

**SOCIAL MOVEMENT DURING AUTHORITARIAN REGIME: A
CASE STUDY OF LAWYER'S MOVEMENT IN PAKISTAN
(2007-2009)**



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“Thesis submitted to the Department of Pakistan Studies, Quaid-i-Azam University, Islamabad, for the partial fulfillment of the Master of Philosophy in Pakistan Studies”.

By

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Author's Declaration

I submit that the dissertation presently submitted bearing the title “**Social Movement During Authoritarian Regime: A Case Study of Lawyer’s Movement in Pakistan (2007-2009)**” is produced as a result of reseaecher own hard work and not been submitted to any other university for consideration of a different degree.

Syeda Sehrish Batool

Supervisor's Declaration

It is to verify that the dissertation submitted by Syeda Sehrish Batool under the title “**Social Movement During Authoritarian Regime: A Case Study of Lawyer’s Movement in Pakistan (2007-2009)**” was under my supervision. I recommend it for the submission in candidacy for the Master of Philosophy in Pakistan Studies (NIPS), Quaid-i-Azam University Islamabad.

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Dedication

To the loving memories of my Father **Syed Ghulam Murtaza (Late)** and comforting presence of my **Mother** and **Brother** , who are the light in my life!

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First of all, I would like to thank Allah, The Cherisher, The Merciful and The Sustainer, who has granted me His mercy, love and strength, and has enabled me to finish this thesis.

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Contribution of my Mother and Brother cannot be described in words in this regard. It was only their affection and inspiring encouragement which kept me proceeding in the direction of my goal.

Syeda Sehrish Batool

Abbreviations:

ANP	Awami National Party
ARD	Alliance for Restoration of Democracy
COAS	Chief of the Army Staff
COD	Charter of Democracy
CMLA	Chief Martial Law Administrator
ECP	Electoral Commission of Pakistan
JI	Jamat-e-Islami
JUI	Jamat Ulema-e-Islam
KPK	Khyber Pakhtunkhawa
LFO	Legal Framework Order
LM	Lawyer's Movement
MRD	Movement for Restoration of Democracy
MQM	Mutahedda Qaumi Movement
MP	Millat Party
NSC	National Security Council

NJPMC	National Judicial Policy Making Committee
PAT	Pakistan Awami Tehrik
PCO	Provisional Constitutional Order
PEMRA	Pakistan Electronic Media Regulatory Authority
PML (N)	Pakistan Muslim League (Nawaz)
PML (Q)	Pakistan Muslim League (Quaid)
PM	Prime Minister
PPP	Pakistan People's Party
PTI	Pakistan TehrikInsaf
RMT	Resource Mobilization Theory
SBA	Supreme Court Bar Association
SCCJ	Supreme Court Chief Justice
SMT	Social Movement Theory

Abstract

This study focuses on a social movement, the Pakistan Lawyers Movement 2007-2009, which brought about major changes in the judicial system of Pakistan, particularly with regard to its judicial independence. The results of this study clearly show a general political development in the country along with a significant change of the judicial system, especially the independence of the judiciary after the historic Lawyers Movement 2007-2009 in Pakistan. Throughout history, Pakistan has kept on shifting between a fragile military and civilian rule, where the judiciary has often been used to legalize extra-constitutional steps, particularly during military regimes. The aim of this research would be to understand and contextualize the reasons for the emergence of the Lawyers Movement 2007-2009 along with its implications, impact and indirect consequences both social and political, and it would explore the role of social movements against authoritarian regimes in Pakistan. A traditional version of the resource mobilization theory has been utilized as the theoretical framework for this investigation in the non-western country like Pakistan.

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CHAPTER 1

Introduction

Pakistan has struggled against authoritarian regimes for a very long time. The fact that several military coups have put a stop to democratic transitions shows that the road to democracy was never simple. Pakistan is a democratic country, but democracy has not developed as it should. From independence to the present day, both civil and military governments have ruled and blamed each other. Our political history is characterized by more periods of military rather than civilian rule. Unfortunately, authoritarianism rather than democratic government has always been the hallmark of Pakistan's military regimes, from General Muhammad Ayub Khan (1907–1974) to General Pervaiz Musharraf. This had created major political, economic and social problems in Pakistan.

Pakistan, like other nations around the world, has its own legal systems. It is independent due to the rules of the Constitution. In accordance by means of law and constitution, it has wide-ranging authority. The judiciary has been able to uphold its independence, reputation, and dignity even during some of Pakistan's most trying times in history. The higher judiciary of the Pakistan has grown gradually, with its foundation being the result of more than 150 years of British rule in the Indo-Pakistan region. The Government of India Act 1935, which was significantly modified to better suit the needs of the new nation, served as Pakistan's first-ever constitution.¹

¹Mannan, M. A., & In Zafar, S. M. (1973). *The superior courts of Pakistan: The development of their powers and jurisdiction*. Lahore: Zafar Law Associates.

Since the country gained independence, numerous ups and downs have occurred. Political and legal development did not follow a predictable course. The path to political stability and constitutional autonomy was fraught with difficulties. Many constitutions were created and then overturned.²The constitution and the political system have both been repeatedly attacked throughout our history. Many successful coups have occurred, including those in 1958, 1969, and 1977, each of which were resulted inside the break of our constitution, the dissolution of legislature, and as well as overthrow of the government.

The 1973 constitution was once more suspended by General Pervaiz Musharraf's military takeover on October 12, 1999. At first, the judiciary declined to take on the duty. However, when the military's imposition was contested and petitions were brought before the Supreme Court, General Pervaiz Musharraf's regime was made public. By this point, the regime had successfully invaded and divided the Supreme Court. When the PCO order which went into effect on January 25, 2000, required judges to take an oath.³According to a 2002 referendum, General Pervaiz Musharraf was elected President of Pakistan for a five-year term, and the judiciary was completely under his control and obedient to his wishes. In every democracy, a powerful, independent, and well-organized judiciary is regarded as essential but unfortunately this has not been seen in Pakistan.

The judiciary avoided the military rulers in the rule of General Muhammad Ayub Khan (1907–1974) and Agha Muhammad Yahya Khan (1917–1980), though it did little to challenge them or prevent the suspension of the constitution. But General Muhammad Zia-ul-Haq's regime eventually took control of judiciary and made it useless in the PCO Order of 1981. Prior to

²Hussain, F. (1991).The Judiciary and Political Developments in Pakistan. *JL & Soc'y*, 10, 1.

³ Iqbal, J. (2006). The Independence of Judiciary.International conference on judiciary in Pakistan.

General Muhammad Zia-ul-Haq's rule (1924–1988), the judiciary had been an active partner in the government.⁴General Pervaiz Musharraf attacked the judiciary at the outset of his administration. The judiciary finally gave up on President General Pervaiz Musharraf's regime after a brief struggle in which Supreme Court opposed taking the Provisional Constitutional Order (PCO) oath required of judges by that government. Due to the judiciary's complete submission to the wishes of the military rulers; Pakistan's citizens were living through one of the most disastrous periods in its history.

The Pakistan Lawyers' Movement (2007–2009) played a significant role in Pakistani politics. The Lawyers' Movement started when President General Pervaiz Musharraf, a military general who took office in 1999 following a non-violent coup, dismissed SCCJ Iftikhar Muhammad Chaudhry from the office.⁵The Lawyers' Movement (2007-2009) is moving from its initial call for reinstatement of chief justice to eventually seeking the resignation of President General Pervaiz Musharraf as well. The Pakistan Lawyers Movement distinguished itself from other movements in Pakistan primarily by being the first to bring together individuals working in various forums to collaborate on the promotion of human rights. It belongs to everyone, whether they are rich or poor, young or old and women or men. They all stood side by side and demanded that the overthrown judiciary be reinstated. Their desire for legal freedom and the rule of law was what brought them together. When President General Pervaiz Musharraf took action against the judiciary in Pakistan in March 2007 and then in November 2007, he does not have weighed the consequences of his actions. So when the leadership of lawyers regularly appears on the news channels, addresses public meetings, writes for newspapers, issues press releases, organizes sit-

⁴Khan, H. (2006). Role of Independent Judiciary in Countries of South Asia, Particularly Pakistan.

⁵Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press, USA.

ins, boycotts courts, they networked with political parties and civil society organizations to make a Non-violent Movement flourish.

The legal community also kept the world informed of developments in Pakistan and made effective use of the internet, ensuring sustained international pressure on President General Pervaiz Musharraf. Everybody seems to have their own opinion about the successfulness of the Lawyers' Movement's, some referring it as a path to stability, right direction, as well as the illustration of people power and rebirth of Pakistan. But the fact is that it was happened first time in Pakistan. People have refused the Government and the Army with the collective slogan "enough is enough".

The judiciary role within the democratization process has always remained problematic all the way through Pakistan's political record. Historically, the Pakistan's courts have provided legal protection and legitimized armed forces rule. The Lawyers' Movement (2007-2009) gave Supreme Court of Pakistan an opportunity to affirm its advisory role. The Movement not only mobilized the good and legal judicial system, but as well paved the way in favor of the Supreme Court to contribute to the democratization course of action in Pakistan. The Lawyers' Movement was not only limited to the Lawyers but moreover included a variety of civil society actors such as the leader and workers of different political parties, students from various fields, peoples belong to religious groups in Pakistan and civic groups.

Statement of Problem

The writing on Pakistan's history mainly focuses on the State and Nation-building, overseas policy and democratization etc. The country's Social Movements haven't received attention, but the Lawyers' Movement (2007-2009) is a catalyst in this regard. The Lawyers' Movement (2007-2009) is directly related to our judicial system. Unfortunately, Pakistan's

judicial system lacks the capacity to handle the country's problems. It is still helpless to stop the military interventions. Dictators frequently engage in unconstitutional attacks on the judiciary. As a result, it continued to be a weak institution in Pakistani politics. The constitution was suspended three times (1977, 1999 and 2007) and repealed twice (1958 and 1969). It depicts a gloomy scene. Threats and challenges during President General Pervaiz Musharraf's military rule have further exaggerated the situation. The present study actually makes an effort to give an overview of Pakistan's judiciary in general and in particular from 1999 to 2009.

Main Research Question

- Why the Lawyers' Movement (2007-2009) was initiated in President General Pervaiz Musharraf regime? And what were the impact and consequences of that Movement on the political and judicial history of Pakistan?

Hypothesis

- The more President General Pervaiz Musharraf strived to weaken the judiciary, the latter got stronger.
- President General Pervaiz Musharraf regime was the era of institutional decay of judiciary in Pakistan.

Scope and Significance of Study

- Main purpose of this work is to investigate the judiciary's independence in Pakistan and how a Lawyers' Movement has affected it.
- For students who are interested in Pakistani politics, this study will serve as a basis of information.

- The goal of the current study is to offer a historical perspective on Pakistan's judicial system and evaluates Pakistan's progress toward judicial independence up to 2007.
- This study looks at the objectives and effects of the Lawyers' Movement (2007–2009), especially in toward judicial independence in Pakistan.

Limitation of the Study

This study focuses in particular on the authoritarian regime of President General Pervaiz Musharraf and the Lawyers' Movement (2007-2009) in Pakistan. In order to understand the background, the brief political and judicial history of Pakistan discussed.

Literature Review

This study includes a large number of secondary books, articles and journals drawn from various libraries and research centers. It also includes the National Archives of Pakistan.

Sahar Shafqat's article "*Civil Society and the Lawyers' Movement of Pakistan*" is examines the role played by the Pakistani judiciary and the impact that civil society mobilization has had on it. It is a significant piece of research on how the judiciary becomes influence in autocratic systems. She also looks at the judiciary's active role during General Pervaiz Musharraf's rule, with a particular emphasis on the Lawyers' Movement (2007–2009), and how it changed under authoritarian rule to become a force for the emergence of democracy. However, the excellent work does not examine the judiciary's historical function, which was to almost always support and legitimize by the Military Government. For instance, even though Shafqat's

paper highlights the significant role that civil society played in the opposition to the General Pervaiz Musharraf regime, it may provide additional insight into the civil society.⁶

The first edited volume and one of the most significant collections of studies by Tom and Tamir on courts in authoritarian regimes is titled "*Rule by Law: The Politics of Courts in Authoritarian Regimes*." Numerous chapters are dedicated to the study of judges and attorneys. Theoretically, it outlines five roles that courts play in authoritarian systems: social control, legitimization, agent control, elite cohesion, economic commitments, and delegation of reform.⁷ Abdullah Fareed Khan's article "*The Pakistani Lawyers Movement and the Popular Currency of Judicial Power*" reviews some of the literature on the roots of the judiciary and its influence on Pakistan's political culture, as well as the use of new communication technologies during the Lawyers' Movement (2007-2009).⁸ The law and courts in authoritarian regimes are analyzed in Tamir Moustafa's article, "*The Law and the Courts in Authoritarian Regimes*", which also gives a general overview of the law as a tool of government, the dynamics of legal mobilization, and methods to restrain it in such regimes.⁹

In the article "*Pakistan's Struggle for Democracy: The Lawyers' Movement one year on*" by Farooq Tariq wrote that the CJ's response, like "no," marked a turning point in the judiciary's history. The nation's highest judges had previously approved all military coups. The author, who has examined all phases of the Lawyers' Movement's clearly stated that the General Pervaiz Musharraf dictatorship be clearly seen as a brutal regime trying to suppress the growing

⁶Shafqat, S. (2018). Civil society and the lawyers' movement of Pakistan. *Law & Social Inquiry*, 43(3), 889-914.

⁷Ginsburg, T., & Moustafa, T. (2008). *Rule by law: the politics of courts in authoritarian regimes*. Cambridge University Press.

⁸Khan, A. F., & Newberg, P. R. (2010). The Pakistani Lawyers' Movement and the Popular Currency of Judicial Power. *Pakistan Harvard Law Review*, 123(1705), 17-18.

⁹Moustafa, T. (2014). Law and courts in authoritarian regimes. *Annual Review of Law and Social Science*, 10, 281-299.

awareness of an independent judiciary. It was the Movement's most significant aspect.¹⁰The article “*Miscarriage of Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf.*” by Shoaib and Ghia’s looks at how the expansion of the judiciary under the General Pervaiz Musharraf regime was fueled by increased economic liberalization and public interest litigation in response to urban planning, deregulation of price controls, privatization of public companies, and illegal imprisonment. Ghia’s investigates how the shifting alliance between the legal community and the bank influenced political liberalism in conjunction with these societal discourses.¹¹The article “*Fighting for the Rule of Law: Civil Resistance and the Lawyers’ Movement in Pakistan, Democratization*” by Zahid Shahab Ahmad and Maria Stephan, covering the Lawyers’ Movement (2007-2009), emphasizes nonviolent and effective civil society participation; however, they could look more critically at political parties in earlier Movements because according to them political parties were not much active on that time against the military rule, find allies in civil society, and consider how that might affect the Movement's course.¹²According to Munir's book chapter, “*From Judicial Autonomy to Regime Transformation: The Role of the Lawyers’ Movement in Pakistan.*” the Pakistani Lawyers’ Movement fought against authoritarian rule ,for advanced democracy, and changed Pakistan's political structure. President General Pervaiz Musharraf suspended the Chief Justice in 2007. The

¹⁰Tariq, F. (2008). Pakistan's struggle for democracy: The lawyers' movement one year on. *Links International Journal of Socialist Renewal*.

¹¹Ghias, S. A. (2010). Miscarriage of chief justice: judicial power and the legal complex in Pakistan under Musharraf. *Law & Social Inquiry*, 35(4), 985-1022.

¹²Ahmed, Z. S., & Stephan, M. J. (2010). Fighting for the rule of law: civil resistance and the lawyers' movement in Pakistan. *Democratization*, 17(3), 492-513.

following two years were spent by lawyers in Pakistan organizing on the streets, calling for a court boycott with the return of CJ Iftikhar Muhammad Chaudhry.¹³

Marta Bolognani article "*Virtual Protest with Tangible Effects? Some Observations on the Media*" analyzes the effects of the media strategies during Lawyers' Movement (2007-2009). It does not only build upon the actions and opportunities that the Lawyers' Movements have made possible, but in addition to providing the framework in the cases provided. For example, the system might have been ready for change with new opportunities for actors if there had been vibrant conflict among the institutions of power; or how the instability of political alignments contributed to the downfall of the regime.¹⁴ Susanne Mahrwald talked about how the landed gentry's influence over government institutions and politics undermines democracy and the rule of law. The author examines Pakistan's weak democratic system and lack of the rule of law in relation to the Lawyers' Movement (2007–2009). She emphasized the higher judiciary's shortcomings in supporting military regimes in particular. In light of this historical context, the CJ's opposition to a military dictator has been viewed as a turning point that advanced the Lawyers' Movement.¹⁵

Khalid Ahmad book, "*Political Developments in Pakistan 1999-2008*" explain that people warmly welcome General Pervaiz Musharraf when he gains power. Actually Musharraf was adequate to a large section of the society and posed less threat than elected Government of the 1990s and his ambivalence intend to split attitudes throughout the country, including those of her supported party, the PML(Q). After his departure, the verdict is now rather clear-cut.

¹³Munir, D. (2012). From Judicial Autonomy to Regime Transformation. *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, 378-410

¹⁴Bolognani, M. (2010). Virtual protest with tangible effects? Some observations on the media strategies of the 2007 Pakistani anti-Emergency movement. *Contemporary South Asia*, 18(4), 401-412.

¹⁵Mahrwald, S. (2009). Rule of Law: The Case of Pakistan. *Lahore: Heinrich-Böll-Stiftung*, 4.

Understanding how it has impacted national politics should be helpful. He approached Pakistan's Supreme Court in 1999 to request a first standing order after assuming power, but that court was harshly overthrown in 2007, because it ousted the CJ. He makes the argument that, as a liberal ruler, he was good for Pakistan, but he made a lot of mistakes.¹⁶ Murtaza Rizvi book, "*Musharraf the Years in Power*" traces the rise and decline of the Pervaiz Musharraf. He argues that Musharraf was the most polarizing president. Both Benazir Bhutto (late) and Mian Muhammad Nawaz Sharif controlled the judiciary to avoid the possibility of distressed parties taking their respective Governments to court. The late crackdown on about sixty Supreme Court judges and CJ Iftikhar Muhammad Chaudhry through General Pervaiz Musharraf after he proclaimed a state of emergency was not unusual in Pakistan's history of the legal system. General Pervaiz Musharraf's life was the focal point of Pakistani politics. His personality contained a lot of contradictions. His decisions altered Pakistan's course.¹⁷

Methodology

This qualitative study uses a case study approach to better understand the Lawyers' Movement (2007-2009) against authoritarian regimes. This research applies the method of document analysis and is supported by various data on the development of the Lawyer's Movement (2007-2009). The data includes books, journals, biographies, journal articles, peer-reviewed publications, thesis, and dissertations. It also makes it possible to trace the developments in both the first and the last phase of the Lawyers' Movement (2007-2009). Therefore, this study identifies gradual developments and changes shaping the trajectories of the Lawyer's Movements and judicial independence.

¹⁶Khalid , A. (2010). *Political Developments in Pakistan 1999-2008*. Lahore: Vanguard Books pvt Ltd.

¹⁷Rizvi, M. (2009). *Musharraf: The years in power*. HarperCollins Publishers India, a joint venture with the India Today Group.

Theoretical Perspectives

In politics, an authoritarian government is one in which a few select politicians hold a political power. It mobilizes people for the regime's objectives through political parties and mass organizations. “Authoritarianism emphasizes arbitrary law rather than the rule of law, frequently involves rigging in the election, policy decisions completed through a small group of higher officials behind the closed doors, bureaucracy with the aim of occasionally breaks the rules and fails to adequately supervise elected officials, failing as a result to address the concerns of the constituents it claims to serve. The informal and unchecked exercise of political power, as well as self-appointed leadership that cannot be replaced by citizens even if elected, are other characteristics of authoritarianism.”¹⁸

Authoritarianism and Judiciary in Pakistan

Pakistan's history is marked by troubled relations between state institutions and civil society. Both the Pakistan and India had received colonial legacy of authoritarianism. It was incorporated into both nations' political structures. In a democracy, the judiciary is capable of carrying out its democratic duties. Within the boundaries of the constitution, the judiciary develops. The Independence of judiciary is be partially influenced by the executive power in authoritarian states.

Courts should always operate the system of the country in a balance way, but they face extra challenges in authoritarian states. If constitutions and the executive branch allow them, they somehow have to honor them. Although the executive has the authority to legitimize the

¹⁸<https://www.britannica.com/dictionary/authoritarian>

right to judge, the courts can restrict some of the executive's powers.¹⁹In Pakistan, when this equation broke down, only the brutality of military rule and martial law could keep politics in check. Thus, the strength of the judicial decisions and, in turn, the security issues that supports judicial doctrine, has always been influenced by the boundaries of judicial independence. In the first ten years after existence, the judges have made an effort to balance the demands of current politics with the constitutional principles and legal language of the nation. Their decisions frequently sided with the current administration, most likely in an effort to protect institutional autonomy going forward.

Zulfikar Ali Bhutto (1928–1979), was autocrat. He made effort to strengthen the military establishment, which turned his downfall. In his efforts to establish a rigid regime, Zulfikar Ali Bhutto became more and more dependent on the secret services and the state's coercive apparatus. It hasn't done much to support democratic institutions or make democratic reform irreversible.²⁰Instead, they have focused all of their efforts on advancing a cultural norm. He had no faith in anybody. A power vacuum that was created by the dissolution of democratic institutions and the erosion of constitutional sanctity favored Bonaparte's generals.

In 1991, Mian Muhammad Nawaz Sharif established the government. President Ghulam Ishaq Khan, an autocratic leader who insisted on having his way in the political system, was not pleased with Mian Muhammad Nawaz Sharif's Government. President Ghulam Ishaq Khan saw Mian Muhammad Nawaz Sharif's growing independence as a threat to his power.²¹Actually they had a different opinion about the appointment of chief of army staff, posting of ambassadors, economic liberalization, and relationship between political parties.

¹⁹Rizvi, A. (2003). *The Political System of Pakistan*. Harndard Institute Of Education and Social Sciences, Hamdard University, Karachi.

²⁰Hussain, Z. (2008). *Frontline Pakistan: the struggle with militant Islam*. Columbia University Press.

²¹Mahmood, S. (2002). *Pakistan: Political Roots and Development 1947-1999*. New York, Oxford University Press.

Military rulers are authoritarian and rigid by nature. President General Pervaiz Musharraf responded in the traditional way and forced Mian Muhammad Nawaz Sharif out of office at gunpoint.²²The recent history of Pakistan following the coup led by President General Pervaiz Musharraf in 1999 demonstrates that due to military, Pakistan is going towards its down. Despite slow progress toward democracy and civilian rule into the post-Cold War period, Pakistan's military continues to be the country's most potent and independent political actor.

The Role of Social Movements

To increase comprehension of the Lawyers' Movement (2007–2009) and its effects on society and politics, it is helpful to come across at the role of the Social Movements in political developments. The Lawyer Movement (2007-2009) was a far-reaching political and Social Movement initiated by legal professionals such as the lawyers and judges, including the civil society members, for the country's political development. Lawyers' Movement (2007-2009) emerged in two phases. Firstly, lawyers protested in the streets, the Pakistan's Supreme Court made an independent assertion and won public support. Secondly, nationwide protests against President General Pervaiz Musharraf's arbitrary actions were organized by a larger coalition of lawyers, members of civil society and non-governmental organizations, students, political parties, and other groups. As a result, Pakistan's political and judicial systems underwent changes.

Social Movements (SM) are collective actions aimed at a particular social or political problem. SM is more frequently meant to be practiced in highly developed democracies. However, some with a democratizing effect can be seen in military regimes. In the era of a military dictatorship, one such example was the Pakistan Lawyers' Movement (2007-

²²Kukreja, V., & Singh, M. P. (Eds.). (2005). *Pakistan: Democracy, development and security issues*. Sage.

2009). McCarthy and Zald define social movement as “a set of opinions and beliefs in a population that represent preferences for changing some element of social structure or the distribution of rewards in a society”.²³ According to Tilly, “the term Social Movement most accurately describes an ongoing dialogue involving a particular set of authorities in addition to a variety of speakers who are challenging those authorities.”²⁴

Resource Mobilization Theory

According to Mancur Olson's (1965) theory of social action, all social movements are driven by individuals' rationality.²⁵ His philosophical foundations served as a foundation for the Resource Mobilization Theory (RMT). The Resource Mobilization perspective is generally used to explain the RMT approach. The Resource Mobilizing Structure mainly focuses on role of leadership, role of Organizations, collective identity, role of electronic media and political parties. For RM theorists, daily choices made by Social Movement leaders in particular serve as a starting point.²⁶ This study aims to investigate the Lawyers' Movement (2007–2009) in particular using the Resource Mobilizing Structure as a lens.

Organization of Chapters

This study consists of four chapters:

Chapter One: The first chapter of the study comprises the research proposal of the project. This chapter sets out the plan of the study, which includes the statement of problem, the objective and

²³McCarthy, J. D., & Zald, M. N. (1977). Resource mobilization and social movements: A partial theory. *American journal of sociology*, 82(6), 1212-1241.

²⁴ Tilly, C. (1984). Social movements and national politics. In C. Bright, & S. Harding (Eds.), *Statemaking and social movements: Essays in history and theory* (pp. 297-317). Ann Arbor: University of Michigan Press.

²⁵Olson, M. (2012). The logic of collective action [1965]. *Contemporary Sociological Theory*.

²⁶Turner, C. L. (1995). *Japanese workers in protest: an ethnography of consciousness and experience*. University of California Press.

significance of the study, research questions, hypothesis, Methodology, data collection, theoretical framework and organization of chapters.

Chapter Two: Focuses on the judicial history of Pakistan (1947-1999) and the major state-judicial conflicts associated with it. It demonstrates how unstable Pakistan's political and judicial systems have been since the country's independence. Four direct military dictatorships have existed in Pakistan, and the judiciary has had to treat through the serious penalty of the military involvement into politics. The courts had to compromise their judicial independence in order to survive these authoritarian times.

Chapter Three: Focuses on the military takeover of 1999 and its legitimacy. The overthrow of Mian Muhammad Nawaz Sharif's civilian government, the Pakistani military's function and goals, PCO, the presidential referendum, and the general election are all covered in detail.

Chapter Four: Begins with the history of the Lawyer Movements (2007-2009), its origin, underlying causes, its goals and objectives and declaration of Lawyers' Movement (2007-2009) in favor of the Independence of the Judiciary. It also explains how the Lawyers' Movement (2007–2009) affected Pakistan's political and judicial history.

The conclusion is given at the end

CHAPTER 2

Judicial History of Pakistan (1947-1999)

Historical Perspective

The Hindus, the Mughals, and the British colonial rulers are just a few of the various influences that have shaped Pakistan's judicial system. The four distinct historical eras that have shaped the country's legal system were the Hindu Kingdom, Muslim rule, British colonial rule, and the years following independence in 1947. The court system and structures have been most influenced by the British era. The Hindu king (1500 BC-1500 AD) had complete control on judicial system, which was clearly laid out and organized. Although the king appointed individuals to serve as judges, ministers, or councilors to assist in the administration of justice, the king retained ultimate control over all judicial decisions. The first Muslims arrived in India as seafarers and traders in the western coast ports. Under Muhammad Bin Qasim's direction, Muslim conquest officially began with the invasion of the Sindh in 712 AD. Sultan Qutub-ud-din Aibak established the most important Muslim dynasty in 1206 AD.²⁷

We can see four different types of courts in Muslim era: the Nazim-e-Suba courts (head of province), the district-level courts (Qazis), and the Tehsil level courts. The central court or the king's court was located in capital.²⁸ There were other institutions in addition to this four-tiered judicial system that carried out administrative and judicial duties concurrently.²⁹ For the three

²⁷Hussain, F. (2015). *The judicial system of Pakistan*. Pakistan: Supreme Court of Pakistan.

²⁸Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

²⁹Munir, B. (2020). The Mughal Administration of Justice: An Appraisal. *Global Security and Strategic Studies Review*, 5(3), 43-50.

cities of Bombay, Calcutta, and Madras, the British government established courts. The High Court and the Courts of Record were two different types of courts comprised of British judges chosen by the Crown. British law was applied to both civil and criminal cases.³⁰

The Government of India Act of 1935

Prior to the subcontinent's partition, the British ruled India and used the 1935 India Act to run the country's government. A federal structure of government was established by this Act. Governor General was chosen by British Monarch, was given control of the government. The House of Assembly, the Council of State, and His Majesty, represented by the Governor General, were all established by this Act. The 1935 Act established the Federal Court by means of exclusive and appellate jurisdiction for the administration of justice. Additionally, it established courts with specific jurisdictions on the province level, including the High Courts, Chief Courts, and Judicial Commissioner's courts.³¹ The Indian judicial system was reorganized by the India Act of 1935. It was maintained that the Federal Court had exclusive appellate and advisory jurisdiction, along with the former High Courts. Between the Federal and Provincial Governments, disputes could be settled by the Federal Court.³²

The Independence Act of 1947

On August 14, 1947, a sovereign independent state called Pakistan was established. The Constituent Assembly decided that Quaid-i-Azam Muhammad Ali Jinnah (1876–1948) would be the first Governor-General of Pakistan. Liaquat Ali Khan (1895–1951) was appointed by Quaid-

³⁰Hussain, F. (2015). *The judicial system of Pakistan*. Pakistan: Supreme Court of Pakistan.

³¹Khan, S. A. (1997). The Government of India Act, 1935 and The Lahore Resolution. *Journal of the Pakistan Historical Society*, 45(2), 147-180.

³²<https://blog.ipleaders.in/government-of-india-act-1935-2/>

i-Azam as Prime Minister and given control over the Ministries of Defense and Foreign Affairs. Both the Independence Act of 1947 and 1935 were still in effect in Pakistan after country gained its independence. The Interim Constitution Framework of Pakistan was created by both of these Acts.³³ Pakistan had learned the legal and judicial lessons from the British experience but there were huge differences in how courts work in the UK and in Pakistan. We have written constitution, which takes priority over others common law in the nation, was foremost among them.

The First Constitutional Assembly

The First Constitution Assembly was established on August 11, 1947, in Karachi. Quaid-i-Azam spoke to Pakistan's new constitutional assembly and said, "I believe that if we keep that as our goal, over time the Hindus and the Muslims would cease to be what they are today, not in a religious sense for the reason that each person's personal faith determines that but rather in a political sense like members of the state".³⁴

Constitutional Assembly was given two distinct tasks by the Indian Independence Act, first drafting the constitution and second was serving as the Federal Legislative Assembly or Parliament until a new the constitution is made. Constituent Assembly was granted the authority to Central Legislature by Government of India Act of 1935. It originally had 69 members, but later added a further 74. Upon joining Pakistan, Bahawalpur, Khairpur, Balochistan, and tribal regions were given further seats.³⁵

³³Sayeed, K. B. (1955). The Governor General of Pakistan. *Pakistan Horizon*, 8(2), 330–339.

³⁴Quaid-e-Azam Address to the Constitutional Assembly on August 11, 1947

³⁵Symonds, R. (1950). State-Making in Pakistan. *Far Eastern Survey*, 19(5), 45–50.

Objective Resolution 1949

Nation was shocked by the Quaid-i-Azam's death on September 11, 1948. Khawaja Nazim-ud-din, the Prime Minister of East Bengal, was elected to the position of Governor-General. Liaquat Ali Khan continued to serve as the prime minister, and Pakistan's first truly constitutional governor-general was Khawaja Nazim-ud-din. The Objective Resolution, which Liaquat Ali Khan introduced into Constituent Assembly on March 12, 1949, was a noteworthy act of government.³⁶The Objective Resolution served as the Constitution's foundational document. Later, it was kept as a preamble in the Constitutions of 1956, 1962, and 1973. It established the principles of social justice, democracy, freedom, equality, and tolerance. One of the most significant pieces of constitutional history in Pakistan is the Objectives Resolution.

Constitutional Assembly established the Basic Principles Committee, whose job was to report on the fundamental ideas upon which the Pakistan Constitution would be based. Interim report was delivered in September 1950, but the final report was delivered in December 1952.³⁷During their rule, Liaquat Ali Khan failed to lay the foundation for the new constitution. On December 22, 1952, Khawaja Nazim-ud-din presented the Basic Principle Committee's Consolidated Report after he abandoned the task of making the Constitution incomplete.³⁸The military had grown to be a significant political force by 1953. Only with the backing of the military some crucial decisions were made possible by the Governor-General. The military had

³⁶ Ibid

³⁷ Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

³⁸ Ahmad, R. (2002). Pakistan's First Constituent Assembly's Efforts for the Making of Constitution. *Pakistan Journal of History & Culture*, 23, 1.

absolute power over security and defense. Army modernization is a priority for Commander-in-Chief General Muhammad Ayub Khan.³⁹

The Basic Principles Committee report had been discussed by the Constituent Assembly by mid-September 1954 and Muhammad Ali Bogra, who was working as a Prime Minister on that time, announced that Constitutional Law's final draft would be ready by December 25, 1954 but on the same time (October 24, 1954) a very crucial step was done by Governor General Ghulam Muhammad. He dissolved the Constituent Assembly, citing a lack of support from the people and an unreasonable deadline for drafting a Constitution as reasons. He would set elections for a new assembly because there was no representative in the current assembly.⁴⁰ Governor General dissolved Constituent Assembly and reassembled the cabinet with his proclamation of October 24, 1954. He declared that a newly assembled Cabinet would lead the nation until the elections.⁴¹ The Pakistan has not been able to establish a stable and legal political order as a result of the political and institutional instability, which has caused frequent swings between civilian and military rule.

Tamizuddin Khan Case

When Pakistan's first Constitution was about to be ratified in 1954, Ghulam Muhammad dissolve the Constituent Assembly. The First Constituent Assembly's speaker, Maulvi Tamizuddin Khan, challenged it in the Sindh High Court pursuant to Section 223-A of Government of India Act 1954 (Amendment) for the declaration of writs of *quo warranto* and

³⁹Innes, F. M. (1953). The Political Outlook in Pakistan. *Pacific Affairs*, 26(4), 303–317.

⁴⁰Kokab, R. U., Shah, A. S., & Aziz, T. (2020). Second constituent assembly of Pakistan: Politics for dissolution of former assembly and electoral regulations for new assembly. *sjesr*, 3(3), 49-57.

⁴¹Choudhury, G. W. (1969). *Constitutional development in Pakistan*. Publications Centre, University of British Columbia.

mandamus to prevent the government from dissolving the constituent assembly. Federation filed a petition alleging that the Government of India Act 1954 (Amendment) was invalid because the Governor General had not approved it. If the Law was approved by the constituent assembly, then the Governor General's approval was not required, the Sindh High Court, presided over by the Chief Judge, and declared the dissolution of the Assembly to be illegal. On appeal, however, the ruling of the Sindh High Court was overturned by the Federal Court, which was presided over by Judge Muhammad Munir and Judge A.R. Cornelius. Due to the Enabling Act of 1954's lack of Governor-General Approval, the Federal Court determined that the Sindh High Court's issuance of writs was not legitimately justified. The '*necessity of assent*' was established by the Federal Court's ruling. Actually the Emergency Powers Ordinance of IX of 1955, gave power to Governor General to validate some of the Constituent Assembly passed laws, the constitutional crisis grew even more serious.⁴².

The decision by the court signaled the start of Pakistan's constitutional crisis. Sharp political and legal disagreements were foreseen by the decision. All laws passed between the assembly's incorporation and dissolution is now invalid due to this ruling. As a result, this set of rulings confirmed the termination of first Constituent Assembly and served as a template for future military bodies' unconstitutional actions. The judiciary was left weaker after this incident because it was unable to stand up to the unconstitutional actions of civilian presidents and military leaders to overthrow governments and dissolve elected parliaments. Maulvi Tamizuddin Khan case was the first in which the Federal Court was pressured to reverse the Sindh High Court decision by upholding Governor General order to dissolve the first Constituent Assembly.

⁴²Shabbir, S. S. (2013). Judicial activism shaping the future of Pakistan. Available at SSRN 2209067.

Judiciary Under the 1956 Constitution

On March 23, 1956, Pakistan's first constitution went into effect. Pakistan changed from a monarchy to a republic, president serving as the head of the state. First President of Pakistan was Iskander Ali Mirza. In accordance to with constitution of 1956, Supreme Court replaced with the Federal Court along with in some ways had broader authority. There were no express constitutional restrictions on the High Court's authority to hear cases. All Pakistani courts must follow Supreme Court rulings, and the Supreme Court should receive support from all executive and judicial branches of government. The Supreme Court's orders must be followed as if they had been issued by the Highest Courts with the necessary jurisdiction. The task of interpreting constitution process was given to Supreme Court. Its authority to resolve the conflicts between Federal Government and provinces was specifically granted.⁴³

Supreme Court was comprised of CJ and six further judges, though this could be increased through the Parliament in accordance with the law. The President was having authority to appoint Chief Justice, and President was to confer with the Chief Justice before appointing the other judges. It was necessary for the appointment of Supreme Court judge to have five years of experience as High Court judge or fifteen years of experience as lawyer or pleader in High Court .A Supreme Court judge must retire at age 65 and is not permitted to work for or represent courts or authorities in Pakistan. A judge may perhaps only be removed as of his office if the President finds that he is guilty of misconduct or has a mental or physical impairment and the National Assembly votes to do so with two-thirds of the members present. In the event that the Chief

⁴³Khan, H. (2016). *A History of the Judiciary in Pakistan*. Oxford University Press.

Justice is unavailable or the position becomes vacant, it also allowed appointing of an acting Chief Justice.”⁴⁴

Two High Courts were established for East and West province of Pakistan by the constitution of 1956. Both High Courts were made up by the Chief Justice and the additional judges that the President could appoint and Chief Justice of High Court was also appointed by the President. In the event that additional High Court judges need to be appointed, the President may do so after consulting with the relevant High Court's Chief Justice and the Constitutional Officers. For appointment as a High Court judge there was some requirement such as one needed to have ten years of experience as district judge or at least ten years of judicial service in Pakistan. If the President has advised the Supreme Court that the Justice should be removed for any of these reasons, the President may not remove a High Court judge from office by executive order. However, the decision to transfer a judge from one High Court to other was only made contingent upon the transferring judge's and after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court where he served as a judge. The Supreme Court of Pakistan was given similar High Court authority to issue any such writs to uphold the constitutionally guaranteed fundamental rights.⁴⁵

Failure of the Constitution of 1956

Although the 1956 constitution was only temporary, it brought a lot of changes in the country. The major one was the quick holding of elections, but it never happened. The President was Head of State and actual Executive power belonged to Prime Minister. Parliamentary

⁴⁴ Ibid

⁴⁵ Ibid

System was introduced.⁴⁶ However, the President's interference into the State political affairs weakens Prime Minister's authority. The smooth operation of the cabinet system and the ministers' accountability to Parliament were both hampered by this interference. The failure of the 1956 constitution was due to the frequent changes in Ministers, a lack of leadership, growth in bureaucracy, and the extra interferences of bureaucracy in the matters of government policy and administration.

First Martial Law and Changes in Judicial System (7th- 27th October 1958)

The first martial law was declared on October 7, 1958 by Iskander Ali Mirza, with the help of Army Chief General Muhammad Ayub Khan in Pakistan. He revoked the constitution and was allotted as Chief Martial Law Administrator.⁴⁷ Central and Provincial Cabinets and Assemblies were also dismissed. Additionally, all the political parties were outlawed and Martial Law was enacted in Pakistan. President Iskander Ali Mirza outlined the reasons for making this decision in his proclamation. The first stage of martial law was this. On October 26, 1958, General Muhammad Ayub Khan was appointed Pakistan's prime minister. He actually created a scheme against President Iskander Ali Mirza because he wants to have complete control so after twenty days, army generals enforced Iskander Ali Mirza to step down as president. Iskander Ali Mirza, the president, silently complied. President and Chief Martial Law Administrator duties were combined under General Muhammad Ayub Khan.⁴⁸

A Law Reforms Commission was established by the Martial Law regime on December 1959 to propose changes to British inherited legal systems. The Commission recommendation

⁴⁶Pardesi, Y. Y. (2012). An Analysis of the Constitutional Crisis in Pakistan (1958-1969). *Dialogue (Pakistan)*, 7(4).

⁴⁷Idrees, M., & Khan, N. (2018). A Survey of the Role of Judiciary in Validating Military and Authoritarian Regimes in Pakistan. *Social Crimonol*, 6, 182.

⁴⁸Rizvi, H. A. (2000). *The military & politics in Pakistan, 1947-1997*. Sang-E-Meel Publication.

was comprehensive, and for several years. The recommendation aimed to expedite and simplify the administration of justice. Ten ordinances to reorganize the delivery of justice were passed between 1962 and 1963. It was intended to establish Special Courts for the trial of specific crimes and Family Courts for the resolution of matrimonial disputes. The idea to establish mobile courts to hear administrative offences followed a similar course.⁴⁹ Even though not all of the Commission's recommendations were carried out, some of them were to amend the Civil Procedure Code, which meant to reduce the practical legal complexities that frequently caused the cause of substantial justice to be delayed.

The 1962 Constitution and Judiciary

The first Martial Law was proclaimed in October 1958, old constitution was suspended. General Muhammad Ayub Khan was determined to give the nation a new one as soon as possible. Soon after, on February 17, 1960, he took the oath as Pakistan's first elected president and established a Commission headed by Manzoor Qadir to draft a new constitution. In May 1961, the Commission delivered its final report. Then preparations were made for elections (National and Provincial Assemblies) which were too held in May 1962 and signaled the start of a period of Presidential Rule. The 1962 Constitution had a rigid structure.⁵⁰ A Supreme Court and the two High Courts comprise an independent judiciary according to the Constitution. The Judges of the Supreme Court, including the Chief Justice, may be appointed by the President and may hold office until age 65. They were protected by the constitution and could be removed from office for misbehavior or physical or mental illness that could be established before the Supreme

⁴⁹Wilcox, W. A. (1965). The Pakistan Coup d'état of 1958. *Pacific Affairs*, 38(2), 142-163.

⁵⁰Wheeler, R. (1963). Pakistan: New Constitution, Old Issues. *Asian Survey*, 3(2), 107-115.

<https://doi.org/10.2307/3023682>

Judicial Council. All conflicts involving the Central and Provincial Governments fell under the Supreme Court's authority. It was authorized to file an appeal in opposition to any ruling, restraining order, or directive issued by High Courts. Any person, organization, or government can be ordered by the courts to do or not do something for any reason. Additionally, the Constitution maintained judicial oversight of the Executive. General Muhammad Ayub Khan, however, was given real power by the constitution of 1962, and he used that power to make changes that benefited him personally.

Beginning in the middle of the 1960s, the President Muhammad Ayub Khan regime came under vengeful attack from the politics of exclusion and economic inequality. The backdrop for new opposition was provided by labour militancy in industrial areas and student radicalism that was pervasive in universities across the nation. The Pakistan Democratic Movement (PDM) was founded in May 1967 by the East Pakistan-based Awami League, the Council Muslim League, Jamat-i-Islami, and Nizam-i-Islam. All were demanding in favor of the beginning of a parliamentary system, direct elections, as well as the federal government by means of power-sharing among the constituent entities. The Ulema, low-level government employees, industrial workers, students, and other professional groups participated in large-scale anti-government demonstrations in major cities between November 1968 and March 1969. In subsequent clashes with the police and army, 250 people were killed.⁵¹ On March 25, 1969, under intense pressure from all directions, President Muhammad Ayub Khan was forced to make a clear demand from the Military Command to immediate transfer of authority to General Muhammad Yahya Khan, who was the head of the Pakistan Army on that time.

⁵¹Shaikh, R. A. (2009). Military Dictatorship and People's Movement in Pakistan. *Jadavpur Journal of International Relations*, 13(1), 24-45. <https://doi.org/10.1177/0973598409110003>

Second Military Regime of Muhammad Yahya Khan and Judiciary (1969 – 1971)

General Muhammad Yahya Khan took the office as the President of Pakistan and the CMLA as well. The 1962 Constitution was voided by him. He pledged to hold "free and fair" elections and give elected officials more authority. The LFO which was released on 30th March, 1970, set forth the principles that Military Leaders wanted the National Assembly to take into account when drafting the constitution and provided the rules for General Elections.⁵² General Muhammad Yahya Khan quickly established the Provisional Constitutional Order (PCO), which stated that Pakistan would be governed largely in accordance with the 1962 Constitution up until a new constitution was put into effect. Fundamental rights were suspended, and courts were not permitted to issue any writs or orders that would conflict with the Martial Law Administrator's directives. Any court cannot overturn a military court's decision. The Constitution had to be written by the National Assembly within 120 days of its first meeting. Following that, the National Assembly would be dissolved automatically.⁵³ Basically General Muhammad Yahya Khan followed General Muhammad Ayub Khan's course and did almost same things to gain more power.

Asma Jillani Case

For political reasons, government detained Malik Ghulam Jillani, Altaf Gauhar, and some others on December 22, 1971, in an effort to silence the opposition. The arrests were contested in the Lahore High Court by Asma Jillani, Jillani's daughter, and Zarina Gauhar, Gauhar's wife. The petition was accepted by the court, and notices were sent to the Punjab Government. The

⁵²Rizvi, H. A. (2000). *The military & politics in Pakistan, 1947-1997*. Sang-E-Meel Publication.

⁵³Pardesi, Y. Y., & Panhwar, K. N. (2014). Constitutional crisis in Pakistan from 1969 to 1971: critical analysis. *The Government-Annual Research Journal of Political Science.*, 3(03).

government revoked the prior arrest warrant on December 29, 1971, the day earlier than the court appearance, and issued a new one under Martial Law in its place. The initial complaint from the Government was that Section 2 of the Chief Martial Law Administrator enacted order 1969 did not grant Lahore High Court jurisdiction.⁵⁴Supreme Court was approached through the petitioners. The detainees were released after the Supreme Court overturned the *doctrine of necessity*, declared both warrants void, and overturned their validity. Supreme Court issued the order, "This country was not a foreign country attacked via Army head General Muhammad Yahya Khan, and also it was not a foreign territory to conquer by that Army as well". So, the constitution has always prevailed over martial law. Supreme Court moreover ruled that General Muhammad Yahya Khan was not a victor and the Pakistan was not occupied territory. He was labeled a "usurper" by the court, and his actions were deemed unlawful.⁵⁵So this decision was take a great place in judicial system. It was for the first time that judiciary go against the military ruler before that the higher judiciary was always remain in favor of the Military ruler and mostly declared constitutional petitions legitimate, except in Asma Jillani case. So this case was unique in that sense because General Muhammad Yahya Khan was declared as usurper and his action was also confirmed against the law by the court for the first time. The main aspect of this case is that General Muhammad Yahya Khan was not in power at the time the verdict was announced. In the Western region of the nation, the Pakistan People's Party was into charge. Zulfikar Ali Bhutto (1928–1979), who presided over Pakistan as its first civilian Martial Law Administrator following the war in 1971, later rose to the position of country's president and prime minister.

⁵⁴Khan, H. (2016). *A History of the Judiciary in Pakistan*.Oxford University Press. pp. 143-144

⁵⁵Pardesi, Y. Y., &Panhwar, K. N. (2014). Constitutional crisis in Pakistan from 1969 to 1971: critical analysis. *The Government-Annual Research Journal of Political Science.*, 3(03).

The 1973 Constitution and Judiciary

On December 20, 1971, Zulfikar Ali Bhutto was sworn in as President and CMLA as well. Thus, second Martial Law was in effect from March 25, 1969, until April 21, 1972.⁵⁶The judiciary provision in the 1973 new Constitution was similar to that in the old Constitution. However, an effort was made to control and restrict the Superior Courts' authority. Courts were allowed to exercise jurisdiction only within the Constitution. Apart from this, court was not allowed to have jurisdiction. It is clear that the purpose of this clause was to restrict the idea of the Superior Courts' inherent authority and jurisdiction. The highest court in the country is still the Supreme Court. All Pakistani courts had to abide by the Supreme Court's rulings. The Supreme Court would serve as the chief executive and judicial authority for the entire nation. The work of interpreting the Constitution was given to Supreme Court. The High Court's criminal and civil rulings fell under the purview of the Supreme Court. An appeal from a High Court may also be heard by the Supreme Court. Additionally, the Supreme Court had advisory authority over all legal matters. Supreme Court had the exclusive authority to concern rulings regarding the application of any Fundamental Rights.⁵⁷

Zulfikar Ali Bhutto and the Judiciary

Zulfikar Ali Bhutto convened a gathering of both judges of High Court and Supreme Court in Lahore after assuming office in 1972. He spoke in a very authoritative manner to the judiciary during this meeting, in addition to criticizing it. He had made some adjustments to the judicial system. The Third Amendment made it easier for the Government to declare an emergency and gave it the authority to hold someone for three months without a trial. In relation

⁵⁶Rizvi, H. A. (2000). *The military & politics in Pakistan, 1947-1997*. Sang-E-Meel Publication.

⁵⁷Khan, H. (2009). *Constitutional and political history of Pakistan*. Karachi: Oxford university press. pp. 281

to preventive detention, the Superior Courts' jurisdictional powers under Section 199 were restricted by the Fourth Amendment in 1975, and the freedom of association was systematically further restricted. The High Courts' judicial authority was further constrained by the Fifth Amendment in 1976. Supreme and High Court Chief Justices were given fixed terms of four and five years, respectively. Despite having reached their respective retirement ages of 65 and 62, the six amendments of 1977, CJ of both Supreme Court and High Courts were each given five and four additional years to serve. Following a popular uprising against Zulfikar Ali Bhutto's rule as a result of the rigged 1977 elections, the Seventh Amendment was passed. A referendum was allowed as a means of avoiding re-election. Additionally, by these amendments, the jurisdiction of High Courts was limited to civilian only.⁵⁸

The Government was given the authority to remove any Chief Justice and name any Chief Justice regardless of seniority, which severely curtailed the judiciary's independence. These amendments also gave the Executive the power to transfer a judge to a High Court for up to years without the judge's consent or consultation with the appropriate Chief Justice. The chief justice could now be chosen by the executive branch rather than the senior judge thanks to these amendments. These amendments compromised the independence of the judiciary as well as the fundamental rights of the people.

Third Martial Law and Judiciary (1977 - 1988)

For the third time in history, the judiciary steps in and support General Muhammad Zia-ul-Haq, who actually imposed third Martial Law and overthrew Zulfikar Ali Bhutto's democratically elected government. Invoking the doctrine once more, CJ Anwar-ul-Haq justified

⁵⁸Mahmood,N.(2015).A History of Constitutional Amendments.
<https://www.thenews.com.pk/tns/detail/559672-history-constitutional-amendments>

the illegal actions. General Elections were called and scheduled by Prime Minister Zulfikar Ali Bhutto in 1977. On March 7, 1977, elections were held, and PPP received 155 out of 200 seats, giving them a majority in National Assembly. Only 36 seats were won by Pakistan National Alliance (PNA). The opposition parties disputed the election results and claimed that they were rigged.⁵⁹

Along with rejecting the election results, the opposition parties launched a large-scale uprising against Zulfikar Ali Bhutto's administration. Large crowds of people showed up, making it more difficult for the police and security forces to keep the country under control. The PPP's civilian government appealed to the military to help civilian institutions bring peace back to the nation. Despite a massive campaign against the opposition and the arrest of the top opposition party leaders, the government was unable to put an end to the protest. In clashes with the army and police, many people were killed. In the end, Martial Law was imposed by General Muhammad Zia-ul-Haq. He dissolved assemblies and took control of all civil institution because the military refused to follow the Civilian authorities' orders. Zulfikar Ali Bhutto was placed under house arrest in Adyala after he was removed as prime minister. In his address to the nation, he gave an explanation of the circumstances surrounding his coup and pledged to transfer power within three months of free and fair elections. On the advice of A.K. Brohi, General Muhammad Zia-ul-Haq determined to suspend the 1973 constitution rather than repeal it.⁶⁰

The Nusrat Bhutto Case

The Martial Law Order No. 12 of 1977 was contested by Begum Nusrat Bhutto, in a petition to Supreme Court of Pakistan in Article of 184(3) of the 1973 Constitution. She argued

⁵⁹Richter, W. L. (1978). Persistent Praetorianism: Pakistan's Third Military Regime. *Pacific Affairs*, 51(3), 406–426.

⁶⁰Khan, H. (2009). *Constitutional and political history of Pakistan*. Karachi: Oxford university press. pp. 437-438

that General Muhammad Zia-ul-Haq, lacked the legal authority to impose martial law and that PPP leaders, including her husband, were wrongfully detained. A PPP lawyer, Mr. Yahya Bakhtiar, defended the case using the precedent set by the Asma Jilani case. He argued that the Elected Prime Minister and Elected Assemblies could not be removed by the Army Chief under any legal authority. He determined the Army Chief's action to be illegal and requested that the Supreme Court resolve the matter in accordance with Article 184(3).⁶¹ Attorney General Sharif-ud-Din Peerzada of Pakistan testified in court as a member of the law enforcement community and backed the claim that the enactment of martial law does not grant the Army Chief of Staff the authority to assume executive authority. He claimed that due to widespread election rigging in 1977, the Prime Minister had usurped authority and that the Military wanted him out of office. The Supreme Court of Pakistan justified the Army Chief's extra constitutional action on November 10, 1977, citing "state necessity" and "people's welfare" as justifications.⁶² As a result, the court acknowledged that Zulfikar Ali Bhutto resignation was valid and lawful. The appeal for release made by Zulfikar Ali Bhutto and other PPP leaders was also denied because it was ineffective.

Military Government of Muhammad Zia-ul-Haq and Judiciary

General Muhammad Zia-ul-Haq advocated for "Islamization" as a way to strengthen society. He cited the Ushers and Zakat rules in Islam. He also discussed Qisas and Diyat's modes of operation. Religious judges established and administered Qazi courts. He urged the creation of an Islamic legal system that adheres to Islamic jurisprudential principles. He believed that the

⁶¹Bhatti, M. N., & Shaheen, M. (2019). Assessing the Freedom of Judiciary in Pakistan during 20th Century. *Journal of Historical Studies*, 5(2), 146-177.

⁶²Virk, M.N.(2012). Doctrine of Necessity-Application in Pakistan-Cases of Immense Importance-A Critical Review. *International Journal of Social Science & Education*, 2(2), 82-87.

proposed Islamic reforms could end corruption and stop the exploitation of the most vulnerable members of society. Federal Shariat Court was established in May 1980. Its function was to review its own rulings, and the Shariat Bench of Pakistan's Supreme Court heard appeals against their order. The Hudood Ordinance was introduced in 1979 by General Muhammad Zia-ul-Haq to establish the Islamic system in Pakistan.⁶³

Provisional Constitutional Order (PCO) 1981

In March 1981, PCO was unveiled because if the President gave permission to political parties than they can participate in any kind of political activity. Parties without election commission registration were disbanded. Without the Chief Election Commissioner's prior approval, no political party could be formed. According to PCO order, it was mandatory for judges to take an oath. Anwar-ul-Haq, the Chief Justice, was one of many judges who steadfastly refused to take the oath. As a result, they were laid off.⁶⁴ General Muhammad Zia-ul-Haq was placed in a difficult situation when he encountered a ferocious demonstration in Sindh province organized through the MRD. The MRD declared that it would begin operations on August 14, 1983.⁶⁵ The Movement was actually given a signal to change the current situation. Actually he attempted to undermine the Movement for Restoration of Democracy by announcing an election formula because he saw its new potential but all in vain.

⁶³Lawrence, Z. (2007). *Pakistan in the Twentieth Century: A Political History*. Karachi: Oxford university press.

⁶⁴Ahmad, M. S., Ghazali, M. A., & Naeem, M. (2022). General Zia ulHaq Legacy: Provisional Constitutional Order (PCO) March 24, 1981. An Analytical Study. *Harf-o-Sukhan*, 6(1), 23-28.

⁶⁵Mushtaq, A. Q. (2015). Movement for Restoration of Democracy (MRD). *Journal of the Research Society of Pakistan*, 52(1).

The Eighth Amendment

The eighth amendment, which acts as a "bridge" between military rule and democracy, was considered a piece of "Constitution Engineering". According to the 1973 amendments to the Constitution, the President had certain powers, including the ability to dissolve the National Assembly under certain circumstances. As Chief Executive in the Constitutions of 1973, the Prime Minister had complete discretion. In accordance with Article 58(2)(b) of the Constitution, on May 29, 1988, General Muhammad Zia-ul-Haq used his executive authority to remove Prime Minister Muhammad Khan Junejo's administration. Two and a half months later, on August 17, 1988, he died in a plane crash close to Bahawalpur. The situation was altered by General Muhammad Zia-ul-Haq's unexpected passing in a plane crash on August 17, 1988. General Aslam Baig assumed leadership of the Army as Chief of Staff right away. The Senate Chairman at the time, Ghulam Ishaq Khan, assumed the presidency. He declared the Emergency Council to be formed. On November 16, 1988; party-based elections were held in country. The political parties such as PPP, lead by Benazir Bhutto (late), and the IJI, lead by Mian Muhammad Nawaz Sharif, engaged in the main conflict. The PPP narrowly managed to win 92 of the 205 seats up for election in Parliament in the 1988 election, falling short of a clear majority. Nevertheless, the election's results favored the PPP. Only 54 seats were won by the Islami Jamhori Ittehad (IJI), which was the second political party to enter the Assembly.⁶⁶

Judiciary from 1988-1999

The politics from 1988-1999 was called a musical chair between PPP and PML(N), because during that time one political party came to power and sometimes another. There were

⁶⁶Yasmeen, S. (1997). Pakistan: moving towards democracy?. *Asian Studies Review*, 21(2-3), 91-103.

four General Elections. Benazir Bhutto's (Late) won the election firstly in November 1988 and then again in October 1993. Both general election of October 1990 and February 1997 were won by the Pakistan Muslim League (N). There were two significant issues between them. The first was the acrimonious clash among the PM and the President. The second one was the conflict over the selection of justices for the Superior Courts between Executive and Judiciary, specifically among the PM and CJ of Supreme Court. The opposition and the ruling party were also engaged in a tug of war. There were disagreements over political and legal matters between Prime Ministers and Presidents, as well as occasionally with the Chief Justice. The Prime Minister Benazir Bhutto (late) and Mian Muhammad Nawaz Sharif both experienced conflicts over the appointment of the judges for Superior Judiciary. Both were demanded to hire their preferred candidates. The Article 58 (2)(b), was the main bone of contention between Presidents and Prime Ministers but on the other way it was regarded as a safeguard against a direct military takeover, allowing the military establishment to overthrow civilian governments with the backing of the president. During their terms in office, each president runs the judiciary in their own specific way. They effort to forcing Superior Courts to rule in support of ousted prime ministers governments and in favor of presidents who seemed to have the hold up of the military establishment.⁶⁷

Conclusion

Since Pakistan's independence, the judiciary has had a conflicting impact on the nation's political evolution. It developed a puppet image particularly in military rules. In the course of their rulings, we can see that courts always gave legality and validity to armed forces. They mostly tried to overturn and overruled the constitutions. They made upheld laws and rules which

⁶⁷Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

secured political control of these leaders' and undermined their own authority. In our judicial history these courts also assisted the military in limiting the authority of political parties and elected officials because both were having same platform. As an outcome, judicial independence was further undermined with the passage of time. Courts also vanished the respect of public and legal profession. Since becoming independent, Pakistan has experienced four military governments. In order to strengthen their hold on power and limit political freedoms, they amended constitution several times. The Article 58(2)(b) had the most significant impact on Pakistan's political and judicial history. Despite not having direct control, this clause gave the military the authority to interfere and intervene in executive branch affairs, frequently working with judiciary. Due to 8th constitutional amendment, a number of presidents removed and chose new assemblies. The superior courts undermined the courts themselves by upholding the legitimacy and validity of these presidential actions. The judges themselves were a part of the decline in their own judicial independence. The constitutional changes made by Zulfikar Ali Bhutto moreover helped toward the restriction on the power of judiciary.

CHAPTER 3

Military Takeover of 1999 and its Legitimacy

The civilian government of Mian Muhammad Nawaz Sharif was overthrown on October 12, 1999, when Army Chief General Pervaiz Musharraf declared martial law nationwide. The four provincial legislatures were also dissolved; along with the National Assembly. Initially President Muhammad Rafiq Tarar was not affected. General Pervaiz Musharraf suspended the constitution. By issuing the PCO, Army Chief replaced the Prime Minister and immediately assumed the roles of President, Chairman of Joint Chiefs of Staff, and Chief Executive as well.⁶⁸ General Pervaiz Musharraf and PM Mian Muhammad Nawaz Sharif already had disagreements in excess of the Kargil War in India. The conflict between them was exacerbated when Mian Muhammad Nawaz Sharif fired the Army Chief as he was flying back from an official visit to Sri Lanka. General Pervaiz Musharraf was defended by military commanders against the Mian Muhammad Nawaz Sharif government because they saw the taking away of their Chief as offend.

Provisional Constitutional Order (PCO) 1999

The PCO was issued in October 1999 by General Pervaiz Musharraf. This order was known as PCO order No.1, 1999, in his opinion. It extends all over Pakistan. It comes into force immediately. According to this Ordinance Pakistan shall be governed by Chief Executive Order. Supreme Court or High Courts shall carry on functioning and exercising their particular

⁶⁸Rizvi, H. A. (2000). Pakistan in 1999: Back to square one. *Asian Survey*, 40(1), 208-218.

powers and jurisdiction as long as the courts that did not already exist immediately before the effective date of this Order. The other Courts have no right to question an order in opposition to the Chief Executive. The declaration of emergency does not conflict with fundamental rights. The Chief Executive's advice is followed by the President. The Provincial Governor follows the Chief Executive's advice when making decisions. The Emergency Declaration of October 1999 shall not be contested by any court, tribunal, or other authority.⁶⁹

Seven Points Agenda of General Pervaiz Musharraf

General Pervaiz Musharraf outlined his preferences in his address on October 17, 1999, shortly after assuming the position of Chief Executive. His seven-point plan includes reviving the nation's spirit and morale, fortifying the union, energizing economy and regaining sponsor assurance, upholding law order, and ensuring quick justice. To ensure prompt accountability across the country and restore the power supply to its basic level.⁷⁰ General Pervaiz Musharraf clarified the position of the Military takeover by many times. He did not consider his action as Martial Law. It was another path to democracy by him. The Military doesn't intend to hold onto power any longer than is absolutely necessary in order to open Pakistan up to real democracy.

Case against Mian Muhammad Nawaz Sharif

The Karachi Airport Police Station registered a criminal case. The reasons behind that was the hijacking of General Pervaiz Musharraf plane. They were chosen in favor of their plot "to physically eliminate General Pervaiz Musharraf (COAS), and 198 other passengers". Before the trial in the case of a plane hijacking began on December 2, 1999, the military regime

⁶⁹https://www.pakistani.org/pakistan/constitution/post_12oct99/pco1_1999.html

⁷⁰Rizvi, H. A. (2000). Pakistan in 1999: Back to square one. *Asian Survey*, 40(1), 208-218.

modified the Anti-Terror Law of 1997. The Pakistan Muslim League (N) leadership publicly criticized the changes for being tailored to Mian Muhammad Nawaz Sharif. Both were tried for corruption and corrupt acts under the 1999 National Accountability Ordinance after being found guilty in the plane hijacking case. They were moved to the military fort at Attock. Before making an appeal, it was decided that Mian Muhammad Nawaz Sharif and his family would depart Pakistan for Saudi Arabia on December 11, 2000.⁷¹

Military Confronts with the Judiciary

Initially, the change had no impact on the judiciary. General Pervaiz Musharraf made assurances to the judiciary about its independence, constitutional authority, and full range of powers. Under the PCO order, judges of Superior Courts were exempt from having taken an oath. The Constitution permitted them to carry out their obligations and use their authority. In the first week of 2000, the tenure of the Peshawar High Court's Chief Justice was set to expire. Then there was a serious debate about what oath the judges of the superior Court should take. It was decided that the Constitution would be followed when the new Chief Justice of this Court took his or her oath of office.⁷² This circumstance did not last very long. The Supreme Court received several petitions from Mian Muhammad Nawaz Sharif and other PML (N) leaders to challenge the military coup of October 12, 1999, and requesting the reinstatement of Assemblies. Although every petition had been heard, the government became anxious as the hearing date drew near. There were persistent rumors that Mian Muhammad Nawaz Sharif's Government might be reinstated if these petitions were granted.

⁷¹Kumar, S. (2001). Sharif Vs. Musharraf: The future of democracy in Pakistan. *Strategic Analysis*, 24(10), 1861-1875.

⁷² Ibid

All Superior Court judges were required to take an oath on January 25, 2000, and to carry out their obligations under the Emergency Declaration of October 14, 1999. It was clear that a judge would lose his position if he did not take the oath in the time frame set by chief executive. Said-uz-Zaman Siddique, declined to take the oath in accordance with this directive. According to him, the military regime would be permitted to operate within the bounds of the constitution without interfering with the independence of the judiciary. He was essentially under in house arrest until 11A.M on January 26, 2000, in order to prevent him from influencing the judges' willingness to take the oath. Just seven judges took the oath, and Irshad Hassan Khan, who was named Chief Justice, was the oldest of them. Due to their refusal to take the oath, many other judges from different courts were no longer in office.⁷³

Supreme Court Uphold Military Takeover

The PML (N) filed Constitution Petition No. 63/99 in December 1999 to contest the legality of the army takeover on October 12; 1999. They claimed that doing so was against the 1973 Constitution and illegal. Additionally, the petitioners asked that the PCO order No. 1 of October 14, 1999, the emergency declaration from that day, and all orders issued under it be declared illegal and without legal standing. After hearing this petition the Supreme Court issued an order on May 12, 2000 and dismissed the petitioners' claim by Justified the Military action of 10/12/1999 as a necessity of state and was validly carried out. Even though some provisions of the 1973 Constitution have been suspended by the government for practical reasons, it remains the country's supreme law. The Constitution's guidelines will continue to be followed by the Superior Courts. The Chief Executive may amend the Constitution under certain circumstances. The Supreme Court still has the authority to judge the legality of any military action taken in

⁷³ ibid

accordance with the law of state necessity. The Chief Executive was given three years to accomplish the stated goals.⁷⁴

The Provisional Constitutional Order (PCO) had no effect on President Muhammad Rafiq Tarar after the 1973 Constitution had been suspended and the new judges had taken office. In June 2001, the military coup made the decision to depose the President and assumed power. General Pervaiz Musharraf issued the emergency order on June 21, 2001. It modified the previous emergency order's proclamation of October 14, 1999, and it resulted in President Muhammad Rafiq Tarar's dismissal. Tarar's term as president ended on January 1, 2003. General Pervaiz Musharraf became President on the following day.⁷⁵

Referendum 2002

General Pervaiz Musharraf announced a referendum on April 30, 2002. Main Political parties like PMLN, PPP, JUI and JI boycotted the referendum. They take out rallies and other political gatherings to persuade the public, to avoid the polls. But on the other side some political groups such as PTI, MP, along with PAT, supported the referendum. General Pervaiz Musharraf and his supporters asserted that more than 50% of voters cast ballots, and 97.49% of those votes went in favors of General Pervaiz Musharraf. In 2001, General Pervaiz Musharraf is the president of Pakistan.⁷⁶The military government's desire to keep politics alive in the Country was confirmed through the exclusion of President Muhammad Rafiq Tarar, and referendum provided a step in that direction. The goal of the referendum was to obtain approval for his reforms in a number of sectors and get a five-year extension.

⁷⁴Aziz, S. (2009). *Between Dreams and Realities: Some Milestones in Pakistan's History*. Oxford University Press.

⁷⁵Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

⁷⁶Khan, K. A. (2011). 2002 Elections in Pakistan: A Reappraisal. *Journal of Political Studies*, 18(1), 93.

Many petitions were filed by different people because the removal of President Muhammad Rafiq Tarar was not accepted by majority of the people. On the other side public was not in favors to accept the referendum results. But once again judicial history repeat itself by gave the decision in military favors. Accordingly by Supreme Court judgment, referendum was a legal activity, Chief Executive General Pervaiz Musharraf was able to successfully remove Muhammad Rafiq Tarar and further more assume office of President.⁷⁷

Legal Framework Order (LFO) 2002

The Legal Framework Order (LFO) gave the President wide powers. The power to appoint any Member of Parliament as Prime Minister was granted to the President. With viceroy powers, he had the authority to remove any elected Prime Minister and his cabinet. The advice of the Prime Minister and his cabinet was not necessary for the President's extreme course of action. At his discretion, he had the authority to appoint provincial governors.⁷⁸With the creation of the National Security Council (NSC), whose chairman was the President, Legal Framework Orders (LFO) for the first time legalized the military's involvement in the country's political affairs. Throughout his time as Military Ruler, President General Pervaiz Musharraf made 29 constitutional amendments, but criticism was voiced regarding the extension of the three-year period of judges of Supreme Court and National Security Council (NSC), which was established as a parliamentary body, and Section of 58(2)(b), which gave President the authority to suspend National Assembly and release Parliament. The opposition was against LFO order. The sticking point was Article of 58(2)(b). The threat posed by the President's ability to fire Prime Minister and Cabinet was very real.

⁷⁷Waseem, M. (2006). *Democratization in Pakistan: A study of the 2002 elections*. Oxford University Press, USA.

⁷⁸Shaikh, R. A. (2010). Politics in Pakistan: ParvaizMusharaf's Military Rule in Perspective. *A Biannual Journal of South Asian Studies*, 11, 11-22.

Elections 2002

The ECP announced the election program on August 16th, 2002. Election Day for the both assembly's such as National and provincial was set for October 10th. All Political Parties made the decision to participate into the election for the development of Pakistan. In the meantime, the Military Government established the PML(Q), a political organization made up of dissidents from the PPP and PML(N). Another pro-Pervaiz Musharraf alliance was formed by this party. The National Alliance was an alliance made up of six minor political parties.⁷⁹Unexpectedly, the results of the elections in October 2002 were unclear. Two main and major political parties of Pakistan such as PML(N) and PPP, vanished from the political screen. The PML(Q) won 77 seats, the PPP 62, the MMA 45, the independent 30 seats, the PML(N) 15 seats, the MQM 13 seats, and the ANP 13 seats in election. MMA and PML(Q), who had never won as many seats before, were undoubtedly the two new faces. The time to create a coalition government was at that point. To establish a ruling government, there were two parallel negotiations. The negotiations to form the government between PML (Q), PPP, and MMA came first. The media reported on these negotiations, which gave the impression that they were real. Second, the discussions that President General Pervaiz Musharraf has been having with other political parties such as the PML(Q), MQM, and the Independents to exclude the PPP from running for office. The media was not allowed to report on these negotiations.⁸⁰As a result of the negotiations, President General Pervaiz Musharraf was able to disqualify the PPP from consideration for both the government and opposition positions. Ten more seats were won by President General Pervaiz Musharraf, leading to the PML(Q) nominations of Mir Zafar ullah

⁷⁹Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

⁸⁰Shahzad, M. N., & Kokab, R. U. (2013). Political Parties: A Factor of Stability in Pakistan 1999-2008. *Asian journal of social sciences & humanities*, 2(4), 348-358.

Khan Jamali as Prime Minister of Pakistan. Maulana Fazl-ur-Rehman of MMA was proposed as opposition leader in National Assembly.

The Seventeenth Amendment

On December 26, 2003, the government presented the Constitution's Seventeenth Amendment to the National Assembly. Aitazaz Ahsan of the Pakistan People Party objected, arguing that the Legal Framework Order (LFO) was not a part of the Constitution and that the Amendment Bill went against the Joint Position of the Alliance for the Restoration of Democracy (ARD). However, on December 29, 2003, the National Assembly passed the 17th constitutional amendment with a margin of more than two-thirds. It gave the President General Pervaiz Musharraf's administration legitimacy. No votes were cast against that bill, which was accepted by 248 out of 342 of the lower house members. The ARD and its partners boycotted opposition.⁸¹The amendment was approved by the Senate on December 30, 2003. Another boycott of the Senate session was carried out by the ARD and other opposition groups. A seventeenth constitutional amendment included a number of significant amendments and changes, such as increase in the number of seats in the National and Provincial Assembly and the use of Article 58(2)(b) toward restore President's authority to suspend the National Assembly. As president for five years, General Pervaiz Musharraf helped to sanctify the outcome of the referendum in 2002. The President was appointed to lead the National Security Council (NSC) and was given authority to appoint members of the Superior Judiciary, reviving Article (152-A).⁸²

⁸¹Khan, K. A. 17th Constitutional Amendment & Its Aftermath: The Role of Muttahidda Majlis-i-Amal (MMA). *Pakistan Vision*, 9(2), 102-106.

⁸²https://senate.gov.pk/uploads/documents/1658376935_930.pdf

National Security Council (NSC)

Before the 2002 general elections, General Pervaiz Musharraf amended the constitution of Pakistan to reinstate the notion of the NSC and give the President more authority. Its members were Chairman of Joint Chiefs of Staff Committee, Chairman of Senate, the Speaker of National Assembly, Opposition leaders, Chief Ministers, and Chiefs of Staff of the Army, Navy, and Air Forces. It served as the main governing body. The NSC was composed of nine civilians and four top generals of armed forces. All strategic issues, such as the distribution of natural resources, were subject to its authority. For the next five years, president in military uniform would serve as NSC Chairman.⁸³The NSC membership revealed the military's desire to manage state affairs from a back seat. Its main objective was to create sovereign military class that might defend its interests and bargain with political actors.

Conclusion

The judiciary's inability to exercise the independence that the Constitution purportedly granted it was due to a number of factors, not just military takeovers. When the democratic forces overcame the military rulers, the superior courts refused to back them. Due to the judiciary's close relationship with the military, democratic civil regimes encountered challenges brought about by the courts. In Pakistan, the courts' primary functions were to support the old guard as agents of the past as much as possible while offering minimal hold up to self-governing forces that sought to overthrow the status quo. For the majority of their existence, Pakistani courts have always seen to supported military intervention in political system and upheld the "*State necessity*". The Courts have chosen state solidarity over democracy and judicial

⁸³[https://military-history.fandom.com/wiki/National_Security_Council_\(Pakistan\)](https://military-history.fandom.com/wiki/National_Security_Council_(Pakistan))

independence when given the option to choose between the two. The Courts in Pakistan have changed their stance as an outcome of remarkable Lawyer Movement from 2007 to 2009, as I discuss in the following chapter.

CHAPTER 4

The Lawyers' Movement: Origin, Development and Impacts

Iftikhar Muhammad Chaudhry was appointed as Chief Justice on June 30, 2005 by the President General Pervez Musharraf. He was one of the judges who accepted the 1999 military coup. When Chief Justice Iftikhar Muhammad Chaudhry decided to fight the charges rather than submit to the military ruler's demands, it came as a surprise. This was the first time the Superior Judiciary had a disagreement with an armed forces leader who had the backing of the foreign powers. Many cases were taken up by CJ Iftikhar Muhammad Chaudhry such as human rights violation, political and public significance issues etc. The Prime Minister Shaukat Aziz, President General Pervez Musharraf, and many of their close associates were extremely angry with him over the investigation of those cases. He specifically looked interested in the cases involving the land allotments to powerful individuals in Gwader and prevented the parks from turning into for-profit businesses, limiting the environmental harm that would have resulted from the removal of millions trees in favor of new Murree Himalaya foothills program. Most importantly the privatization of Pakistan Steel Mills was one of his most and major notable concerned. The consortium agreement was declared invalid by the Supreme Court (mostly the Chief Justice), who found that the privatization process had been tainted by the illegal behavior of government officials, including the Prime Minister. By using his *Suo Moto* authority, Chief Justice Iftikhar Muhammad Chaudhry started looking into the disappearances of 400–600 people in late 2005. The government is required by the Chief Justice to provide information regarding the missing person. He expresses his extreme disappointment at the government's inability to

provide the necessary information when these orders were not carried out satisfactorily. On March 9, 2007, due to his efforts, several people were released. Then, Iftikhar Muhammad Chaudhry, Pakistan's Chief Justice, was scheduled to hear additional cases of crucial national, political, and constitutional import very soon.⁸⁴The validity of the President continuing in his role as COAS, the possibility of delaying 2007 general election, and additional difficulties with the privatization of public assets is all issues raised by all of these cases, whether they are currently awaiting or are possible to be brought prior to Supreme Court.

Political and judicial crises were started on to March 9, 2007. The President General Pervaiz Musharraf summoned CJ Iftikhar Muhammad Chaudhry to his office at the Rawalpindi Army House. For alleged "Misuse of Office," Chief Justice Iftikhar Muhammad Chaudhry was asked to resign and in effect fired. But he disobeyed President General Pervaiz Musharraf's command, so he declined. Massive anti-President General Pervaiz Musharraf demonstrations started across the nation when he was forcibly removed from his position. The government made an effort to crush a legal movement that called for Chief Justice Iftikhar Muhammad Chaudhry to be reinstated. Security personnel were forced to follow the government's advice because they couldn't help it. As a result of the tenseness of this anti-government protest 42 people lost their lives.⁸⁵The violence was started by the MQM, a significant alliance collaborator in President General Pervaiz Musharraf's administration. In an effort to prevent Iftikhar Muhammad Chaudhry from speaking to Sindh High Court Bar Association Karachi, they made obstruction attempts. The conflict revealed two significant outcomes. Firstly, the Pakistan Supreme Court proclaimed its independence and also gained legitimacy with the general public. Secondly, the

⁸⁴Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University Press.

⁸⁵Rizvi, M. (2009). *Musharraf: The years in power*. HarperCollins Publishers India, a joint venture with the India Today Group.

alliances of all lawyers of Pakistan, major political parties, and further national and international organizations gave the opposition to the government a strong platform. The media also had a note worthy impact on the struggle of the average person against the autocratic leader.

General Pervaiz Musharraf, the president of Pakistan, announced in November 2007 that he would run for re-election for another five years.⁸⁶The Supreme Court of Pakistan was about to limit General Pervaiz Musharraf's validity to serve as President a second term. On November 3, 2007, General Pervaiz Musharraf imposed a State of Emergency and suspended the constitution, which further inspired the masses to organize protests.

Commencement of the Lawyers' Movement (2007-2009)

The PCO Order and Emergency led to the Lawyers' operation to reinstate the defenders of law and the constitution. On November 2, 2007, the movement's top leaders unanimously approved a resolution that criticized the media's restrictions as well as the unfairness to the legal profession and the court. They declared that they would keep fighting until an open judicial system was reinstated. It was also ruled that the judges of the Provisional Constitutional Order (PCO) were ineligible. On November 6, 2007, a meeting was held by Pakistan Bar Council in Islamabad. They chose to pass a resolution that contained the following clauses:

- a. The PCO order is invalid and in violation of the constitution.
- b. The lawyers had consented to the PCO order being declared unconstitutional by a seven-judge Supreme Court panel on November 3, 2007.

⁸⁶Hasan, A. D. (2007). *Destroying Legality: Pakistan's Crackdown on Lawyers and Judges* (Vol. 19, No. 19). Human Rights Watch.

- c. The lawyers did not accept the judges who took oath through the PCO order, and the judges who had been removed under PCO order should not file any petition ahead of such PCO order judges.
- d. The lawyers are determined to keep fighting until Pakistan's military government is overthrown, and they intend to use Article 6 of the Constitution to bring high treason charges against those who have committed such acts.
- e. The Pakistan Electronic Media Regularity Authority (PEMRA) regulation changes, media repression, and restrictions on television channels were strongly denounced.⁸⁷

On November 7, 2007, all lawyers were given go-ahead to halt until a fair legal setup was restored in order to demonstrate harmony with them. People from all different backgrounds agreed with that. When CJ Iftikhar Muhammad Chaudhry was ousted as of his position, the legal community, major political party leaders, and the general public all rallied to support the cause. Additionally, ex-Supreme Court judges joined the Lawyers' Movement.⁸⁸ The removal of CJ Iftikhar Muhammad Chaudhry and other judges from Supreme and High Courts was the main driving force behind the Lawyers Movement. Even though a military dictator had previously dismissed judges from Pakistan's Superior Courts but this was the opening time that judges and those who supported them had objected. CJ Iftikhar Muhammad Chaudhry, who resisted being fired, was the main cause of the legal profession's uprising against the military government. The Lawyers Movement was primarily motivated by public and legal community resentment of military rule.

⁸⁷Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University press.

⁸⁸ (2007, November 8) Dawn Islamabad

The media actively contributed to increasing public awareness and igniting a desire among the public to fight for an impartial judicial system in Pakistan. This conflict lasted for a very long time. They sharply criticized the President General Pervaiz Musharraf, who was elected for a second term. In an effort to put an end to this, they went to the Supreme Court and suggested Judge Wajuh-ud-din Ahmad (retired) as their candidate, but he ultimately lost to President General Pervaiz Musharraf. President General Pervaiz Musharraf had this as one of his top priorities.

Objectives of the Lawyers' Movement (2007-2009)

Lawyers' Movement was essentially started in the direction of restore democracy in Pakistan, overthrow President General Pervaiz Musharraf from power, establish the rule of law, reinstate the judges who had been removed by the military regime, uphold fundamental rights, and restore the independence of the judiciary. Its main focus was;

- 1) Independent and sovereign Judiciary, in the sense of fighting unconstitutional actions taken against Pakistan's Chief Justice and securing his reinstatement.
- 2) The rule of law puts an end to military dictatorship forever and halts the doctrine of necessity in all its forms.
- 3) Establishing a democratic government in Pakistan that will send the army back to its barracks through the return of the self-governing process and free and fair elections.⁸⁹

Actually, the public was tired of military rule. Through the judicial revolution, they desired social and political change. They desired the restoration of a productive democratic system, adherence to the constitution, and a free and good judicial coordination in Pakistan. The

⁸⁹Chaudhry, M.A. (2007, April 5). Adalathi Buhran Aur Wakalaw Tehrik ke Maqasid|| (urdu), The Daily Nawa-i-Waqt, Rawalpindi.

superiority of judiciary sparked the interest of legal profession. They believed that the judicial revolution could result in beneficial adjustments to the legal system that would improve the way it served the public at large.

Atrocities on Lawyers'

A few thousand lawyers in eight months posed more serious threats to General Pervaiz Musharraf's military government in Pakistan than the united hard work of the political opposition in the eight years period. The Lawyers defended constitutionalism and the rule of law into Pakistan. The Lawyers' Movements argued for the protections enshrined in the constitution, seeking both physical and political security.⁹⁰In light of this, it was understood why President General Pervaiz Musharraf decided to hang up the constitution of Pakistan on November 3, 2007. A new chapter in Pakistani government was written during this military dictatorship.

Lawyers Association and its political allies were always there to protect the constitution and constitutional rights of society. General Pervaiz Musharraf, the president, increased torture and deterrents. Consequently, a decision was made against lawyers, and police beat and used tear gas on them. All manner of atrocities and violence were used to restrain the lawyers, but they were all prepared to fight to the death. Although it was against the law for military leaders to hold two offices concurrently, President General Pervaiz Musharraf did so by abusing his authority. Lawyers were imprisoned and not even permitted to defend their own rights, laws, and ethical obligations. The military rulers in Pakistan suspended the constitution, proclaimed martial law, and removed all judges after Pakistan's Supreme Court declined to uphold General Pervaiz Musharraf's illegitimate election as president.

⁹⁰Hasan, A. D. (2007). *Destroying Legality: Pakistan's Crackdown on Lawyers and Judges* (Vol. 19, No. 19). Human Rights Watch.

Numerous lawyers, political party members, advocates for human rights, students, and others have been detained by the government without being charged with a crime. Additional charges against hundreds of people have been made by President General Pervez Musharraf in accordance with different requirements of Pakistan law, some during legitimate parliamentary channels and others during illegitimate and the unconstitutional channels.⁹¹ Although it is against the law for any institution to detain people who are demonstrating for their rights, Pakistan continued the practice at the direction of the head of State.

The Role of Civil Society

The Lawyer's Movement's emergence and success were greatly influenced by civil society. In the past, the majority of our political parties, activists took part into the anti-military movements that aimed to reestablish democracy in the country. However, almost all facets of civil society were involved in the Lawyers Movement (2007–2009) against the dictator action, including women organizations, journalists, columnists, TV anchors, students, NGOs, and overseas Pakistani organizations. Although this Movement was led by judges, lawyers, bar associations, and district bar councils. They were speaking out in favor of change.⁹² The relationship between civil society and parliament was viewed as a key component of Pakistan's democracy. The anti-Musharraf movement demanded the good and well establishment of rule of law and a self-governing government in Pakistan. It cut across all societal divisions. They remained together until President General Pervez Musharraf's resignation.

⁹¹(2007, October 24) .Pakistan: Musharraf Should Accept Ruling on Re-Election,||Human Rights Watch news release. <http://hrw.org/english/docs/2007/10/24/pakist17130.htm>.

⁹² PILDAT.(2007) . Joint Session of Parliament and Joint Resolution: A Step in the Right Direction,||Islamabad, <https://mail.google.com/mail/?shva=1#label/Pakistan/12ffdaad62d98c20>.

The PILDAT survey indicates that thousands people from further facets of civil society, such as students, women's organizations, journalists, human rights advocates, academics, trade unions, and professional associations, joined the Lawyers' Movement. Since the judges were reinstated, these organizations' contributions to accelerating the shift from a dictatorship to a democracy have been much less apparent than anticipated. They generally haven't succeeded in filling the political void they created.⁹³Therefore, in strong democracies, civil society serves as a force for bring social change by promoting reform on some important issues, increasing public understanding, and mobilizing the public / masses views as a means of contributing to the formulation of public policy. In order to increase accountability and transparency, civil society organizations play a crucial role as gatekeepers for organizations like the Electoral Commission, the Police, the Courts, and the Parliament. In the military dictatorship of the President General Pervaiz Musharraf, Pakistan civil society had to deal with a number of issues. Helping the people of Pakistan required much more encouragement.

The Role of Political Parties

In order to challenge the military ruler, the ARD was established. They decided to give Pakistan's parliament its full authority and to re-establish a true and respectable democracy. The PPP and PML (N) were among the fifteen political parties that made up the ARD in Pakistan. In a effort to restore true democracy and the supremacy of parliamentary institutions, the coalition tried to come to an effectual political approach.⁹⁴In May 2006, Mian Muhammad Nawaz Sharif and Benazir Bhutto (late), signed a "Charter of Democracy" (CoD), which aims to restore democracy. Even when exiled, both were formidable rivals. An agreement that outlined a plan

⁹³ ibid

⁹⁴Gregory,S. (2006, September 24) . Pakistan on Edge|| Open Democracy.<http://www.opendemocracy>

for the nation's transition back to democracy was negotiated by these political rivals. After coming home from exile, both leaders joined Lawyers Movement, which was active from 2007 to 2009, expressed disapproval of General Pervaiz Musharraf and forced him out of office.⁹⁵

President General Pervaiz Musharraf's authority was contested by the community of Lawyers Movement (2007–2009). Between March 2007 and February 2008, oppositional political parties fully backed the lawyers' movement. The largest anti-government protest was held when ousted CJ Iftikhar Muhammad Chaudhry traveled as of Islamabad to the Lahore to talk to lawyers' community. It was designated as the Long March by the lawyers. The massive number of supporters showered Chaudhry's caravan with rose petals as it traveled from city to city. Further inspiration for the movement was provided by Benazir Bhutto (late) and Mian Muhammad Nawaz Sharif. At rallies in support of CJ Iftikhar Muhammad Chaudhry many activists and people were killed and hurt through the gunmen in Karachi and Islamabad. Numerous attorneys and activists were also beaten and imprisoned.⁹⁶

The movement's political protestors were met with violence by President General Pervaiz Musharraf. Although they faced many obstacles during the nearly one-year battle, they remained steadfast. Ultimately, their efforts brought drastic change and finally President General Pervaiz Musharraf resigned from Army Chief on November 28, 2007. The new Chief of Army Staff General Ashfaq Pervaiz Kiyani was appointed. President General Pervaiz Musharraf had pledged before the election that if he were elected again, he would surrender his position as COAS and take off his uniform. When Benazir Bhutto was killed on December 27, 2007 in Rawalpindi during a campaign rally, the political climate deteriorated further. Elections were called by Asif Ali Zardari. Benazir Bhutto's murder was forbidden by party leaders. The PPP's call for the

⁹⁵ (2008, November). Pakistan: Musharraf Uses Anti-Terror Laws to Jail Critics, Human Rights Watch news release.

⁹⁶ Ibid

election, received the full support of Mian Muhammad Nawaz Sharif. The assassination of Benazir Bhutto prevented President General Pervaiz Musharraf from starting his campaigning for the general elections. The holding of elections and the expeditious restoration of democracy were demands made by all major political parties. As a result, Pakistan Muslim League (Q) and President General Pervaiz Musharraf suffered a crushing defeat in the elections. General Pervaiz Musharraf was forced to walk out as president on August 18, 2008, after PPP won the elections with majority of the seats.⁹⁷ Pakistan Muslim League (Q), which was supported by the military, was split by President General Pervaiz Musharraf, who also gave the Pakistan Muslim League (N) momentum. Additionally, it indicated a loss of President General Pervaiz Musharraf's authority over the political landscape. Actually, upon their return, Mian Muhammad Nawaz Sharif and Benazir Bhutto made every effort to organize party members to bring about favorable changes in Pakistan. Even though they had resentments against one another, they worked together to defend the nation's democracy. The Lawyer Movement became much stronger as a result of them.

The Role of Electronic Media

The media has been subject to a number of restrictions ever since the events of March 9, 2007. The Two significant television networks, AAJ TV and GEO News, were shut down on March 12, 2007, following a notice from PEMRA for airing footage of police striking protesting the lawyers in Lahore with batons. According to reports, television stations be contacted and told not to air footage of police activity involving lawyers. As a result of its coverage of Supreme Judicial Council session on March 13, 2007, the GEO News reportedly gets an in print order as of PEMRA prohibiting it from the airing of a well-known program. Newspapers were contacted

⁹⁷Fruman, S. (2011). *Will the Long March to Democracy in Pakistan Finally Succeed?* US Institute of Peace.

and were requested not to write too much about Chief Justice-related issues in their reports.⁹⁸ A violent incident took place on March 16, 2007, while the GEO News team was busy in covering events from the roof of Supreme Court, even as Supreme Judicial Council was also in conference, according to the HRCP press release. The office was visited by three or four police officers, one of whom was an inspector, who demanded that the cameras on the rooftop be taken down. Until written instructions were given, the request was turned down. As a result, about a dozen police officers arrived and searched the area. Journalists, politicians, lawyers, and businessmen all strongly condemned this attack. President General Pervez Musharraf then appeared on live television, calling the incident regrettable and pledging to take swift action against those responsible. On May 9, 2007, Supreme Court issued a press release that forbade observations from being made regarding the president's remark about the CJ. This was another restraint on media, and further broadly on the freedom of expression, which is very important for running a good and smooth democratic system. Any conversation, remark, or writing that might affect the legal system or one of its judges is strictly forbidden, it was stated. The Chief Justice served as the Chief Guest at a seminar "Independence of the Judiciary" that was planned by Supreme Court Bar Association on May 26, 2007. All of the major commercial television networks, including GEO, AJJ, and ARY, carried those broadcast live. The General Pervez Musharraf administration was unable to handle the seminar's speeches and presentations. Many significant restrictions were placed on electronic media by the government. The live coverage of any event of CJ was also forbidden. Any action against private TV channels may be taken by the PEMRA. After that, the Chief Justice Event's live coverage came to an end.⁹⁹

⁹⁸Khan, H. (2009). *Constitutional and political history of Pakistan*. Oxford University press.

⁹⁹(2007, May 13). HRCP Press Release.

The International Lawyers Organization Role

Human Rights Organizations in Pakistan and around the globe fully backed judicial independence. Numerous Bar Associations supported lawyers. The Leading attorneys were subjected to intense pressure from Pakistan's military regime during that time. At the same time, Harvard Law School honored CJ Iftikhar Muhammad Chaudhry by the esteemed "Medal of Freedom". He thus became just the third man in history to be given such an honor in gratitude of his independent hard work to sustain the law and his core values of liberty, justice, and equality. As a representative in movement for judicial and legal independence, CJ Iftikhar Muhammad Chaudhry was given honorary membership by the New York City Bar Association. The National Law Journal, a publication with headquarters in New York, presented the CJ with the "*Lawyer of the Year award*" for 2007. The fight to reinstate the overthrown judiciary was ongoing at the time.¹⁰⁰

The Role of Law Community

In all, there were almost 160 Bar Councils and the Lawyers Association. They had a combined membership of more than 9,000 lawyers. Within the movement, this was the largest organized body. National Action Committee of Lawyers was the smallest of these organizations, but it was also the most effective. Prominent lawyers such as Aitzaz Ahsan, Ali Ahmad Kurd, Munir A. Malik, Hamid Khan and Lawyer's associations like Pakistan Bar Council and Supreme Court Bar Association have elected Tariq Mahmood as their president.¹⁰¹ In order to combat armed ruling in 2007, the legal society took the lead. The Bar Association put a lot of effort into

¹⁰⁰Abbas, A. & Jasam, S. (2009). A ray of hope: The case of Lawyers' Movement in Pakistan. *Pakistan. Reality, Denial and the Complexity of its State*, 16, 140-170.

¹⁰¹Ahmed, Z. S., & Stephan, M. J. (2010). Fighting for the rule of law: civil resistance and the lawyers' movement in Pakistan. *Democratization*, 17(3), 492-513.

getting the CJ and the other deposed Judges back into their place. They did not approve of the newly appointed judges under PCO order. By passing the Finance Bill in June 2008, the alliance administration decided to boost the number of judges from 18 to 29. This decision has drawn criticism from the Bar Association. The government intended to re-instate sacked judges gradually while retaining Provisional Constitutional Order (PCO) judges. However, the lawyers felt that no matter what obstacles they encountered, they would prefer the Supreme Court's standard without paying attention to a government that was not sensible and appropriate given the current situation.

The Supreme Court Bar Association (SBA) made every effort to end military rule and introduce a proper constitutional package for Pakistan. They were crucial to the reform of the judiciary. The leadership of Pakistan Bar Council, Supreme Court Bar Association, four Provincial Bar Councils, and Provincial High Court Bar Associations all offered their full hold up. These organizations were self-ruled and unaffected by outside meddling from the bench and the government. The lawyers understood that their own movement required internal reforms. The Bar Associations subsequently had strong leadership. A long-standing request from lawyers led to the establishment of a Council of Lawyers leader, which is made up of Bar leaders. In collaboration with representatives from media outlets and human rights organizations, the council provided recommendations and reports.

General Election of 2008 and the Formation of New Government

Following Benazir Bhutto's murder in December 2007, there was a lot of tension during the elections. She went into exile and then came back to Pakistan to vote. Benazir Bhutto's death in December sparked unrest, demonstrations, and street protests throughout Pakistan. Election

Day has been moved up to February 17; 2008. Benazir Bhutto's death made the Pakistan People Party (PPP) stronger, which helped it capitalize on the chance and win the election. Only 91 seats were won by the PML (N), compared to 125 for the PPP. The PPP rose up as one of the strongest parties and established the government. A "government of national consensus" was formed by these two political parties.¹⁰² On March 22, 2008, Syed Yousaf Raza Gillani was proposed for Prime Minister by PPP. By a vote of 246 to 42, he defeated Pakistan Muslim League (Q) candidate Pervaiz Elahi to become the country's new Prime Minister. He issued a release order for the detained judges on March 24, 2008. His command was immediately carried out, and on November 3, 2008, judges were freed from custody. To celebrate with the Chief Justice Iftikhar Muhammad Chaudhry, hundreds of lawyers, activists, journalists, and members of the civil society gathered at his home.¹⁰³

The Murree Declaration for Restoration of Judges

The agreement was done between Asif Ali Zardari and Mian Muhammad Nawaz Sharif to release the judges, surrounded by 30 days of newly federal government, represented a significant step forward. Due to the fact that the agreement was signed in Murree, it was given the name "Murree Declaration" (Bhurbon). In his press conference, Mian Muhammad Nawaz Sharif announced the following decision: "Deposed judges were reinstated in Parliamentary manner that too within 30 days of government in National Assembly". The federal ministers took an oath on March 31, 2008, marking the formation of federal government. The 30 day period was made clear to end on April 30, 2008.¹⁰⁴ But, Pervaiz Musharraf and opponents of Iftikhar-

¹⁰²(2009). PANORAMA of Parliamentary elections||, An Annual publication of the Inter-Parliamentary Union (IPU) Grand-Saconnex, Geneva, Switzerland. p. 3

¹⁰³(2008. March 30) .The Daily News. Islamabad

¹⁰⁴(2008. March 10) . Dawn News. Islamabad

Muhammad Chaudhry intervened and stopped the judges from being re-instated. Even Asif Ali Zardari criticized the detained judges for their eight-year sentence, while Chaudhry Ahmad Mukhtar defended General Pervaiz Musharrf's choice. After arriving in Karachi, Asif Ali Zardari went to Nine Zero. He tried to negotiate a deal by the MQM to include them in coalition government. On April 9, 2008, the MQM Party member attacked the lawyers. Many lawyers suffered injuries as a result of the burning lawyers' chamber building. The fire claimed the lives of lawyer Haji Altaf and his clients.¹⁰⁵ The killing of numerous lawyers by the MQM on May 12, 2007, in Karachi, served as a reminder of these attacks to the public.

The draft resolution on the reinstatement of judges was finalized, according to the Pakistan People Party (PPP). Later on, however, they declared that a "Constitutional Amendment" rather than a "Parliamentary Decision" might be necessary to restore the judges. With the exception of Chief Justice Iftikhar Muhammad Chaudhry, all judges could be reinstated under a constitutional package developed by Pakistan People Party (PPP) lawyers. The "Minus One Formula" label was given to this package later. They decided on two options for removing Iftikhar Muhammad Chaudhry from the legal system: first, he would be reinstated as Pakistan's Chief Justice, but he would have to resign right away. Second, only the Chief Justice should have a three-year term specified in Constitution; so he will retire very soon, in June 2008.¹⁰⁶ On April 21, 2008, a disagreement over the reinstatement of judges led to a serious breakdown in Asif Ali Zardari's relationship with Mian Muhammad Nawaz Sharif. According to Murree's declaration, the two held a meeting during which it was stated that they would restore the judiciary. The deposed judges will be restored earlier than all further matters, and here won't be any supporting effort prior to that. This was made very clear. Asif Ali Zardari left Pakistan for Dubai on April

¹⁰⁵Khan,H. (2009). *Constitutional and political history of Pakistan*.Oxford University press.

¹⁰⁶Ibid

24, 2008, with the intention of returning in three days, but it took a week. On April 27, 2008, Mian Muhammad Nawaz Sharif, his brother Mian Muhammad Shahbaz Sharif, and other PML (N) leaders gathered with the Supreme Court Bar Council's executives. The decision was made that the deadline would pass on April 30, 2008, and that a resolution and executive order would need to be passed in the interim. They also decided to send a delegation, led by PML (N) leader Mian Muhammad Shahbaz Sharif, to Asif Ali Zardari to discuss the issue of the judge's restoration before April 30, 2008. Leaders of Bar Council received a guarantee from the Pakistan Muslim League (N) that they would re-instate judges in their specific positions and, in the event that this did not occur, they would leave the coalition government.

Asif Ali Zardari, returned as of Dubai on May 2, 2008, and Mian Muhammad Shahbaz Sharif announced that the PPP and PML (N) had reached an accord regarding the reinstatement of the Judges. He stated that on May 12, 2008, Parliament would vote to reinstate the judges, and that action would take place the same day. However, he creates a committee to finish the judges' restoration process, but it was a failure and faced serious difficulties because committee member Fakhr-ud-din G Ibrahim refused to work on. He was not agreed and said that the committee's primary goal and focus should be the reinstatement of deposed judges rather than the continuation of judges appointed under the Provisional Constitutional Order (PCO).¹⁰⁷ Because they assisted General Pervaiz Musharraf in dismantling constitution and enforcing the State of Emergency in Pakistan on November 2, 2007, he claimed that the retention of Provisional Constitutional Order (PCO) judges was unconstitutional. This and other differences among the committee members prevented the committee from succeeding, and the matter was forwarded. In the meantime, Asif Ali Zardari and Mian Muhammad Nawaz Sharif traveled to London for

¹⁰⁷ Ibid

private reasons. The meeting between them did not go very well, and on May 10, 2008, the negotiations came to an end. Actually, Mian Muhammad Nawaz Sharif refused to agree to the requirement of maintaining the PCO judges. Just recently, he decided to accept them as temporary judges. Both leaders had different perspectives on the restoration process. The PML(N) proposed the restoring of the deposed judges in the course of a parliamentary resolution, but on the other side Asif Ali Zardari wanted that all the deposed judges to be reinstated with constitutional amendment. This was the main issue in between both leaders regarding the restoration of deposed judges. Both leaders had a different opinion, and they did not want to cooperate with each other.

Mian Muhammad Nawaz Sharif spoke at the core committee meeting on May 12 after his return from the London. On May 13, 2008, the ministers of the Pakistan Muslim League (N) resigned from their respective positions. Instead of joining the opposition, he asserted, they will back the coalition government.¹⁰⁸In reality, Asif Ali Zardari promise evicted to be false. Regarding the reinstatement of deposed judges, especially CJ Iftikhar Muhammad Chaudhry, he was never sincere.

The Long March 2008

The government was unsuccessful to reinstate the judges on May 17, 2008. The lawyers gathered in Lahore and talk about the future of Lawyers' Movement for the Restoration of Deposed Judges, as well as the affected Judicial System in Pakistan. The meeting's attendees decided and declared that June 7, 2008, would be the final deadline for restoration. They decided that the Lawyers would gather for a prolonged march to Islamabad beginning June 9, 2008, if the

¹⁰⁸(2008, May 13). Dawn. Islamabad.

judges did not arrive before that date, according to what they claimed. They extended invitations and made requests for support of the lawyers from businesspeople, members of civil society, and political parties' professional organizations. Lawyers' Movement in fact determined to go on the long March after the deadline expired.¹⁰⁹ On June 9, Long March departed from the Quetta and the Karachi and arrived late afternoon in Sukkar. On June 10, the long march participants set out from Sukkar and arrived in Multan afternoon. On June 11, 2008, deposed CJ Iftikhar Muhammad Chaudhry participated in Long March in Multan. Following that, Long March began in Multan and ended in Lahore early on June 12, 2008. Lahore High Court Bar Association heard speeches from Lawyers Movement's Aitizaz Ahsan and CJ Iftikhar Muhammad Chaudhry. On June 12, 2008, the participant left Lahore for Islamabad in the late afternoon. The founder and president of the PML(N), Mian Muhammad Nawaz Sharif, the Ameer of JI, Qazi Hussain Ahmad, and the Chairman of PTI, Imran Khan, propose the people of Long March a good farewell and sent them on their way from Lahore to Islamabad.¹¹⁰

On June 13, 2008, in the evening, Long March participants arrived Islamabad and gathered in Parliament's "Parade Ground". People of Long March from the Lahore gathered inside Rawalpindi early on June 13, 2008, and they were joined by KPK participants who had begun their journey in Peshawar. About 30,000 lawyers, workers, political party leaders, and other members of civil society made up the quarter million people who took part in the long March. On June 14, 2008, the lawyers, bar leaders, and leaders of the political parties spoke to the crowd.¹¹¹ As a result of the Long March on June 13, 2008, Pakistan's judiciary no longer tolerated human rights abuses and the interference of military dictators, changing the course of

¹⁰⁹Khan, H. (2009). *Constitutional and political history of Pakistan*. Karachi: Oxford University press .p. 533-34

¹¹⁰ (2008, June 13). Dawn. Islamabad

¹¹¹ (2008, June 14). Dawn. Islamabad

its history. On June 13–16, 2008, travelers from various parts of Pakistan arrived in Islamabad by road. They embarked on the march because the government was powerless to end these crises and produce a satisfactory result. It has been a very serious error for our government and for the international community to ignore this enormous movement. Providing justice and defending people's rights are impossible without an independent judiciary, according to Chief Justice Iftikhar Muhammad Chaudhary. The Pakistani people made it clear that they needed an independent judiciary and a solid democracy and that they would reject any agreement that did not call for the reinstatement of the removed judges. No agreement or administrative authority could halt it because it was such a peaceful and important movement.

The Long March became a significant turning point in Pakistani history. All political opposition workers took part in the march. There were many participants from Pakistan's civil society. The Long March brought Pakistanis together and inspired a lot of enthusiasm for one cause. Leaders in the bar and the legal profession demonstrated their ability to energize a large number of people from various backgrounds whenever needed. Another benefit of the movement was that it was unaffected by the militants and that they did not engage in any illegal activity for the duration of the six days of the movement, despite the fact that it took place during a time of violence and terrorism.

The lawyers' march was extremely long in a number of ways. It began in the remote regions of the Quetta, Karachi, and the D.I. Khan and traveled to Islamabad first. Second, it went on almost six days. There were many factors that contributed to the Long March's widespread acceptance and support. The deposed judges were unable to be reinstated by the coalition government. Among the many other factors, we can imagine that there were also the political opposition toward President General Pervaiz Musharraf, the public's "NO" to the contravention

of constitution, the lot of questions and doubts as regards the Lal Masjid operation in Islamabad, a lot of anger about the Baluchistan operation, major opposition to the FATA operations, the murder of Bugthee, the raise in Army's and ISI's involvement in politics, missing persons and lawyers killings in Karachi etc.¹¹²The main and more fundamental cause of the nation's outrage was the state's violation of the 1973 constitution, particularly its guarantee of fundamental rights and equal treatment for all citizens. The values of Islamic justice are explicitly stated in the Constitution. Since the average Pakistani, whether educated well known or not, is responsive of the value of justice but everyone in Pakistan was disappointed by the government's actions. They came to an agreement because they were denied their fundamental rights to justice.

In the eyes of the Long March participants, democracy was impossible in the presence of a broken and paralyzed judicial system. Government attempted to prevent the march because of the safety concerns; however this move worked out very well for the protesters because it enhanced their public image. And the march has received a lot of public support so far. The marchers didn't remain seated for as long as was anticipated.¹¹³The Political parties leaders, the lawyers, the media people, members of the civil society, and the general public/ masses came jointly during the Long March against President General Pervaiz Musharraf with the goal of advancing democratic values, judicial independence, the parliamentary supremacy, free and fair independent media, and elections.

Impeachment of President Pervaiz Musharraf

The opposition was courted by President Pervaiz Musharraf, who also tried to extort them. He made a number of inducements to the opposition and agreed to cooperate. However,

¹¹²Zehra, N. (2008, June 11). Justice March||, The Daily News, Islamabad.

¹¹³Fruman, S. (2011). *Will the Long March to Democracy in Pakistan Finally Succeed?*. US Institute of Peace.

the opposition believed it was sufficient for Pervaiz Musharraf, so they brought charges of impeachment against him to the Provincial Assemblies. Pervaiz Musharraf handed over the duties and authority of Pakistani President to Senate Chairman Mian Muhammad Soomro on August 18, 2008, as part of his resignation from office during the year of his humiliation. The process of getting ready for the election of Pakistan's new president was started by the Electoral Commission of Pakistan (ECP).¹¹⁴His resignation was warmly welcomed by the Pakistani people. General Pervaiz Musharraf's resignation as president was significant because military rule posed significant barriers to democratic and civil rule.

Although PPP and PML(N), Pakistan's two major democratic political parties, had agreed toward form a government, they were still at odds over different political agendas. President General Pervaiz Musharraf's ouster served as the tie that bound the two parties together. When President General Pervaiz Musharraf resigned, certain disagreements arose between both political parties; particularly the key issue was the restoration of Supreme Court judges, which could make them separate. The PML (N) wanted that the National Assembly pass a resolution by a simple majority ordering the reinstatement of CJ Iftikhar Muhammad Chaudhry and all other judges who had been fired by means of previous administration of Pervaiz Musharraf. Instead, the Pakistan People Party (PPP) sought to reinstate judges by amending the constitution, including its provisions governing judges. The Pakistan Muslim League (N) wanted the judges to be reinstated as soon as possible because otherwise they would shift to the opposition and the

¹¹⁴Jetly, R. (2008). *Musharraf's Resignation: A Cause for Celebration and Concern for Pakistan*. Institute of South Asian Studies.

political climate in Pakistan would become more complicated. Asif Ali Zardari was opposed to the restoration of some judges.¹¹⁵

On the subject of reinstating the removed judges, the government had made progress. The Lawyers' Movement was at its height at that time. Iftikhar Muhammad Chaudhry had assumed a new position of authority within Lawyers Movement. They were not in favor of the government of the General Pervaiz Musharraf. They objected to Justice Abdul Hameed Dogar being appointed Chief Justice. Additionally, they insisted that Pervaiz Musharraf's Provisional Constitutional Order (PCO) judges who had taken their oaths be fired.¹¹⁶ The majority of the judges that President General Pervaiz Musharraf removed had consented to the government's restoration process. Along with them, a few judges have expressed dissatisfaction over the movement's leaders making the choice without their input. By reinstalling a sizable number of judges chosen by the "Lawyers Movement" leaders, the government increased its popularity with the general public. Spring 2008 saw the Pakistan People Party (PPP) government drafting a Constitutional Amendment Bill and negotiating with the Pakistan Muslim League (N) on judicial reforms and judges' reinstatement. In addition to ensuring the independence of the judiciary, significant changes had been made to reinstate the parliamentary system.¹¹⁷

Breakdown of Coalition on Judges Restoration

PPP has broken its undertake to reinstate judges once more. On August 7, 2008, it was announced in Islamabad that all the judges who had been suspended would be instantaneously re-instated. It was declared clearly in Murree Declaration that the restoration of judges would

¹¹⁵ Ibid

¹¹⁶ (2008, September 21). Dawn

¹¹⁷ (2008, October). Reforming the judiciary in Pakistan. International Crisis Group .Asia Report N°160 .Washington DC.

occur following President Pervaiz Musharraf's resignation. In regulate to justify the reinstatement of judges, the PPP government and leadership started making excuses.¹¹⁸On August 21, 2008, the coalition partners gave deadline to Pakistan People Party (PPP). In short coalition ended on August 25, 2008. They were agreed to re-appoint CJ Iftikhar Muhammad Chaudhry and a few further suspended judges, through their former seniority of November 2, 2007.Eight judges of Sindh High Court who were on suspension took the oath as part of the notice of re-appointment on August 27, 2008. When Law Minister publicly stated that the Abdul Hameed Dogar was a best candidate for CJ position on August 27, the PPP government was made public.¹¹⁹The PPP administration was opposed to CJ Iftikhar Muhammad Chaudhry's reinstatement, as was evident from this.

Asif Ali Zardari, won the presidential election with a commanding victory on September 6, 2008. He was elected as Pakistan's 12th president.¹²⁰The PML (N) declared on February 25, 2009, that they would sustain Long March of Lawyers' Movement up until CJ's re-instatement. The government blocked the march using a variety of tactics, including jamming some news channels, forbidding public gatherings, and blocking roads. Many politicians and lawyers were detained on March 11, 2009. Mian Muhammad Nawaz Sharif managed to get past the police cordon despite being placed under house arrest. The nation was informed in a speech by Prime Minister Syed Yousaf Raza Gillani on March 16 that CJ would resume his position on March 21, 2009, because on that day, Abdul Hameed Dogar was scheduled to retire. Yet, in order to prevent chaos, the US and UK supported a compromise agreement. On March 23, 2009, after the struggle of two year Supreme Court had successfully restored him; Iftikhar Muhammad

¹¹⁸ (2008, August 20). Dawn

¹¹⁹ (2008, August 27). Dawn

¹²⁰Rabbani,M,I.(2012). *Pakistan Affairs*.Lahore: Carvan Publisher.

Chaudhry reclaimed his position.¹²¹The two-year-long lawyers' movement achieved its biggest victory with the return of Iftikhar Muhammad Chaudhry and some other judges. Rule of law and judicial independence were hoped for.

Impact of the Lawyers' Movement (2007-2009)

In Pakistan's judicial system, the Lawyers' movement had a significant impact. Court procedures and organizational design have undergone significant changes as a result of the Lawyer Movement. The Lawyers Movement urged the courts to issue rulings that would uphold the nation's legal system by opposing military and civilian political regimes. An important result of the Lawyers' Movement has been the strengthening of the judiciary, which has increased its independence and autonomy.

Chief Justice Iftikhar Muhammad Chaudhary's individual act of defiance to the reinstatement of rule of law and a sovereign judiciary had a significant political impact on Pakistan's political landscape. The Lawyers Movement was a peaceful, nonviolent, organized, and disciplined popular uprising against President General Pervaiz Musharraf's oppressive rule as well as the PPP administration that encouraged the dictator's authoritarian behavior. The transition as of an armed dictatorship toward a political administration led by civilians was a enormous achievement, but possibly most significantly, reinstatement of the judges who had been removed from office, including CJ of Supreme Court Iftikhar Muhammad Chaudhary, covered the mode for judiciary to function as the independent institution in Pakistan.¹²²In the course of this movement, Lawyers collaborated among opposition parties and further civil

¹²¹ International Bar Association, —A Long March to Justice: A report on judicial independence and integrity in Pakistan|| (United Kingdom September 2009) This report has been compiled in accordance with the Lund-London Guidelines 2009 (www.factindingguidelines.org)

¹²²Ahmed, Z. S., & Stephan, M. J. (2010). Fighting for the rule of law: civil resistance and the lawyers' movement in Pakistan. *Democratization*, 17(3), 492-493.

society organizations to restore independence of the judiciary in Pakistan. Therefore, Lawyers Movement has significantly contributed toward the political and social awareness of Pakistan civil society.

Impact of the Lawyers Movement on Society

In order to bring democracy back to the nation, the Lawyers' Movement (2007–2009) was crucial. The relationship b/w the state and society was fundamentally altered by this movement. By establishing a democratic agenda and inspiring civil society to participate in the democratization process, this organic movement promoted democracy.¹²³Kareem concentrates on the creation of a well-built civil society inside Pakistan following the dissolution of the Lawyers Movement. He asserts that Pakistani society is in the process of changing from authoritarian to a democratic system. It draws attention to the assistance provided by lawyers, councils, and the bar associations within facilitating this shift on the way to democracy. It highlights positive impact of Lawyer's Movement on the way citizens think and its ability to bring effective change in society through democratic means.¹²⁴Therefore the Lawyer's Movement has had four major impacts on the society of Pakistan in general such as:

- It is incredibly surprising that this movement has been so successful. The general public felt empowered and more confident as they prepared to fight for change in a nonviolent manner.
- It has changed how people view democracy and the rule of law as well. It gave hope to organizations and groups that they too could attain their goals by nonviolent protests and

¹²³(Shah, A. S., Waris, M., Azhar, M. M. (2018). Independence of Judiciary: An Assessment of Lawyers Movement and its Impact on Civil Society of Pakistan. *Global Regional Review*, III(I), 402-414. doi:[https://doi.org/10.31703/grr.2018\(III-I\).30](https://doi.org/10.31703/grr.2018(III-I).30))

¹²⁴Kareem, A. (2010). Civil society in transition: Pakistan and the Lawyers' Movement [Unpublished BA in Honorsthesi].pp 86-88

movements such as lawyers did. As a result, numerous societal groups, including the Pakistan Medical Association and organizations for missing persons, among others, changed their protest strategies and tactics significantly. Because after lawyers movement people got a new idea of peace protest and most of organizations thought that they can pressured the government by organizing better protests.

- The military stayed out of the Lawyers' Movement, in contrast to previous occasions when it did so. In those instances, the military exploited popular protests and movements to interfere directly in political system through enactment a military coup. This time, the cooperation of the judges and Lawyers was crucial to the establishment and maintenance of democratic values in society.
- The inclusion of new social classes into politics was another significant accomplishment of this movement. These groups realized that by engaging in political conflict, social change and politics could be made more peacefully political.

Another study from Harvard Law School looks at the immediate effects of the Lawyer's Movement on Pakistani society and culture. The Lawyer's Movement assisted general public in comprehending the significance of legal profession, the Constitution, and the judiciary. It also helped the general public to develop a sort of collective identity. In past conflicts against Generals Muhammad Ayub Khan, Zulfikar Ali Bhutto, and Muhammad Zia-ul-Haq, attorneys also played a critical role.¹²⁵ Similarly, judges were impacted by the Lawyer's Movement. During the demonstrations calling for the restoration of the judiciary, judges resisted pressure from the General Pervaiz Musharraf regime.

¹²⁵Berkman, T. (2010). The Pakistani lawyers' movement and the popular currency of judicial power. *Harvard Law Review*, 123(7), 1705-1726.

Impact of the Lawyers Movement on Democracy of Pakistan

The Lawyers Movement (2007–2009) to reinstate judges undoubtedly had a significant impact on Pakistan's political landscape, but it could not have been successful without the active participation of political parties. The Lawyers Movement also had a productive influence on the political situation of state or country. All the Political parties on that time became an active part of the lawyers' movement and managed to extend a good and soft image along with the masses.¹²⁶When a political system transitions from an authoritarian regime to a democracy, the courts can engage in re-creation of one of two "upstream" roles: either supporting the change or opting to stay out of politics. After the Lawyers' Movement, Pakistan's courts have played a variety of roles. Neither military institution nor democratic political services were supported by courts. In the end, Pakistani courts took the safe route. Courts have occasionally ruled against the military establishment in favor of democratic forces or anti-establishment opponents. In some other cases and circumstances, courts covered up democratic and civil forces in sort to pacify and defend regime. The military does not feel the need to directly interfere in political matters as a result of Pakistan's courts playing this distinct role.¹²⁷In the past, Pakistan's democracy has faced significant difficulties particularly military has intervened in politics almost four times, toppling elected leaders and dissolving elected bodies.

Major Changes in Judicial Policy

On April 18, 2009, CJ Iftikhar Muhammad Chaudhary, convened a meeting as Chairman of NJPMC. A Presidential Ordinance form 2002 established it. Its members include Secretary of

¹²⁶Shah, A. S., Waris, M., Azhar, M. M. (2018). Independence of Judiciary: An Assessment of Lawyers Movement and its Impact on Civil Society of Pakistan. *Global Regional Review*, III(I), 402-414.
doi:[https://doi.org/10.31703/grr.2018\(III-I\).30](https://doi.org/10.31703/grr.2018(III-I).30)

¹²⁷Fruman, S. (2011). *Will the Long March to Democracy in Pakistan Finally Succeed?*. US Institute of Peace.

the Law and the Justice Commission as well as the CJ's of all High Courts and the Federal Shariat Court. The first National Policy was created by NJPMC in response to changes that followed the Lawyer's Movement. It suggested significant changes to Pakistan's judicial system. Rules and procedures for the judges to away from executive and the administrative duties are established in Section A of the document, which is devoted to independence of judiciary. National Judiciary Policy aimed to implement extensive reforms to Pakistan's criminal and civil processes, especially to get rid of pointless delays in case handling. The former Article 128(4) of the 1962 Constitution, later amended by Article 209(8) of the 1973 Constitution, states that the Judges of Supreme Court and High Courts be required to abide by a code of conduct established by the Supreme Judicial Council in order to carry out their duties. Following the Lawyers' Movement, the Supreme Judicial Council authorized the adding of a new Article XI to the previous Code of Conduct for the Supreme Court judges and ordered that the full text of Article XI be published in the Gazette at its session on August 8, 2009. This Code has eleven articles in total, including the newly added Article XI. The judges of superior judiciary were so certain they did not want to remotely risk being sworn in by another military adventurer in a subsequent Provisional Constitutional Order (PCO) that they added Article XI to the Code. Judges made a commitment to upholding their oath of allegiance to the constitution for the first time in Pakistan's legal history.¹²⁸ The 1973 Constitution's sixth Article, which referred to the death penalty as an option for those who violated, revoked, or suspended the constitution, also underwent a significant change. Article 6 (2A) of the Constitution, which is legally binding for the first time in history, stipulates the same penalty for the judges of superior courts who uphold acts of treason. The Supreme Court has created a separate chamber to hear cases involving

¹²⁸Article-XI of Code of Conduct.

human rights. The Pakistan's entire judiciary was overhauled in 2009 under the new judicial policy, which also strengthened rule of law and judicial independence as well.

Changes in the Appointment and the Removal Method of the Judges

An essential component of judges' independence is the selection procedure for the higher Courts. Prior to the Lawyer Movements, the Chief Executives for Federal level appointments and provincial Chief Ministers for High Court appointments were responsible for appointing judges to the High Court and Supreme Court. For the appointment of judges, it was mandatory for the chief executives to "consult" with the particular chief justices, but the term "consultation" was not as much defined in any law or the court order. It was customary for the Chief Justice and the Chief Executive to come to an informal understanding or agreement regarding who should sit on the bench. Typically, the Chief Justice would send the names of judges who needed to be appointed, and Chief Executive would suggest the Head of State, the President for the appointment of a Supreme Court judge, and the Governor for the appointment of a judge for the High Court. The agreement reached by these three individuals during their consultation was somewhat unofficial, and the executives had the authority to reject any nominees proposed by the chief justices.¹²⁹The adoption of the 18th Amendment, which requires judges to be appointed for Supreme Court with the "consent" of a Judicial Commission with a majority of judges, was the most significant change that occurred after the Lawyers' Movement. The Judiciary Commission's recommendations were approved by a parliamentary committee that had been established. The Parliamentary Committee, however, did not have the authority to reject the Judicial Commission's recommendations without good, documented cause.

¹²⁹Ijaz, S. (2014). Judicial appointments in Pakistan: Coming full circle. *LUMS LJ*, 1(1), 87-88.

Relationship of the Judiciary with other Government Stakeholders

The judiciary doesn't operate in a vacuum. Their interactions with other governmental branches and some other state institutions play a key role in determining how well they operate. In transitional democracies such as Pakistan, the work effort and effectiveness of courts are influenced by more than just textual or constitutional limitations; they are also influenced by their informal interactions with other state actors, such as military, which like an institution has historically had significant impact on effectiveness of superior Courts.

The judiciary and the civilian governments were in constant conflict after the Lawyers' Movement. Parliamentary elections were announced in February 2008, and the PPP won that election. National Assembly nominated Syed Yousaf Raza Gillani as PM and Asif Ali Zardari as president by the four provincial legislatures and Parliament following President Pervaiz Musharraf's resignation. Approximately all deposed judges were reinstated by administration of PPP, with the exception of CJ Iftikhar Muhammad Chaudhry and four other deposed judges. A point of contention between the PPP administration and the restored judiciary was the delay in installing CJ Iftikhar Muhammad Chaudhry. The decision that targeted the executive branch's powers was later made by Supreme Court under the direction of CJ Iftikhar Muhammad Chaudhry. Through its *Suo-Moto* actions, the use of Article 183(4)'s powers under the 1973 Constitution, and disregard for Article 204's judicial powers, the Supreme Court has all but paralyzed the civilian government.¹³⁰Raja Pervaiz Ashraf, the Pakistan Prime Minister, was once removed from office due to allegations of contempt of court, and an arrest warrant was issued in a case involving corruption. Supreme Court inserted similar force on President Asif Ali Zardari to stand trial for corruption and the money laundering in a Swiss court in the Memo-Gate case.

¹³⁰Waseem, M. (2012). Clash of institutions in Pakistan. *Economic and Political Weekly*, 47(28), 16-18.

The Adverse Impacts of Lawyers' Movement

The media has created a new term, "wukalagardi," (Lawyer Hooliganism) to describe the rowdy behavior of some lawyer. Following the 2009 lawyer protests, the lawyers' morale and social standing quickly deteriorated. Because of the violent acts of some of the lawyers their image of heroes has been distorted into that of hooligans.¹³¹ The general public believed that the success of the Lawyers' Movement (2007–2009) against military and civilian regimes, as well as this newly discovered tenacity, had given lawyers the confidence to demoralize other facets of society, as well as their own, the legal fraternity.

Conclusion

This chapter serves as a case study of the fight on behalf of the Superior Court judges who were removed by Military and the civil society, ultimately for judicial independence and rule of law in country. In Pakistan, civil society has been fighting the dictatorial rule of President General Pervaiz Musharraf for two years in order to establish the good and fair judicial independence and rule of law. More than 64 judges from higher courts were fired by President General Pervaiz Musharraf in 2007, including Chief Justice Iftikhar Mohammad Chaudhary of Supreme Court. The Lawyers' Movement, which took place in Pakistan from 2007 to 2009, was a significant act of resistance against military dictator President General Pervaiz Musharraf. Its objectives included the restoration of all judges who had been removed from office and the establishment of an independent judiciary. This chapter focuses on top of the root causes of the lawyers' movement, for example the public resentment about the military ruler General Pervaiz Musharraf and the extreme brutality of police alongside the bench and bar, in addition to

¹³¹Leiby, R. (2012). Once Hailed as Heroes, Pakistani Lawyers now seen as "Gangsters". *The Washington Post*, 11.

exploring the history and evolution of the Lawyers Movement since March 2007. It emphasized the importance of contemporary media, the political parties, and the civil society as well as the pressure coming from both international governments and non-governmental organizations. The Lawyers' Movement's supporters and leaders played a significant part in educating the public about the military regime's oppressive policies. This chapter contends that since the Lawyers' Movement, judicial independence has significantly improved. The lawyers' movement's first significant effect was constitutional. The 1973 Constitution's addition of the 18th and 19th Amendments resulted in significant changes to the Pakistani judicial system, including the selection process for Supreme Court judges, their compensation, and the duration of their terms. Like any significant social movement, the Lawyer's Movement has had a largely positive effect on the nation's judicial system, but it has also unintended negative effects. The general masses were given a glimmer of great hope, support, and consciousness of their fundamental social, political, and the legal rights, but on the flip side, some legal professionals, particularly younger lawyers, adopted attitudes that worsened violence against police officers, judges, and their own colleagues. The Lawyers Movement, in its entirety, was a non-violent social movement that promoted the judicial independence and the rule of law in Pakistan. Despite only being two years long, it had a profound impact on society as a whole and brought about long-lasting changes.

Conclusion

A nation and a democratic society cannot develop without the judiciary, which plays a significant role in the state's institutions. Pakistan has a powerful judicial system that it inherited. People had confidence in the legal system. But over time, the judiciary's morale declined. The authoritarian rulers deserve some of the blame for this weakness, either directly or indirectly. The judiciary gave in to the pressure from the authorities.

Pakistan has experienced many judicial crises throughout its history, and high courts have been called upon to address them. Both civilian and military leaders can compel judges to impose sentences that are consistent with their underlying goals by exerting political pressure on them. After a nine-year battle, the 1956 constitution was finally written, but it was short-lived. President Iskander Ali Mirza decided to repeal it out of self-interest. This made it possible for military leaders to enter politics. The army commander at the time, General Muhammad Ayub Khan, consequently proclaimed Martial Law. His martial law affected the judiciary and constitutionalism in addition to upsetting the political system. Justice Munir legalized his Martial Law via doctrine of necessity, and as a effect of this choice, the judiciary lost faith in him. The 1962 constitution was established based on General Muhammad Ayub Khan's notion of centralized power and the principles of democracies. The presidential form of government was put in place and the center had dominance over the provinces, according to the constitution of 1962. Rule by force was used to describe this autocratic form of government. The Asma Jilani case, in which the Supreme Court invalidated General Muhammad Yahya Khan's Martial Law, was one of its landmark decisions. The Supreme Court's credibility was boosted by this ruling.

In Pakistan's political history, Zulfiqar Ali Bhutto's 1973 Constitution marked a turning point. Fundamental rights, parliamentary rule, and judicial independence were all protected. Following the 1977 elections, a second military coup led to the overthrow of the civilian government while the 1973 constitution was still in effect. General Muhammad Zia-ul-Haq enacted martial law in 1977, suspended 1973 constitution and a new military administration took over. Nusrat Bhutto, the ex-prime minister Zulfiqar Ali Bhutto's wife, appealed Zia's declaration of martial law, but Supreme Court, as naturally, rejected the case based on the doctrine of necessity. It was effectively suspended to follow the 1973 Constitution. All dictators, from General Muhammad Ayub Khan to General Pervaiz Musharraf, broke the letter of constitution by taking some steps to impose their own rule and power. The doctrine of necessity was almost used by the military rulers to defend their rule. The despotism of such a doctrine results in anarchy.

The civilian administrations of Benazir Bhutto and Mian Muhammad Nawaz Sharif had a chance to rule between 1988 and 1999. President Ghulam Ishaq Khan, overthrew two elected governments as a result of having the president's extraordinary powers under section 58(2)(b). The judiciary and civil governments have frequently disagreed. Judges were appointed favorably by political governments. The judiciary was adequately controlled and never exercised its authority freely. Positive amendments from Mian Muhammad Nawaz Sharif prevented the President from dissolving the National Assembly. The Army stood by in silence while keeping a close eye on the action. To further solidify their rule, Mian Muhammad Nawaz Sharif removed General Pervaiz Musharraf as army chief of staff and replaced him with Zia-u-din. General Pervaiz Musharraf took action by using a bloodless coup to depose Mian Muhammad Nawaz Sharif. Military representatives thus returned to Pakistan's political scene.

The evolution of the judiciary was further hampered by the military takeover in 1999. It continued to be under pressure. The doctrine of necessity granted legal standing to military government. For the military, all constitutional disputes had frequently been settled by the judiciary. The judiciary's shortcomings were demonstrated by the inconsistent outcomes of judgments on various political issues. Important issues were included the president's dual office charge and wearing a military uniform, the provisional constitutional order (PCO), the legal framework's order, and the presidential referendum. Consequently, constitutional processes were more political than legal. General Pervaiz Musharraf has consistently broken the law since he took office in an illegal military coup in 1999, demoralizing Pakistan's civil institutions in the process. Through the legal means of military and political backing, sound economic policy, and reforms, General Pervaiz Musharraf was able to gain legitimacy. The 1973 constitution underwent some necessary revisions after General Pervaiz Musharraf's military government assumed power in order to facilitate his rule and win support from the political establishment. In this way, the seventeen constitutional amendments he proposed gave all of his reforms official legal status. A public interest trial program was started by Iftikhar Muhammad Chaudhry in 2005, the year he was appointed Chief Justice. The Chief Justice started to play a more active role in the judiciary, taking courageous measures to hold executives responsible on various levels. He used his *Suo Moto* authority to issue judicial notices to illegal commissions at the federal and provincial levels, and he took concrete steps to confirm the rule of law and the independence of the judiciary in Pakistan.

Supreme Court is at odds with the executive branch as a result of a number of decisions it made, particularly on significant economic and social issues. The case of privatization of Pakistan's Steel Mills was declared invalid by the Chief Justice after the Privatization

Commission was accused of fraud and lack of transparency. At its best, it was legal judicial activism. The Chief Justice's stance on these issues subsequently caused the executive branch more trouble. The Chief Justice's audacious legal activism made the Government feel more and more threatened. It's possible that President General Pervaiz Musharraf believed the Chief Justice was unpredictable when it came to crucial political and constitutional matters that would affect his future, especially while wearing a uniform as president. After that, the Chief Justice was by force dismissed.

When the CJ was ousted by President General Pervaiz Musharraf, the lawyers started a remarkable movement. His main objectives were the restoration of the CJ and the overthrow of his administration. Political parties and civil society supported the lawyers' movement. Strong backing came from leaders like Aitzaz Ahsan, Ali Ahmad Kurd, and well-known lawyers. They persisted in fighting until General Pervaiz Musharraf was removed from office and the judiciary was reinstated. After a protracted battle, they succeeded in removing President General Pervaiz Musharraf from office and restoring the CJ of Pakistan and other judges who had been fired. A step toward judicial activism was taken. In terms of politics and law, this was a watershed moment for Pakistan. The Lawyer Movement, which lasted from 2007 to 2009, brought the judiciary's troubled past to light. The Lawyers' Movement helped to reinstate the chief justice while also paving the way for political liberalism. The judiciary was essentially destroyed by President General Pervaiz Musharraf after the second martial law was proclaimed on November 3, 2007. Everywhere there was a high level of corruption, poor management, and power abuse. The court's options were limited. This completely reversed the tendency of the judicial activism at the highest level and had an impact on how the lower levels of judiciary operated. CJ Iftikhar Muhammad Chaudhry, did not set out on this journey with any specific intentions. There were a

few early instances where it appeared that authorities had acted arbitrarily. It quickly gained momentum and dynamics before the entire system broke down. When the executive branch's power exceeds its bounds, the judiciary must exercise restraint. Justice must be available to everyone without discrimination. Under Chief Justice Iftikhar Muhammad Chaudhry, the judiciary made an effort to reverse this trend in 2007. A practical judiciary is now a ray of great hope for the average person in Pakistan.

The structure and operation of the courts have undergone significant change as a result of the Lawyers Movement. The Lawyers Movement urged the courts to issue rulings and challenge military and civilian political regimes in order to sustain the rule of law throughout the country. The judiciary and Lawyers Movement have made a significant contribution to the military and civilian contested regime. The Lawyers Movement served as an example of how nonviolent protest can advance democracy. It ought to serve as an illustration of how political, religious, and denominational groups can best accomplish their objectives. The influence of the Pakistani Lawyers Movement (2007–2009) on institutions like the legislature, executive branch, bureaucracy, military, and lower courts can thus be further examined in a number of ways. The investigation of specific cases involving public interest law, human rights, constitutional interpretation, women's rights, and labor law could be one of several additional areas of inquiry. For both individuals and groups, social and political movements have effects on the economy, politics, and sociology.

Resource mobilization theory, which explains various facets of Social Movement, is the theory employed in the current study. The message was successfully and quickly spread by lawyers. The Lawyers' Movement's most significant contributing factor is the involvement of lawyers in numerous civil society organizations, including NGO's, women's organizations, trade

unions, and student associations, among others. Legal professionals and an independent judiciary are supported by civil society because they uphold the rule of law in the nation. In other words, the Lawyers Movement was able to mobilize society and achieve its goals. Only the civil society, political parties, and electronic media were involved in the movement for judicial independence. Additionally, the judiciary contributed favorably in this regard. What counts right now is how the judiciary will function in the future, how it will operate as an institution to administer justice, and how it will defend the rights of individuals. The most recent report by the International Global Justice Project also criticized the Pakistan's judicial system. While many people argue that such reports has always been used by western institution as a propaganda tool by enemies of the state.

Many people are not satisfied with the country's judicial system. There are endless reasons for this lack of trust; one of the major is lengthy judicial procedures. In fact, every citizen wishes for a fast and easy justice system but now it has become a dream in Pakistan. The delay of justice in Pakistan is also one of the reasons behind many crimes. If the Pakistan's judicial system is not reformed in time and political influence is not removed from the court, it could lead to an unprecedented disaster and pose a severe danger to the existence and the sovereignty of country. The involvement of courts and judges in political affairs and their political affiliation is also a key factor in defaming the judicial system of Pakistan. Courts and judiciary have been used by various civil and military governments to achieve their political goals. It is believed that Zulfikar Ali Bhutto's execution was a form of judicial murder.

In addition, the lengthy process for some cases involving political parties and politician, like the Model town case is also one of the reason why the judicial system is losing the trust of the people in Pakistan. The Sahiwal incident is also one of these famous incidents. In political side we can see that General Pervaiz Musharraf was sentenced to death in 2019 but being away

from the country, could not be penalized. Similarly, former Prime Minister Mian Muhammad Nawaz Sharif despite being on trial in Pakistan for money laundering, Lahore High Court permitted him to travel abroad for four weeks to receive medical treatment but after that he has not returned to the country and has been involved in making statements against the country's military establishment that harm Pakistan's national interest. To conclude the judiciary and other stakeholders must make this justice a reality. To delay is to deny justice, so they must provide immediate, effective and easy justice to the citizens. To meet the needs of the 21st century, Pakistan's judicial system needs to be reformatted.

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