

**A STUDY OF WORKING RELATIONSHIP OF THE  
EXECUTIVE, JUDICIARY AND PARLIAMENT IN  
MUSHARRAF ERA**



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

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

**2023**



In the name of Allah,  
the Most Beneficent,  
the Most Merciful

## DEDICATION

This Piece of research is dedicated  
To  
The Holy Prophet Muhammad

صلى الله عليه وآله وسلم

## DECLARATION

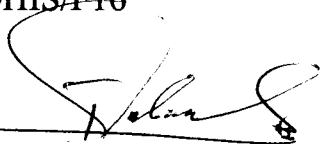
I, Tajammal Hussain Chattha hereby declare that this dissertation has been written by me in its entirety on the basis of my research work under the sincere & heartfelt guidance of my supervisor Dr. Syed Akmal Hussain Shah at the Department of History & Pakistan Studies, Faculty of Social Sciences, International Islamic University, Islamabad.

No portion of this Dissertation has either been copied from any source nor has been submitted before for any degree or qualification in this or any other university or educational institution. Moreover, I declare that any secondary information used in this dissertation has been duly acknowledged.

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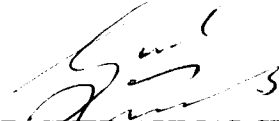


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## FORWARDING SHEET

This Dissertation, titled A STUDY OF WORKING RELATIONSHIP OF EXECUTIVE, JUDICIARY AND PARLIAMENT IN MUSHARRAF ERA, put forward by Mr. Tajammal Hussain Chattha, Registration No. 32-FSS/PHDHIS/F16 in partial fulfillment for the award of the Degree of Doctor of Philosophy (Ph.D.) in History has been successfully completed under my guidance, care, and supervision.

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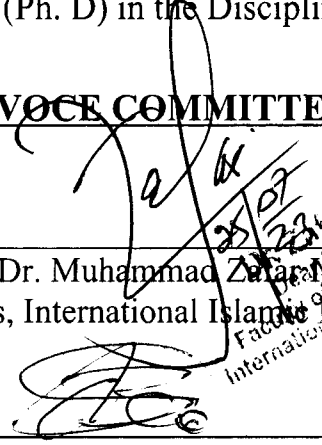
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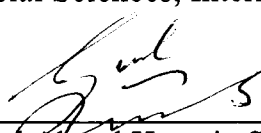
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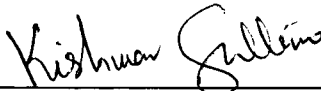
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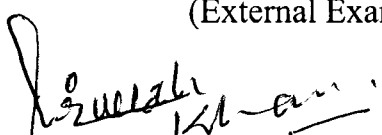
  
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## **LIST OF ABBREVIATION**

<b>CMLA</b>	Chief Martial Law Administrator
<b>PCO</b>	Provisionally Constitutional Order
<b>LFO</b>	Legal Framework Order
<b>NAB</b>	National Accountability Bureau
<b>NRO</b>	National Reconciliation Ordinance
<b>PNA</b>	Pakistan National Alliance
<b>OPEC</b>	Organization of Petroleum Exporting Countries
<b>USA</b>	United States of America
<b>COAS</b>	Chief of Army Staff
<b>NSC</b>	National Security Council
<b>DG</b>	Director General
<b>ISI</b>	Inter-Service Intelligence
<b>NWFP</b>	North West Frontier Province
<b>KPK</b>	Khyber Pakhtunkhwa
<b>PML-Q</b>	Pakistan Muslim League (Qaid e Azam)
<b>MQM</b>	Muttahida Qaumi Movement
<b>PML-N</b>	Pakistan Muslim League (Nawaz)
<b>PPP</b>	Pakistan People's Party
<b>MMA</b>	Muttahida Majlis-e-Amal
<b>MRD</b>	Movement for Restoration of Democracy
<b>FSF</b>	Federal Security Force
<b>ARD</b>	Alliance for the Restoration of Democracy

<b>ICT</b>	Islamabad Capital Territory
<b>FANA</b>	Federally Administered Northern Areas
<b>PSMC</b>	Pakistan Steel Mills Corporation
<b>BLA</b>	Baluchistan Liberation Army
<b>NGO'S</b>	Non-Governmental Organization
<b>PCCR</b>	Parliamentary Committee on Constitutional Reforms
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>PBC</b>	Pakistan Bar Council
<b>SCP</b>	Supreme Court of Pakistan
<b>CJP</b>	Supreme Justice of Pakistan
<b>SJC</b>	Supreme Judicial Council
<b>LHC</b>	Lahore High Court
<b>SCBA</b>	Supreme Court Bar Association
<b>HRCP</b>	Human Rights Commission of Pakistan
<b>ACTs</b>	Anti-Terrorist Courts
<b>UNO</b>	United Nation Organization
<b>CMAG</b>	Commonwealth Ministerial Action Group

## GLOSSARY

<b>Adliya Bachao Tehreek</b>	Saving the Judiciary Movement
<b>Awami</b>	Of Common People
<b>Governor Raj</b>	Governor became as an Administrator
<b>Lal Masjid</b>	Mosque (Name: Lal Masjid)
<b>Madrassa</b>	Like a School (where Peoples come to learn Islam)
<b>Majlis-e-Shoora</b>	A Parliament
<b>Nazim</b>	Designation similar to a Mayor
<b>Naib Nazim</b>	Assistant to a Mayor
<b>Ahmadis</b>	Followers of the Ahmadiyya Movement

## ABSTRACT

*This thesis explores the intricate dynamics of the executive, judiciary, and parliament in the era of General Pervez Musharraf's rule in Pakistan. The study delves into the interplay between these three branches of government, focusing on their interactions, conflicts, and collaborations during this period. By analyzing key events, legislative measures, and court decisions, this research aims to provide a comprehensive understanding of the power dynamics and governance structure that existed in Pakistan during the Musharraf Era.*

*The thesis employs a multidimensional approach, drawing on various primary and secondary sources such as legal documents, parliamentary records, judgments, and scholarly works. The methodology includes descriptive, analytical, and qualitative approaches to illuminate the intricate relationship among the executive, judiciary, and parliament.*

*The findings of this research shed light on the strengths and weaknesses of the relationship between the executive, judiciary, and parliament during the Musharraf Era. It examines the impact of executive actions on the functioning of the judiciary and the legislature, and conversely, the influence of judicial decisions on the executive and legislative branches. The research also investigates the extent to which the separation of powers was maintained and the degree of independence enjoyed by each branch of government.*

*Furthermore, the thesis critically evaluates the role of the Constitution, legal frameworks, and institutional structures in shaping the interactions between the executive, judiciary, and parliament. It explores the mechanisms employed by each branch to maintain checks and balances, ensuring accountability and transparency in the decision-making process.*

*The significance of this research lies in its contribution to the understanding of democratic governance and the rule of law in Pakistan. By examining the working relationship of the executive, judiciary, and parliament during the Musharraf Era, this thesis provides valuable insights for policymakers, scholars, and practitioners seeking to strengthen democratic institutions and ensure a balanced distribution of power within the government.*

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**Tajammal Hussain Chattah**

## INTRODUCTION

The study of civil-military relations underscores two trajectories, in countries where people have not In Pakistan, the declining trajectory of the judiciary is normally traced back to the judgment of the federal court in the Moulvi Tamizuddin Khan Case, consisting of a triad of three decisions. The first was the judgment in the Tamizuddin Khan Case itself, the second was the judgment in the Usif Patel Case and the third was the decision in the governor general's reference of 1955. Experienced a military takeover, the focus remains on civilian control of the military. In countries where people have witnessed military takeovers, the focus expands to incorporate issues related to military takeovers, military regimes, and transition to democracy besides civilian control over the military. Pakistan falls in the second country therefore the study of politics, power struggle, and the process of democratization in Pakistan due to repeated military takeovers presents a dilemma. Since its inception, the political elite, military, and judiciary have conflicted and colluded in a variety of ways to influence the process of state and nation-building. Resultantly, the country has regularly alternated between civil and military rules. Until 2008, the country was ruled directly by the military for 33 years. For 17 years, there had been a civilian government under a civilian President, and for eleven years, it had been ruled by semi-civilian non-elected governments during the first decade after the independence.<sup>1</sup>

In the process of state-building, two competing binary trends are evident. The civilian political elite prefers a federation with parliamentary system of

---

<sup>1</sup> Siegfried O. Wolf and Seth Kane, *Democratic Ambitions under Praetorian Stress-Civil-Military Relations in Pakistan,* in *Democracy under Stress: Civil-Military Relations in South and Southeast Asia,* ed. Paul Chambers and Aurel Croissant (Bangkok: Institute of Security and International Studies, 2010), pp 171

government (1956 and 1973 Constitutions). Contrarily, the military's choice had been a presidential system of government (1962 Constitution). General Zia-ul-Haq and General Musharraf during their rule, while living with the 1973 Constitution, it had fostered a division of power i.e. a *de facto* presidential system with emphasis on grass root democracy through local governments.<sup>2</sup> The alternations between civil and military rule and attempts to formulate and practice two different types of governments has had numerous adverse effects. It in the main has impeded the process of democratization consolidation, and maturing of democratic culture and values. These alternations are tabulated below.

**Table 1: Civil and Military Regimes in Pakistan – 1947-2002**

<b>Structure of Leadership</b>	<b>Duration</b>	<b>Period</b>
<b>Semi Civilian (Non-Elected) Government</b>	11 Years	1947-1951: Liaquat Ali Khan 1951-1953: Muhammad Ali Bogra 1953-1955: Ch Muhammad Ali 1956-1957: H.S. Suhrawardy 1957-1958: Sir Feroz Khan Noon
<b>Direct Military Rule</b>	33 Years	1958-1969: Ayub Khan 1969-1971: Yahya Khan 1977-1988: Zia ul Haq 1999-2008: Pervez Musharraf
<b>Elected Government under a Civilian President</b>	17 Years	1971-1977: Zulfikar Ali Bhutto 1988-1990: Benazir Bhutto 1990-1993: Nawaz Sharif 1993-1996: Benazir Bhutto 1997-1999: Nawaz Sharif

The aforementioned history presents contradictory narratives. The political elite blame the military interventions and dominance for lack of democratic consolidation. The military on the other hand faults political elite for their undemocratic attitude, inept governance and corruption leading to institutional

<sup>2</sup> The Constitution of 1973 was abrogated by General Zia and then restored as part of an agreement and later General Musharraf also maintained the constitution and worked within it. However in both cases the power was redistributed to render the Prime Minister accountable to the President with latter enjoying arbitrary powers to dismiss the prime minister and his government

decay<sup>3</sup>. Most importantly, in military's opinion the political elite instead of delivering good governance and advancing national interests employ the facade of democracy to advance their personal interests with least interest in institution building. The intra elite conflicts and inability to resolve them through political institutions while weakens the country it also drags military into politics which sometimes leads to military takeover.

In the international and local academia, both sides have their own sets of exponents. Scholars, studying the interventionist behavior of the military, trace the problem to its initial formation and its class composition.<sup>4</sup> Others like Askari,<sup>5</sup> Shafqat<sup>6</sup> and Shah<sup>7</sup> opine that involvement of military in internal and external affairs has created a military hegemonic system which consequences into military's intervention in politics.<sup>8</sup> The military on the other hand, considers that "army could not remain unaffected by the conditions around it."<sup>9</sup> It has to respond to the political developments like General Jehangir Karamat suggested the need for National Security Council (NSC) and General Musharraf opined if you want to keep them military out, bring them in.

A brief recount of history of civil military relations indicates that the first Martial

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<sup>3</sup> Hasan Askari Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 55.

<sup>4</sup> Syed Hussain Shaheed Soherwordi, *Punjabisation in the British Indian Army 1857-1947 and the Advent of Military Rule in Pakistan* (Edinburgh: Papers in South Asian Studies, 2010), 78.

<sup>5</sup> Hasan Askari Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 57.

<sup>6</sup> Saeed Shafqat, *Civil-Military Relations in Pakistan: From Zulfikar Ali Bhutto to Benazir Bhutto* (Colorado: Westview Press, 1997), 50.

<sup>7</sup> Aqil Shah, *The Army and Democracy: Military Politics in Pakistan* (Cambridge: Harvard University Press, 2014), 56.

<sup>8</sup> The monthly meeting of Corps Commanders keeps eye on political situation in the country and discuss remedial measures while the COAS brings these to the notice of incumbent prime minister when the need arises.

<sup>9</sup> Mohammad Ayub Khan, *Friends Not Masters: A Political Autobiography* (Karachi: Oxford University Press, 1967), 175.

Law before the partition was imposed after *Jallianwala Bagh* incident in 1919.<sup>10</sup> The second occurred after independence in 1953 to quell disturbances related to *Ahamdiya* issue and food shortages in Punjab.<sup>11</sup> However, during these episodes the notion of civilian supremacy continued to hold sway both during the British Raj and even after the independence.<sup>12</sup>

The notion of civilian supremacy was progressively eroded because of civilian reliance on military for combating security and survival challenges; it reduced the distance between civilian and military domains.<sup>13</sup> This inadvertent process of 'political integration of the military' commenced with the struggle for liberation of Kashmir and during the ensuing Indian occupation of the State of Jammu and Kashmir. The Martial Law of 1953, followed by induction of serving Army Chief, General Muhammad Ayub Khan as Defense Minister, further reduced the distance.

These political decisions introduced army's leadership very early into politics, policy formulation and governance arena. Simultaneously the process of state and nation building witnessed acute turmoil. Four Prime Ministers were prematurely removed and equal numbers of constituent assemblies were dissolved before finally agreeing to the first ever 1956 Constitution.

However, in order to pre-empt loss of power which he anticipated as a

---

<sup>10</sup> The 1919 Jallianwala Bagh massacre in the northern Indian city of Amritsar was ordered by General R.E.H. Dyer. On Sunday April 13, 1919, which happened to be '*Baisakhi*', one of Punjab's largest religious festivals, fifty British Indian Army soldiers, commanded by Brigadier-General Reginald Dyer, began shooting at an unarmed gathering of men, women, and children without warning. He marched his fifty riflemen to a raised bank and ordered them to kneel and fire. He ordered soldiers to reload their rifles several times and they were ordered to shoot to kill. Official British Raj sources estimated the fatalities at 379, and with 1,100 wounded. Civil Surgeon Dr Williams DeeMeddy indicated that there were 1,526 casualties. However, the casualty number quoted by the Indian National Congress was more than 1,500, with roughly 1,000 killed.

<sup>11</sup> Hamid Khan, *Constitutional and Political History of Pakistan*. (Karachi: Oxford University Press, 2009), 45.

<sup>12</sup> Wolf and Kane, 'Democratic Ambitions under Praetorian Stress.'

<sup>13</sup> *Ibid.*190.

consequence of the forthcoming general elections, President Iskandar Mirza imposed a martial law. He appointed General Ayub as the Chief Martial Law Administrator (CMLA) on 8 October 1958 and abrogated the constitution.<sup>14</sup> The arrangement for co-sharing of power between a President hailing from bureaucracy<sup>15</sup> and military could not last for more than a few days. On 24 October 1958, General Ayub Khan ousted President Mirza and gained complete control of power which lasted till 25 March 1969.<sup>16</sup>

In summary, these events reveal that the first attempt for democratization in the country ended in a failure. Evidently the political elite could not develop consensus on application of 1956 Constitution, had they been able to put aside their differences and hold elections in accordance with the constitution, the first step towards democratic consolidation could have been taken early in country's history.

It indicates that the role of political elite is crucial for furthering democracy. The independent variable of politics generates pull and push effects on the dependent variable of military, which then responds in accordance with its own political

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<sup>14</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 47. After nine years of effort, Pakistan succeeded in framing a Constitution which became effective on 23 March 1956. President kept on delaying the holding of general elections according to the constitution until it was finally decided that they will be held in November 1958.

<sup>15</sup> Iskandar Mirza was born on November 15, 1899, in a feudal family of Bengal. He was inducted into the British Indian Army in 1919. In 1926, he left the army, joined the Indian Political Service and was posted as Assistant Commissioner in North West Frontier Province. He was promoted to District Officer in 1931. Before the creation of Pakistan, he served the Ministry of Defense, Government of India, as a Joint Secretary. Being the senior-most Muslim Civil Servant in the Indian Ministry of Defense, Iskandar Mirza was appointed as the first Defense Secretary of Pakistan at the time of Independence. He served at this position for about seven years. With the dismissal of the United Front's Ministry in East Pakistan, Governor General Ghulam Muhammad decided to enforce Governor's Rule in the province and appointed Iskandar Mirza as Governor in May 1954.

<sup>16</sup> Mohammad Ayub Khan, *Friends Not Masters: A Political Autobiography* (Karachi: Oxford University Press, 1967), 175. He writes that Martial Law was imposed as 'the central authority' had collapsed' after imposing Martial Law the President started dividing the armed forces and asked an air force officer to arrest General Ayub who had just returned from East Pakistan, the General and his staff assessed that since Martial Law had been imposed and Chief Martial Law Administrator had been appointed the office of President was redundant, therefore he was relieved and was settled in England.

views. The persistent political commotion in the country from 1947 to 1958 and repeated employment of military on a variety of tasks also pulled them into politics.<sup>17</sup> On the other hand, poor governance created insecurity and instability, pushing the military commanders into action to take control and rectify the situation. Therefore, when General Ayub took over he was initially welcomed by a large segment of population as the only way out of the mess created by the politicians in the first eleven years.<sup>18</sup>

General Ayub's ten years rule can be divided in two periods. The first (1958-1965), stands out for significant changes and all round achievements, while the second (1965-1968) reflects the undoing of these achievements by its own creator. He created a balance *viz* India by joining the western alliance during the cold war and accrued assistance in different dimensions. He fostered green and industrial revolution and stood up to obscurantist forces. Although, he was not successful in undoing the feudal class, yet he diluted their effect by adding an industrialist class albeit comprising few families to the polity.

He was called a benevolent dictator and despite all the shortfalls, his tenure is regarded as a period of stability in the history of Pakistan.<sup>19</sup> However, it was also detrimental to the consolidation of democracy. The "misadventure" of 1965 war marked the beginning of his end.<sup>20</sup> After the war dissatisfied by the behavior of United States of America (USA) he pursued a more independent foreign policy and built a lasting relationship with China and attempted to normalize relations

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<sup>17</sup> Refer to Table 1.1; in eleven years six prime minister changed and between 1955 and 1957 four prime minister changed hands.

<sup>18</sup> Kalim Bahadur, *Democracy in Pakistan: Crises and Conflicts* (New Delhi: Har-Anand Publications, 1998), 12

<sup>19</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 195

<sup>20</sup> M. Asghar Khan, *The First Round: Indo-Pakistan War 1965* (Lahor: Vikas Publishing House Private, 1979) 121.

with Soviet Union.

In the context of civil military relations in Pakistan, General Ayub's tenure raises number of issues. Firstly, he interrupted the process of democratization and persisted with Martial Law with disastrous consequences. Secondly, the constitution of 1962 ran contrary to the political genius of the polity which preferred a federation, a parliamentary style of government hence the constitution of 1962 did not last beyond his tenure. Before General Ayub's take over, civil military relations, despite active participation of military in security politics signified civilian supremacy in the country.

However, his take over severely undermined civilian control over military which climaxed in the in 1965 war. Besides, his decade long rule entrenched the military in the political system thus creating a new paradigm of "military politics."<sup>21</sup> Thereafter, the military emerged as a competing force against which political elite and civil society contested.

General Ayub resigned from office under popular pressure, but instead of handing power to the speaker of national assembly as required by the constitution, he handed it to General Yahya Khan on 25 March 1969. He sensing military's alienation and unpopularity of the 1962 Constitution abrogated it on 28 March 1970 and announced a Legal Framework Order (LFO) which laid down the basic structure for the new constitution. However he assured that the new constitution would be formulated by the representatives of the people. Towards this effect, he promised direct elections based on universal adult franchise, the elections were

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<sup>21</sup> The term refers to military's political role witnessed in the six decades of Pakistan's history and not to politics within the military.

held on 7 December 1970 and were judged as free and fair.<sup>22</sup>

Party	East Pak	Punjab	Sind	NWFP	Baluchistan	Total
Awami League	151	-	-	-	-	151
Pakistan People Party	-	62	18	1	-	81
Council Muslim League	-	7	-	-	-	7
Ahle Sunnat	-	4	3	-	-	7
Jamaat-e-Islami	-	1	2	1	-	4
Qayyum Muslim League	-	1	1	7	-	9
Convention Muslim League	-	2	-	-	-	2
Pakistan Democratic Party	1	-	-	-	-	1
National Awami Party (Wali Group)	-	-	-	3	3	6
Jamait Ulema-e-Pakistan	-	-	-	6	1	7
Independent	1	5	3	7	-	16
<b>Total</b>	<b>153</b>	<b>82</b>	<b>27</b>	<b>25</b>	<b>4</b>	<b>291</b>

Source: Report of the Elections Commission of Pakistan

The results mirrored differences between East and West wings which due to years of divisive politics persistent political issues had sharply polarized the polity. Awami League propagated provincial autonomy articulated in six points<sup>23</sup> of Sheikh Mujeebur- Rehman, emerged as the largest single party, winning all but two seats, from East Pakistan but none in West. Pakistan People's Party (PPP), led by Zulfikar Ali Bhutto, emerged as the largest party in West Pakistan with could not win any seat in the East and in Baluchistan and only one in NWFP. The results are tabulated below.

The elections results warranted calling of National Assembly session and transfer of power to Awami League. However, it appeared that the political and military

<sup>22</sup> The First 10 General Elections of Pakistan: A Story of Pakistan's Transition from Democracy above Rule of Law to Democracy under Rule of Law: 1970-2013' (Islamabad, August 2013).The report concludes that only 1970 elections were free and fair

<sup>23</sup> Muhammad Ibrahim and Razia Mussarat, "Electoral Politics: A Case Study of Pakistan (1947-1985)," *Journal of Public Administration and Governance* 5, no. 1 (2015):138.

elite in West Pakistan were not willing to do so.<sup>24</sup> The delay in transfer of power sparked civil unrest in East Pakistan which soon snowballed into an Indian abetted insurgency and culminated into the disastrous Indo-Pak War of 1971. The war in its outcome resulted in creation of Bangladesh.<sup>25</sup>

Why East Pakistan chose to secede? From the perspective of civil military relations, these happenings raise number of questions. Firstly, was it the military or the irreconcilable behavior of politicians, especially Bhutto who resisted handing over power to Awami League and thereby returning democracy to the country? The delay in calling session of national assembly by General Yahya was interpreted as non-acceptability of the six points of Sheikh Mujeeb to the military. Building on it, Bhutto refused to go to the national assembly session which was called by Awami League in Dhaka.

Cumulatively, the delay spiraled unrest in the East and both military (Yahya) and civil (Bhutto) were responsible for it.<sup>26</sup> The consequent political unrest in East Pakistan was interpreted by military as “law and order situation” which could be resolved by use of force.<sup>27</sup> The rioting and violence led to rise of Mukti Bahini which was abetted by India.<sup>28</sup> The increasing violence in East Pakistan sucked the military into counter insurgency operations and subsequently a brief war with India in December 1971. The war went badly and the military lost control of East Pakistan.

A detailed study of civil military relations during and after the war is beyond the

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<sup>24</sup> Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (California: University of California Press, 1991), 120. Bhutto is accused of preventing reconciliation with Mujeeb ur Rehman and his six point agenda for regional autonomy.

<sup>25</sup> Ibid.

<sup>26</sup> Steven I. Wilkinson, “Democratic Consolidation and Failure: Lessons from Bangladesh and Pakistan,” *Democratization* 7, no. 3 (2000): 235.

<sup>27</sup> Aditya Bhawe and Christopher Kingston, “Military Coups and the Consequences of Durable de Facto Power: The Case of Pakistan,” *Economics of Governance* 11, no. 1 (2010): 313.

<sup>28</sup> Indian Forces Fought along Mukti Bahini: Modi’, *The News*, 8 June 2015.

scope of this research. Dismayed by the outcome of war, the military lost confidence in General Yahya and asked him to step down. A meeting of officers stationed in Rawalpindi was called on 20 December 1971 in which it was decided that General Yahya should step down and transfer the power to Zulfikar Ali Bhutto. On the same day, Bhutto became the President and the first civilian CMLA.<sup>29</sup> The internal dynamics of military politics led to transfer of power and return to civilian control.

The 1970 elections were aimed at electing a constituent assembly to formulate the constitution for Pakistan (East and West). However, with secession of East Pakistan, the representatives lost authority and a fresh elections and mandate was now essential to elect a new constituent assembly to frame a constitution for residual Pakistan.<sup>30</sup> Bhutto brought in an interim constitution<sup>31</sup> which was presidential in nature and remained in force till promulgation of 1973 Constitution. As per the spirit of democracy, a fresh elections under the new constitution was essential but interestingly, the assembly elected to frame the constitution extended its own life under the new constitution till 14 August 1977.<sup>32</sup>

Bhutto was a charismatic leader with a populist style of politics. He employed the powers of CMLA to implement his socialist agenda to include nationalization of basic industries, schools and land reforms.<sup>33</sup> During Bhutto's tenure, political

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<sup>29</sup> Elections were held in a different environment wherein the Presidential system was not acceptable and a new constitution to accommodate the demand of East Pakistan was required, with loss of East Pakistan, the environment changed and a fresh elections would have most likely yielded different results.

<sup>30</sup> Bhutto ordered a judicial inquiry and appointed Justice Hamood ur Rehman to inquire into the military defeat in 1971. He kept the findings confidential and employed it as a coercive tool against the military rather than an instrument for reforms.

<sup>31</sup> Nasir Hafeez, "Evolution of National Security Structures in Pakistan," *Strategic Studies* 32, no. 2, (2012): 191.

<sup>32</sup> *Ibid.*

<sup>33</sup> Bhutto political slogan stated Islam as the religion but socialism was his economic philosophy, his call for Food, Clothing and Shelter for all appealed to the masses. His major contributions were

government dominated politics and civil military relations were characterized by a robust civilian control. He employed a two prong strategy for strengthening civilian control over the military.<sup>34</sup> First, by reforming the command structure of the armed forces<sup>35</sup> and secondly by reducing reliance over the military for maintaining law and order by creating paramilitary forces. Federal Security Force (FSF) was created to this effect.

Dissatisfaction in military soon begun to surface and quell any trouble on 3 March 1972, Bhutto suddenly replaced General Gul Hassan with General Tikka Khan as Army Chief (General Tikka Khan was earlier by-passed when General Gul Hassan was appointed). Similarly Air Marshal Raheem Khan was replaced by Air Marshal Zafar Chaudhary as Air Chief. On 30 March 1973, Ministry of Defense reported that a small group of military officers had conspired to seize power.

They were tried in a military court headed by the then Major General Zia-ul-Haq and sentenced to heavy terms of imprisonment. On completion of term of General Tikka in March 1976, Bhutto appointed General Zia-ul-Haq, a junior corps commander, as the Army Chief.

Under the new constitution, elections were to be held in 1977. On 7 January, Bhutto announced that elections will be held on 7<sup>th</sup> and 10 March 1977 for national and provincial assemblies respectively. On 21<sup>st</sup> January, nine opposition parties formed an electoral alliance namely Pakistan National Alliance (PNA) against the ruling PPP. It was generally perceived that despite a strong opposition

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formulation of 1973 constitution, land reforms, Simla Agreement and repatriation of prisoners of war and, Setting up of port Qasim and Steel mill and laying the foundations of Pakistan's nuclear programme and holding of Islamic Summit in Pakistan. His major failure was the inability to stabilise the nationalisation process, electoral mal-practices which led to his down fall.

<sup>34</sup> Bhutto ordered a judicial inquiry and appointed Justice Hamood ur Rehman to inquire into the military defeat in 1971. He kept the findings confidential and employed it as a coercive tool against the military rather than an instrument for reforms.

<sup>35</sup> Large scale reshuffling and retirement were orchestrated in three services.

PPP would still win.<sup>36</sup>

On 8<sup>th</sup> March, after national assembly election, PNA alleged massive electoral rigging and boycotted the provincial assembly's elections. Resultantly, a very low turnout was witnessed on 10<sup>th</sup> March. The alleged rigging proved to be a turning point leading to another military coup on 5<sup>th</sup> July 1977. In the context of civil military relations, the events during March- July 1977 once again reveal that political elite due to intra elite conflict, create situations of prolonged impasse, compromising national security and also involve military into politics which sometimes results in military takeover.<sup>37</sup>

The negotiation process started on 13<sup>th</sup> March and continued up till 4<sup>th</sup> July and comprised twelve rounds.<sup>38</sup> And even on the last day when the agreement was finalized, Bhutto said that he will sign it on the next day. In the process, widespread political agitation was witnessed leading to imposition of partial Martial Law in Lahore, Karachi and Hyderabad. Secondly, Bhutto kept military informed and also invited General Zia to attend the negotiating process and cabinet meetings. Under societal considerations and inconclusive political situation, General Zia imposed Martial Law on 5<sup>th</sup> July 1977 and remained in power till 17<sup>th</sup> August 1988.<sup>39</sup> General Zia ruled the country for more than a decade and his regime can be divided into four phases.<sup>40</sup>

In the first, 1977-1979, he worked for demobilization of PPP and sought cooperation with PNA. In the second, 1979-1983, he distanced himself from political parties in general and the strengthened the military rule. During third

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Tahir Amin, "1977 Coup D'état in Pakistan," *Pakistan Journal of History and Culture* 28, no. 2 (2007), 11.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

phase, 1983-1985, he granted limited political activities by holding the party-less general elections in 1985 under the increased pressure from Movement for Restoration of Democracy (MRD). The last phase was of party-less parliamentary democracy with strong interventionist presidency during 1985-1988.

In the context of civil military relations, while the military enjoyed complete autonomy in the economic, political and social life, General Zia was not a revolutionary and substance of his policy was adhocism. His policy of Islamization and his strategic alliance with USA after Soviet intervention in Afghanistan were most detrimental for the national security. The increased role of military in politics and holding of non-party elections during his tenure adversely affected the possibility of return to democracy.

Accidental death of General Zia triggered phenomenal changes in the political dispensation in the country.<sup>41</sup> Therefore, politics and operation of civil military relations in ensuing decade is of special interest to this research. After General Zia, the military took a back seat, facilitated general elections on party basis and fostered return to democracy albeit the constitutional amendment which distributed power between the prime minister and president. The political elite had two options; they could either unite for strengthening democracy or fight among themselves to aggrandize their personal and political gains at the cost of democracy. Unfortunately, they opted for the second option, offering opportunity to non-democratic forces to exploit their differences.

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<sup>41</sup> President Zia ul Haq died in an air crash on 17 August 1988 near Bahawalpur. He was accompanied by a number of senior army officers and the US Ambassador to Pakistan and military attaché. A meeting took place in Islamabad to decide on the issue of succession and it was decided to follow constitutional provisions. In accordance with the provisions of Article 49(1) of the Constitution Chairman Senate Ghulam Ishaq Khan took over as the President, General Mirza Aslam Beg was appointed as COAS.

Twice Benazir Bhutto and Nawaz Sharif had the opportunity to govern the country from 1988 to 1999. Ironically, this period was characterized for perennial political instability, consistent strife between government, opposition and judiciary and frequent direct and indirect intervention by President and military.<sup>42</sup> In February 1997, Pakistan Muslim League Nawaz (PML-N) led by Nawaz Sharif won general elections with two thirds majority. Despite relatively low turnout, Nawaz Sharif claimed it as a landslide victory with a heavy mandate. The nation fatigued by consistent instability hoped that the installation of new government would mark a new beginning. It was indeed a new beginning but in ways different from that what they expected. Detailed study of this period is of interest to this research to ascertain the role of political elite in process of democratic consolidation after General Zia.

Prime Minister Nawaz Sharif rapidly embarked upon a journey to concentrate power and was able to do so with considerable success.<sup>43</sup> On other counts his performance in the second term was not much different from the previous. Confrontation with judiciary, storming of Supreme Court and forcing President Farooq Ahmad Khan Leghari to resign stand out as significant features. Also, his inability to sustain political alliances in North West Frontier Province (NWFP) now Khyber Pakhtunkhwa (KPK), Sind and Baluchistan alienated smaller provinces and aggravated internal security situation. Incidents of terrorism, rampant lawlessness and corruption multiplied and even special judicial arrangements like anti-terrorism courts could not bring them under control. His

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<sup>42</sup> 1988-1990 and 1993-1996 Benazir Bhutto. 1990-1993 and 1997-1999 Nawaz Sharif, a total of 11 Years with a civilian President in place.

<sup>43</sup> Thirteenth and Fourteenth Amendments, Resignation of President Leghari and tabling of Shariat Bill etc.

economic policies were equally not successful and his desire to concentrate power accentuated the systemic imbalances in socio-political structure of the country.

The deteriorating state of internal security situation prompted General Karamat, Chief of Army Staff (COAS) to indicate that there was a need for taking note and instituting NSC for handling and stabilizing the situation. The suggestion irked Nawaz Sharif who asked him to resign which he dutifully did. General Pervez Musharraf was handpicked by Nawaz Sharif as his replacement on 8 October 1998. On 12 October 1999, General Musharraf who was on a flight on his way back from Sri Lanka was unceremoniously replaced with another handpicked Lieutenant (Lt) General Zia ud Din Butt, the then Director General (DG) of Inter-Services Intelligence (ISI). This decision triggered events which unfortunately led to fourth military take over and the country relapsed into the déjà vu paradigm.<sup>44</sup> After announcing the appointment of new COAS, Nawaz Sharif realized that COAS designate would need time to consolidate his command, the flight control staff on behest of Nawaz Sharif was ordered not let the deposed COAS land in Pakistan and when that was not possible they were asked to direct his aircraft to Nawab Shah and he should be detained there. The military reacted in favour of General Musharraf and took political control of the flight operations to safely land the commercial airliner which was running low on fuel and simultaneously seized political control which some termed as a 'counter coup'.<sup>45</sup> General Musharraf ruled till his resignation on 18 August 2008. His rule lasted for nearly nine years.

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<sup>44</sup>Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 223. He outlines the dismal performance in great detail.

<sup>45</sup>Sartaj Aziz and Syed Babar Ali, *Between Dreams and Realities: Some Milestones in Pakistan's History* (Karachi: Oxford University Press, 2009), 287. They recounts the mistakes committed by Nawaz Sharif when he planned to remove General Pervez Musharraf and not allow the plane carrying him on his return from Sri Lanka to allow time to induct General Zia ud Din as new Chief of Army Staff.

“When he seized power he was welcomed by many political parties, elites and by urban middle class”.<sup>46</sup> In his address to the nation on night of 12 October, he said that Army has moved in as a last resort.<sup>47</sup> In his speech on 17 October, he laid out a seven point agenda for rectifying the situation and announced his government. He asked President Rafiq Tarar to continue in office, formulated NSC and a cabinet of ministers to work under it. The provinces similarly were to function under their respective governors with a small cabinet under them. Six months later, premised on the *law of state necessity*, the Supreme Court in its judgment of 12 May 2000 validated the military takeover, granted him three years to achieve his seven point agenda i.e. to rebuild national confidence, strengthen federation, revive economy, improve law and order, depoliticize state institutions, devolve power to grass root level and ensure swift across the board accountability. The judiciary also vested in him the unprecedented powers to amend constitution but asked him to hold general elections before expiry of the three year period and transfer power to elected representatives<sup>48</sup>.

Pursuant to the Supreme Court’s judgment General Musharraf did hold elections in 2002 but prior to that he signaled his desire to continue in power beyond his permitted tenure of three years by holding a Referendum in April 2002. After the

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<sup>46</sup> Sadaf Farooq, “Rule by the Generals: The Influence of Military Regimes on Pakistan’s Internal Security,” *Political Science Association* 11, No. 3 (January 2010): 46. “Back to Future? Countdown to Oct 12 Coup”, *Dawn*, 13 October 1999. “You are all aware of the kind of the turmoil and uncertainty our country has gone through in recent times. Not only have all the institutions been played around with, and systematically destroyed, the economy too is in a state of collapse. We are also aware of the self-serving policies being followed, which have rocked the very foundation of the Federation of Pakistan. The armed forces have been facing incessant public clamour to remedy the fast declining situation from all sides of the political divide. These concerns were always conveyed to the Prime Minister in all sincerity, keeping the interest of the country foremost...I wish to inform you that the armed forces have moved in as a last resort, to prevent any further destabilization”.<sup>55</sup> The one requested by General Jahangir Karamat.

<sup>47</sup> Ibid.

<sup>48</sup> General Pervez Musharraf, Chief Executive of Pakistan and others Respondents. Constitutional Petitions Nos. 62, 63, 53, 57, 66, 64 of 1999 and 3 of 2000, decided on 12th May, 2000. (Constitution petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973).

elections, he engineered a loyalist coalition into power which passed Seventeenth Amendment to the Constitution to provide constitutional cover to General Musharraf's takeover. Later, a bill was passed in October 2004 which enabled him to simultaneously retain two offices i.e. of the President and COAS till December 2004.

From the foregoing brief historical review, two significant trends can be gleaned. First relates to the inability of the political elite to utilize opportunities for democratic consolidation and convert them into conditions fostering stable democracy in the country. Secondly, due to the repeated military takeovers followed by prolonged military and quasi-military rule, the perception about military as a competing political force had strengthened. The interface of political elite with the military in keeping with the two trends has resulted into a non-normative paradigm which merits investigation to understand the process of democratization and its interface with civil military relations with a view to extract findings and proffer recommendations to rectify the situation.

Democracy is apparently an attractive concept for the masses and the scholar's. It is a political system in which the citizen can hold their governments accountable for their policies. It can promote economic growth, human rights and protect people from the cruelties of an autocratic regime. It encourages the governments to be alert to the needs of their citizens and promote their health, education, and overall well-being which guarantees peace and harmony within a state. Moreover, it helps people in developing societies to learn from one another through public discussion, thereby facilitating the definition of needs, priorities, and duties, and enrich the lives of citizens by recognizing their dignity as human beings. This brand of democracy can be found in most of the developed societies of the world. Developing democracies,

like Pakistan, have been suffered a lot due to continuous interference of undemocratic forces in the political process. In Pakistan, Civil and Military bureaucracy has been instrumental behind whole phenomenon with support of its civil institutions, mainly, Executive, judiciary, sometimes, even the parliament. Soon after creation of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah, (founder of the Pakistan) died on September 1948. The next line of Pakistani leadership was not prepared yet to take the responsibility to keep Pakistan on the democratic path. They could not accomplish the task of formulating a functional constitution for the newly independent state for the next nine years since its independence in 1947. The first constitution 1956 with presidential form government by making president as center of power. Same was the case of second constitution in 1962.

Prior to Musharraf's takeover, Pakistan experienced a period of political instability, marked by frequent changes in government and allegations of corruption. This instability created a perceived need for a strong and stable leadership, which the military aimed to provide. Pakistan faced significant economic challenges during that time, including a high level of external debt, fiscal deficits, and slow economic growth. The military portrayed itself as a capable and efficient institution that could effectively address these economic issues and bring stability to the country. The Musharraf era saw Pakistan grappling with internal security threats, particularly from militant groups operating within its borders. The military positioned itself as the guardian of national security and portrayed its rule as necessary to combat extremism and maintain law and order.<sup>49</sup>

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<sup>49</sup> Krepinevich, A. F. "The military and the lessons of history." *Journal of Strategic Studies* 33, No.4 (May 2010): 525.

Musharraf's government received substantial support from the international community, especially in the aftermath of the 9/11 attacks. The United States, in particular, considered Musharraf a crucial ally in the fight against terrorism, which bolstered his position and provided legitimacy to military rule. Widespread corruption, weak governance, and a lack of effective leadership in previous civilian governments had eroded public trust in the political system.<sup>50</sup> The military capitalized on this disillusionment, presenting itself as a viable alternative that could deliver stability, development, and good governance. Musharraf utilized legal and constitutional measures to legitimize his rule. He suspended the constitution, dissolved the parliament, and declared a state of emergency. These actions allowed the military to assume control of key institutions and consolidate power. Musharraf garnered support from certain segments of society, including the middle class, urban elites, and business community. These groups believed that military rule would bring about economic reforms, improve governance, and restore stability.<sup>51</sup>

It's important to note that while these factors influenced military rule under Musharraf, there were also criticisms and controversies surrounding his regime, particularly regarding human rights violations, media censorship, and curtailment of civil liberties.

Besides this, the landed aristocracy along with the civil and military bureaucracy further helped to disrupt the democratic process in Pakistan. With the passage of time, these factors strengthened the aristocratic colonial structures of the military institution in Pakistan. It developed its institutional superiority against democratic institutions.

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<sup>50</sup> Dr. Hasan Askari Rizvi, "The Musharraf Era: A Brief Overview" (2015). Retrieved from: <https://www.dawn.com/news/1214139>. Last accessed 18/09/018.

<sup>51</sup> Rizwan, Retrieved from: <https://www.parhlo.com/musharraf-era/> last accessed 12/07/2019  
Dr. Muhammad Ishaq, "Role of Army in Education" 2010. Retrieved from: <https://dailyltimes.com.pk/527446/role-of-armv-in-education/last> 18/8/2019

Furthermore, the political system could not manage to bring military top brass leadership under the supremacy of parliament which is essential in any democratic set up. Hence, Pakistan experienced military intervention in its politics time and again. Despite the adoption of the constitution in Pakistan, the military continued its control over the political process of the country.

Pakistan from the adoption of the 1956 Constitution to 1999 was marked by periods of military rule interspersed with limited democratic governments. President Iskandar Mirza invited General Ayub Khan to impose the first Martial Law in 1958, leading to the introduction of the 1962 Constitution. Ayub Khan served as President and allowed a controlled democracy until 1969 when power was handed over to General Yahya Khan. The 1970 general elections resulted in a political deadlock, leading to a military operation in East Pakistan and its eventual separation from West Pakistan in 1971.

From 1971 to 1977, the country was under the democratic government of Bhutto, which ended with the third Martial Law imposed by General Zia ul Haq in 1977. Zia ruled until his death in 1988, maintaining a controlled democracy. From 1988 to 1999, Pakistan had a parliamentary system with increased powers for the President under Article 58-2(B) of the 1973 Constitution, introduced by Zia through the Eighth Amendment in 1985. In 1999, General Pervez Musharraf imposed the fourth Martial Law in Pakistan, following the pattern set by his predecessors.

Now, all these military dictators had to develop working relations with Executive, Judiciary and Parliament. For example, as soon as a military dictator takes over, he declares a PCO defining the working relationship between the military setup and judiciary. Similarly, with the passage of time, he plans to introduce a controlled democracy through a parliament which provides a constitutional coverage to his dictatorial policies and prolongs his tenure. Of course judiciary and parliament have

been instrumental in this regard. However, their roll has been multidimensional. Sometimes, they are silent spectators, other times, they become partisan, and, even more, and they have also been strong opponents to military dictators. Hence, the central theme of this research would be working relations of Executive, judiciary and parliament with General Musharraf's military setup.

### **Statement of the Problem**

Like his predecessors, Musharraf imposed fourth Martial Law in Pakistan by dissolving the parliament and dismissing Prime Minister Mian Muhammad Nawaz Sharif and his cabinet on October 12, 1999. He declared his PCO defining the jurisdiction of the judiciary while keeping 1973-Constitution in abeyance. He continued to run the country under his PCO till 2002 when he decided to put the country on the line of controlled democracy under his president-ship. After holding general elections in 2002, he got a kangaroo parliament which helped in keeping him as president in uniform. Similarly, judiciary was also in his support initially but, later on, he had to surrender before "Judicial Activism<sup>52</sup>" in 2007. Hence, it is very essential to know about the facts those triggered the judiciary and parliament, played their role in strengthening and weakening Musharraf regime. Anyhow, this research is to dig out and critically evaluate the whole phenomenon in chronological order by focusing the dissimilar causes and effects in view. This research would also cover the mutual working relationship of General Musharraf regime with executive, judiciary and the parliament from 1999 till 2008.

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<sup>52</sup> Judicial activism is a concept that refers to the active role of the judiciary in interpreting and shaping the law, beyond the traditional role of merely applying and interpreting existing laws. It describes a judicial approach where judges are more inclined to make decisions that have a broad impact on society and actively participate in policymaking.

## **Scope and Significance of the Study**

This research would cover the mutual working relations of General Musharraf regime with executive, judiciary and the parliament from 1999 till 2008. It would cover the causes which left everlasting effects on those working relations in particular and the people and state of Pakistan in general.

This research would be significant to have a better understanding of General Musharraf regime and its working relations with the executive, judiciary and parliament. It would be like a hand book for judges, lawyers and law makers (parliamentarians) to get information about General Musharraf working relations with the executive, judiciary and parliament. Moreover, the research would minimize the chances of military intervention in future, if had been utilize by the policy maker

## **Review of the Literature**

The research work is the analysis of the factors responsible for the military's participation in the politics of Pakistan and also deeply discuss the role of executive, judiciary and parliament during doctoral regimes. Particularly discuss the working relationship of Musharraf with executive, judiciary and parliament during his regime. A wide range of literature is available on the civil military relations and coup's d'états related issues. A variety of literature from primary and secondary sources from diverse subjects connected to civil military relations, democracy, democratic consolidation, military coups and regimes and methods for exercising democratic control over the military has been consulted in this research. Since, the thesis focuses on civil military relations, therefore the works related to this field is the starting point. Huntington in his seminal work analyzed growth of military in Europe and U.S. and concluded that military is a profession like any other

profession. Contextualized in Cold War setting i.e. external threat paradigm, he developed institutional theory as a mechanism to control the difference between civil and military. He looked at separation of powers, autonomy to the military and objective control as the optimum methods for exercising civilian control. In his view, this arrangement would foster professionalism and render the military apolitical.<sup>53</sup> He also views civil military relations as an interaction between the elites i.e. “the relation of the officer corps to the state” and disregards the relationship of military as a whole with the civil society which narrows its scope.<sup>54</sup> His proposition of objective control has been practiced in Pakistan since inception but it has not been effective in preventing military’s repeated intervention in politics.

Jan Muhammad Dawood “The Role of Superior Judiciary in the Politics of Pakistan” deals with military played a dominant role in Pakistan’s politics. During military rule, executive was a dominant institution over the judiciary. There is always a marriage of convenience between the military and the judiciary. They used judiciary as a tool while suspending or amending the constitution. The appointment and removal of the judges was the discretionary powers of the military regimes<sup>55</sup>. This paper is an attempt to highlight that why military directly intervened in the Superior Courts? What was the response of Superior Courts over military interventions? How the Superior Courts legitimized military regimes?

Sometime Judiciary play negative role regarding democracy, in the Iram Khalid “*Role of Judiciary in the Evolvement of Democracy in Pakistan*” in the case of Pakistan, the

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<sup>53</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, (New York: Harvard University Press, 1957), 23.

<sup>54</sup> Samuel Edward Finer, *The Man on Horseback: The Role of the Military in Politics*, (London: Transaction Publishers, 2004), 91.

<sup>55</sup> Jan Muhammad Dawood, *Role of Judiciary in the Evolvement of Democracy in Pakistan*, (Karachi: Oxford University Press, 2005), 156.

judiciary failed to check an extra constitutional regime change. This practice has questioned the judicial independence as well as weakened the confidence of the institution. Technical steps, legislative corrections and reforms cannot revise the role of judiciary<sup>56</sup>. It needs credible commitment by the government to respect the rule of law, a transparent system of judicial appointments and to ensure that judicial decisions at all levels may be practiced<sup>57</sup>. The present research focuses on (i) the constitutional and political experiences of Pakistan's struggle for democracy (ii) to link the stability of the political system with the judiciary will further create certain debatable issues? The research will conclude that a more comprehensive and coherent policy is needed to tackle this technical as well as political issue. For the survival of democracy and stability of the political system it is important that all the institutions must remain in their described limitations. This strategy will avoid any further bumpy ride of Pakistan's political journey.

To the meagre knowledgeable literature on the role of the army and the judiciary by author, Syed Sami Ahmad's book "*History of Pakistan and the Role of Army*" makes a valuable and refreshingly lucid addition, chronicling the major landmarks and landslides in Pakistan's turbulent history<sup>58</sup>. The book should have been entitled as an account of Pakistan's judicial failure and the military muddle in war and peace. Except for a rapid survey of the Ayub and the Yahya periods the book says nothing about the catastrophic Zia period, the Musharraf period marked for its sweeping constitutional engineering to secure a permanent power base for the military

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<sup>56</sup> Imran Khalid, *Role of Judiciary in the Evolvement of Democracy in Pakistan*, (Lahore: Sang-e-Meel, 2001), 118.

<sup>57</sup> *Ibid.*

<sup>58</sup> Syed Sami Ahmad, *History of Pakistan and the role of Army*, (Karachi: Oxford University Press, 2007), 86.

establishment within a (quasi) democratic set-up<sup>59</sup>. An eminent lawyer and a former president of the Karachi Bar Association, the author uses his vast experience and knowledge of the circumstances forcing the judiciary to cast the first stone at the glasshouse of the budding Pakistani democracy with telling relevance. The naked and repeated military interventions to upset the democratic process drew their legitimacy from the higher judiciary's resort to the doctrine of necessity. The author highlights the anti-western as well as pro-monarchical tendencies of the Muslims of India. Ayesha Jalal and Sujata Bose's *Modern South Asia: History, Culture, Political Economy*<sup>60</sup> paints a similar picture when the authors emphasize the divergent political attitudes of the two communities (Hindus and Muslims) inhabiting United India. C.E. Welch's *Civilian Control of the Military; Theory and Cases from Developing Countries*<sup>61</sup> explains the military influence in the developing countries.

Janowitz, took a wider look on the military and its relations with the society as a whole and not just the elite. His "convergence theory" focuses on finding ways to diminish rather than accentuate or compartmentalize the differences between the civil and military. War (external or internal) in his opinion is a joint enterprise and in keeping with developments in the cold war setting, he went on to propose the constabulary concept as a model for addressing aspects of civilian control.<sup>62</sup> Proximate to Huntington's approach on professionalism as a mean for inhibiting military interventions in politics, Janowitz differed in method. He concludes that protection of democracy is a civic responsibility of the soldier which is achieved

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<sup>59</sup>*Ibid.*

<sup>60</sup> Ayesha Jalal & Sujata Boss, *Modern South Asia: History, culture, Political Economy*, (Routledge: New York, 1998), 32.

<sup>61</sup> Jr.C.E. Welch, *Civilian Control of the Military: Theory and Cases from Developing Countries*, (Albany: State University of New York Press, 1976), 83.

<sup>62</sup> Morris Janowitz, *The Professional Soldier: A Social and Political Portrait*, (New York: Free Press of Glencoe, 1961), 13.

through greater interconnectedness. His theoretical and structural construct of fusion and connectedness is of interest to this study of civil military relations in Pakistan. In this context, the cooperation between civil and military elite can assure consolidation of democracy and effective control over military.

In terms of exercising the control over military, “structural theory” of Desch on civil control over military explains the parameters and methods of its operation. In his findings he asserts that, civil military relations is good when the external threat is high and internal threat is low, which did not work in Pakistan as all four military interventions occurred in the similar settings.<sup>63</sup> In the preceding years, other scholars have also deliberated on the subject. Some explained the phenomenon and suggest remedies e.g. Finer, provides insight into military interventions and their outcomes by connecting politico-cultural developments of a country to military interventions.<sup>64</sup> His categorization of countries with minimal, low, developed and mature political culture provide the backdrop to understand the military interventions. The low political culture in Pakistan, characterized by authoritarianism, non-adherence to democratic values, corruption and absence of rule of law provides the backdrop to understand Gen. Musharraf’s coup and regime.

The end of cold war and dissolution of Soviet Union radically transformed the bipolar political landscape and led to the rise of a unipolar political order. The process unleashed new issues, challenges and threats. In the field of civil military relations, three areas of concern emerged, first the issue of crisis in civilian control

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<sup>63</sup> Michael C. Desch, *Civilian Control of the Military: The Changing Security Environment*, (Baltimore Maryland: JHU Press, 2001), 10.

<sup>64</sup> Samuel Edward Finer, *The Man on Horseback: The Role of the Military in Politics*, (London: Transaction Publishers, 2004), 24.

as studied by Kohn,<sup>65</sup> Weigley,<sup>66</sup> and Bacevich.<sup>67</sup> Second issue related to problem of likely military interventions and growth of resultant civil military relations in the newly liberated countries of Central Asia and Eastern Europe. The third concerned with the conflicting trend of autocracy giving way to democracies in many areas and simultaneous rise of dictatorship in other parts of the world, including Pakistan.<sup>68</sup>

With the onset of age of terror, scholars after events of 9/11 have studied the phenomenon of terrorism and its impact on civil military relations. Lyon asserts that the age of terror poses series challenges to the orthodox western civil military relations, investigating three particular challenges. The changing security environment, issues relating to use of force, and issues relating to the role of western militaries in the reconstruction of weak and failed states. He projects that in relation to each of these challenges one should expect an increase in civil military tensions.<sup>69</sup> Reviewing developments in civil military relations from a generational sense (first age from total war to end of WWII, second during Cold War and third from 1990 onwards),<sup>70</sup> it provides framework for making future

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<sup>65</sup> Richard H. Kohn, "Coming Soon: A Crisis in Civil-Military Relations," *World Affairs* 170, no. 3 (March 2008): 13.

<sup>66</sup> Russell F. Weigley, "The American Military and the Principle of Civilian Control from McClellan to Powell," *The Journal of Military History* 57, no. 5 (May 1993): 397.

<sup>67</sup> Andrew J. Bacevich, "Absent History: A Comment on Dauber, Desch, and Feaver," *Armed Forces & Society* 24, no. 3 (January 1998): 217.

<sup>68</sup> Addressing third aspect Huntington evaluated the revolution in forty countries from authoritarianism towards democracy and observed that the new democracies faced a daunting challenge and needed to reform their civil military relations. He analysed their success and failure in the context of his original assertions for objective civilian control and rise of military professionalism. Exploring the connectivity between military interventions / coup phenomenon and development he advanced the coup attempt ceiling in terms of per capita income i.e. Countries with per capita GNP of \$1000 or more do not have successful coups and countries with per capita GNP \$3000 or more do not have coups. If GNP is less than \$1000 the coup are successful and between \$1000-3000 the coups are not successful.

<sup>69</sup> Rod Lyon, "Civil-Military Relations in an Age of Terror," *The Australian American Fulbright Symposium* 113, No.54 (May 2004): 381.

<sup>70</sup> <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.188.9440&rep=rep1&type=pdf> (accessed on 6 June 2015), pp35.

<sup>70</sup> Ibid.

projections which is employed in this research. Similarly, Dr Wong examines the occurring changes in roles and responsibilities of civilian and military leadership and how they impact civilian control.<sup>71</sup>

General Mc Chrystal's affair emerged as the penultimate contemporary issue in civil military relations which focused attention of the polity in USA on the tensions between civil and military elite during conflict situations. Ulrich examined the issue from the perspective of "dissent over policy, and for failure to implement strategy". He studied the willingness of the military to continue to subordinate itself to the preferences of political elite, adhering to norms of behavior in civil military relations and maximizing the chances of success in Afghanistan are of interest to this research.<sup>72</sup>

In the context of civil military relations, one serious issue relates to military coups/ takeovers. The first reference in this contest is made to John Locke's explanation about pre-requisites of a society in context of civil military relation. He emphasized on interplay of societal and economic factors on civil military relations and their impact on the process of democratization. Locke analyses their impact on society, alteration of legislature and reasons supporting dissolution of governments. In his views when the government fail to deliver their dissolution becomes inevitable. According to him, "When he who has supreme executive power neglects and abandons that charge, so that laws already made can no longer

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<sup>71</sup> Wong Leonard, "Civil-Military Relations in a Post 9/11 World, Colloquium Brief," *Strategic Studies Institute* 72, No. 49 (November 2008): 16. <http://www.dtic.mil/dtic/tr/fulltext/u2/a483557.pdf> (accessed on 12 June 2015),

<sup>72</sup> Marybeth P. Ulrich, *The General Stanley Chrystal Affair: A Case Study in Civil-Military Relations* (New York: Jonithan Press, 2011), pp 3.

be put into execution; this is demonstratively to reduce all to anarchy, and so effectively dissolve the government".<sup>73</sup>

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<sup>73</sup> John Locke, *Two Treatises of Government* (London: Awnsham and John Churchill, 1965), pp 3.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Thomas C. Bruneau and Florina Cristiana Matei, *Towards a New Conceptualization of Democratization and Civil-Military Relations*, (London: Oxford University Press, 2008), 305.

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sector reforms needs to be an engaged, but gradual approach and it is not an “either/or” position.<sup>77</sup>

Within a decade after its creation, civil military relations in Pakistan evolved in normative manner when the political system failed to find answers to political issues, deadlocking politics, defying resolution and resulting into direct and indirect military interventions. Scholars researching in the field of civil military relations look at the military’s role in politics and how it has emerged as the predominant political player. Stephen P. Cohen, an expert of South Asian affairs, has extensively worked on Pakistan and India. In *Idea of Pakistan*, he has evaluated the political dimensions in the backdrop of latent challenges to the security of state in the choice of policy options.<sup>78</sup> Its connection with the Pakistan military has been analysed in this research. Adding to given its significance in explaining Pakistan military’s participation in the country’s politics, the literature centers on the nature of civil-military relations in Pakistan. Diamond’s *Civil-Military Relations and Democracy*<sup>79</sup>, Rizvi’s *The Military and Politics in Pakistan*<sup>80</sup>, Haqqani’s *Pakistan: between Mosque and Military*<sup>81</sup> and McGrath’s *The Destruction of Pakistan’s Democracy*<sup>82</sup> summarize this category of literature well. Gabriel Almond and C. Bingham Powell also contribute to the study of civil institutions (civil supremacy) by describing two ways to gauge the amount of civil supremacy that exists in a given civil society. They use sub-system autonomy and structural

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<sup>77</sup> Chris Smith, “Security-Sector Reform: Development Breakthrough or Institutional Engineering Conflict,” *Security & Development* 1, no. 01 (October 2001), 33.

<sup>78</sup> Stephen P. Cohen, *The Idea of Pakistan*, (Washington DC: Brookings Institution Press, 2004), 23.

<sup>79</sup> Larry Diamond, And Plattner Marc, *Civil-Military Relations and Democracy* (London: the John Hopkins University Press, 1996), 22.

<sup>80</sup> Hassan A. Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 145

<sup>81</sup> Haqqani, Hussain, *Pakistan between Mosque and Militar*, (Washington D.C: Carnegie Endowment Press, 2005), 69.

<sup>82</sup> Allen Megrath, *The Destruction of Pakistan’s Democracy*, (Washington D.C: Brookings Institution Press, 1996), 296.

differentiation to measure the level of institutionalism. Weak civil institutions allow easy entry for domineering governing systems, such as: patriarchy, patrimonialism, and neo-patrimonialism. These systems are exhibited effectively by the military establishment<sup>83</sup>.

Bureaucrats hold offices in government organizations and they practice government as a form of private property not public service<sup>84</sup>. They see the system as a way to advance their personal goals, even if they go against the needs of the state. Neo-patrimonialism serves a valuable function of maintaining a single legitimate source of authority. One individual makes all the decisions and only his authority matters. Military leaders in a praetorian society practice this single authority system. The general becomes the leader of the military and of the civilian government.<sup>85</sup> The leader in this system demonstrates the relationship between himself and his underlings as one of personal subordination.

In developing societies, the military has an easier time administrating the government. The military system usually includes systems of provisioning, the existing literature focuses more on the subject of democracy and authoritarianism in South Asia, the functioning of military regimes in Pakistan, their roots and ramifications. Unlike these studies, the present work attempts to uncover the reasons for divergent political experiences of Pakistan at a time when Pakistan is experiencing yet another democratic transformation after nearly nine-year military rule under General Musharraf. Within this context, the research attempts to valuable understanding of the reasons accountable for frequent military cops in Pakistan.

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<sup>83</sup> G.A. Almond, *Comparative Politics: A Developmental Approach*, (Boston: Little Brown, and Company press, 1966), 173.

<sup>84</sup> Clapham, *Third World Politics: An Introduction Madison*, (Leeds: University of Wisconsin Press. 1985), 24.

<sup>85</sup> Ibid.

## **Objectives of the Research/Study**

The main objectives of the research are:

1. To dig out the causes and effects of military interventions in politics of Pakistan.
2. To comprehend the role of judiciary and parliament under military regimes.
3. To study the causes and effects of General Musharraf intervention in politics.
4. To know about General Musharraf approach towards judiciary.
5. To elaborate the working of executive and its suspension during General Musharraf era.
6. To comprehend the role of judiciary and parliament during Musharraf era.
7. To understand about General Musharraf plans for democracy and parliament.
8. To study the strengths and weaknesses of working relationship of Musharraf with Judiciary and parliament.

## **Research Questions**

1. Why has military intervened into politics sphere of Pakistan repeatedly?
2. How did the civil institutions i.e. executive, judiciary & parliament play their role during military regimes?
3. How did General Musharraf intervene in politics indifferently?
4. How did General Musharraf deal with judiciary and parliamentarians during his Martial Law (1999 to 2002)?
5. Why did Judiciary favor General Musharraf in the early phase of his tenure?
6. How did judiciary and parliamentarians join hands to oust General Musharraf from power?
7. How did Pervez Musharraf deal with Civil Institutions in his regime?

## **Research Methodology**

### **Research Design**

This research discusses the dynamics of the Pakistani politics, the failure of democracy and military's intervention in politics of Pakistan. In this research both descriptive and analytical approaches is applied. The qualitative approach is used to examine the past events and draws conclusions. In order to gain an in depth understanding of the subject the problem identifies from various lenses i.e. historical, political, and institutional. Kate L. Turabian Manual is followed in this research.

### **Data Collection**

#### **Locating the Sources**

The data is collected from various departments, libraries, research institutes, National Archives of Pakistan, the government official documents and National Assembly proceedings is use with full sources. During the data collection is focused on the sources related to military intervention in politics and role of executive, judiciary and legislature in Pakistan, generally and in Musharraf Era, particularly.

#### **Collection of Facts**

The reliability and accuracy of the data is considered during this data collection process. Mostly secondary data is collected from various Articles and documents from well-known organizations. The same method is used with newspapers, only newspapers with a good repute is selected. Knowledge obtained from the secondary sources is verified with the views of the columnists and scholars of good reputation to find out the truth.

## **Data Analysis**

The data analysis is made on the basis of primary and secondary data. Data is obtained according to the relevant topics and is arranged chronologically. After going through each individual data source repeatedly, data is sorted out to answer the questions and objectives of research.

## **Tools of Reliability**

After having been analyzed the data, all the sources is assessed through internal criticism. Information collected from one source is verified with other source. After verifying the data, efforts is made to prioritize the relevant information and an authorized, authentic and relevant data is arranged to represent study.

## CHAPTER- 1

### HISTORY OF MILITARY INTERVENTIONS IN POLITICS OF PAKISTAN

#### 1.1 Introduction

Military rules replication the civilian forms of government to settle their crises of legality<sup>86</sup>. This has remained a common practice in many parts of the world. Military regimes come to power whenever the institutions get weak through corruption and political backwardness along with threats regarding disintegration, wars, social and cultural illness, etc.<sup>87</sup> Whenever military comes to power and tries to establish its de-jure status adopting the ways of civilian government, the representatives of the people make their own governments but the military remains in power by making amendments in the constitution. The civilian government being named as a limited form of government exists parallel to the administration of the military.<sup>88</sup> The dictators, after coming to power, introduce a system that is not familiar with and easily acceptable to the society. As a result, military dictators are removed and their hybrid system gets collapsed.

#### 1.2 Timeline of Military Rule in Pakistan

Military coups in Pakistan began in 1958<sup>89</sup> There have been numerous unsuccessful attempts since its creation in 1947, Pakistan has spent several decades under military rule (1958-1971, 1977-1988 and 1999-2008). Much of Pakistan's history has been marred with dictatorship. From self-proclaimed Field Marshall, General Ayub Khan

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<sup>86</sup> Aditya Bhawe and Christopher Kingston, "Military Coups and the Consequences of Durable de Facto Power: The Case of Pakistan," *Economics of Governance* 11, no. 1 (October 2010): 256.

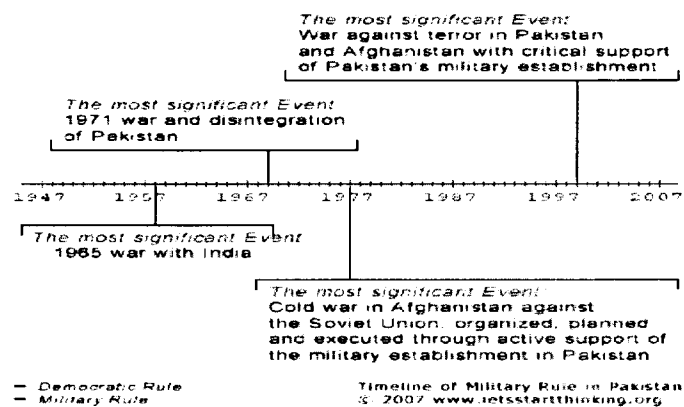
<sup>87</sup> Aslam Khan, *Civil Military Relations: The Role of Military in the Politics of Pakistan* (Birmingham: Lund University, (2012), 70

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

to the so called Chief Executive, General Pervez Musharaf, and the total span of military rule is more than 32 years.<sup>90</sup>

The chart below summarizes the democratic and military span of our history. The most significant event of each dictatorial rule is also highlighted which reveals a very interesting pattern. It is not surprising to note that each military regime leaves behind a legacy of destruction the scars of which are carried out by 160 million souls in Pakistan to this day.



### 1.3 Constitutional Coup

On the 25<sup>th</sup> July 1958, millions of Pakistanis will brave the hot, humid July weather, perennial fears of security and their own apprehensions of Pakistan’s fledgling democracy to head to the polls and to elect Pakistan’s new government.<sup>91</sup> The day is in fact a historic moment because this will only be the second time Pakistan will witness a successful democratic transition in its turbulent seventy year history. It is thus pertinent to chronicle the historical events that brought Pakistan’s democratic journey to this groundbreaking moment.<sup>92</sup> The first decade after Pakistan’s independence was marked by a struggling democracy trying to impose itself on

<sup>90</sup> Hasan Askari Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 176.

<sup>91</sup> Ibid.

<sup>92</sup> Dryland, Estelle. “Faiz Ahmed Faiz and the Rawalpindi Conspiracy Case,” *Journal of South Asian Literature* 27 No.2, (February 1992): 375.

Pakistan's landscape. This first decade in fact laid the groundwork for the civil-military imbalance that would come to define Pakistan in the coming years.<sup>93</sup>

Pakistan's beginnings were marked by contrasting fortunes of the military and the civilian government. Pakistan's founders harbored genuine existential fears of India threatening action against Pakistan, and this fear led to Pakistan diverting scarce resources to the military. This Indian threat also led to Pakistan seeking a patron on the international level that would guarantee Pakistan's security.<sup>94</sup> This line of thinking led Pakistan to entrench itself firmly in the Cold War camp on the hopes that America would protect Pakistan's territorial integrity. America, for its part, poured millions in the Pakistani army in a bid to make it a bulwark against possible Soviet aggression in Asia.<sup>95</sup>

The diverging paths of the military and the civilian government eventually pitted the two forces in a conflict that was only ever likely to have one winner. Pakistan's first experiment with democracy thus came to an ignominious end on 7th October 1958, when the then President Iskander Mirza abrogated the constitution and declared Martial Law in Pakistan.<sup>96</sup>

The patronage the military enjoyed from the Pakistani state and from America led to the military modernizing on a far more rapid scale than Pakistan's civilian establishment.<sup>97</sup> The latter, in fact, suffered from political squabbling and chose to adopt a centralized approach instead of decentralizing power to the provinces. This decision once again stemmed from our leaders' fears that enemy forces might exploit

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<sup>93</sup> Ibid.

<sup>94</sup> Embassy of Pakistan, *India's War Propaganda against Pakistan*. White Paper Published by Government of Pakistan, 1956, 2.

<sup>95</sup> Ibid.

<sup>96</sup> Ayesha Siddiqi, *Military-INC, Inside Pakistan's Military Economy, Milbus: A Theoretical Concept*, (London: Pluto Press, 2007), 33.

<sup>97</sup> Ibid.

fissures in Pakistan's cultural and national make up, which could lead to Pakistan breaking up.<sup>98</sup>

The diverging paths of the military and the civilian government eventually pitted the two forces in a conflict that was only ever likely to have one winner.<sup>99</sup> Pakistan's first experiment with democracy thus came to an ignominious end on 7th October 1958, when the then President Iskander Mirza abrogated the constitution and declared Martial Law in Pakistan.

In 1953, the Governor-General Ghulam Muhammad dismissed the government of the Prime Minister Khawaja Nazimuddin despite it enjoying the support of the Constituent Assembly of Pakistan; then in 1954 he dismissed the Constituent Assembly itself to prevent it changing the constitution to restrict the Governor-General's powers. In doing this he had the support of General Ayub Khan who provided troops to control communications with London so as to avoid any possibility of the Queen being advised to replace the Governor-General.[citation needed] The failure of the courts to support representative institutions in Federation of Pakistan v. Maulvi Tamizuddin Khan provided a pattern which latter led to more open military intervention against elected governments to be justified using a doctrine of necessity.

#### **1.4 First Coup in Pakistan 1958**

In 1958, the first Pakistani President Major General Iskander Mirza dismissed the Constituent Assembly of Pakistan and the government of Prime Minister Feroz Khan Noon, appointing army commander-in-chief Gen. Ayub Khan as the Chief Martial

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<sup>98</sup> Hasan, Askari, Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 98.

<sup>99</sup> Ibid.

Law administrator. Thirteen days later, Mirza himself was exiled by Ayub Khan, who appointed himself president.<sup>100</sup>

1958-1971: The years of development, conflict and direct military rule Iskander Mirza's control of the state would turn out to be short-lived as well. The army chief Ayub Khan took power in his own hands and sent Mirza on a 'vacation' without a return ticket. Ayub then installed himself as Pakistan's president and presided over a decade that has been defined as a turning point in Pakistan's economic trajectory, but which also witnessed Pakistan fighting a war with India in 1965.<sup>101</sup> The economic policies Ayub promulgated were also in large part responsible for East Pakistan breaking apart from Pakistan.<sup>102</sup>

Ayub was candid about his disdain for parliamentary democracy from the beginning. Trained at Sandhurst and highly Western-oriented, Ayub took pride in Pakistan being the United States' 'most-allied ally', and installed a political system that strongly mirrored America's presidential form of democracy.<sup>103</sup>

Ayub's 1962 constitution—which interestingly did not initially include the 'Islamic Republic' in its title, envisioned an electoral college of 80,000 people who would elect the President.<sup>104</sup> The Basic Democracies system was in fact a multi-layered, and complex system that meant that Pakistan's president—who inevitably was to be Ayub Khan— would be indirectly elected. This system of indirect elections was moreover born out of Ayub's belief that the Pakistani 'mentality' was not suitable for Parliamentary democracy. Ayub's economic policies also made him stand out from

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<sup>100</sup> Hassan Abbas, *Pakistan's drift into extremism: Allah, the army, and America's war on terror*, (Lahore: M.E. Sharpe Press, 2005), 129.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Veena Kukreja. and M.P.Singh,ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 120.

<sup>104</sup> *Ibid.*

his predecessors and from those who would succeed him as Pakistan's leaders. Ayub harbingered the green revolution in Pakistan and also set Pakistan on the path of unprecedented industrial development.<sup>105</sup> This growth, however, had a tremendous cost since it gave birth to regional inequalities. Pakistan's famed economist, Mehboob-ul-Haq, for instance, dubbed Ayub's economic policies 'the Doctrine of Functional Inequality' and highlighted the stark inequality that had emerged in Pakistan in the 1960s.<sup>106</sup> Zia-ul-Haq's oppressive rule continues to haunt Pakistan's political and social fabric. Zia abrogated the 1973 constitution, and added the infamous Eighth amendment that would 'debilitate Pakistan's democracy for the next twenty years'.<sup>107</sup>

This inequality, coupled with Ayub's stifling of democracy eventually gave birth to the social unrest that forced Ayub to resign in 1969.<sup>108</sup> The former army chief, however, chose not to hold elections and instead passed on the baton to the then army chief, Yahya Khan. Yahya continues to remain an enigma in Pakistan's history. Although Yahya was the first leader to hold direct elections in Pakistan on the basis of 'one person, one vote', his role in the subsequent political crisis highlights his inherent bias and disdain for sharing power with East Pakistan.<sup>109</sup>

It remains a poorly kept secret of Pakistan's history that the 1971 tragedy was down largely to West Pakistan's economic and political isolation of East Pakistan, and owed little to India's pernicious role. India did indeed exploit nationalist sentiment in what is now Bangladesh, but the grounds for division were laid when West Pakistan

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<sup>105</sup> Ibid.

<sup>106</sup> Samuel Huntington, *The Solider and the State: The Theory and Politics of Civil Military Relations*, (Cambridge Massachusetts: Harvard University Press, 1957), 203.

<sup>107</sup> Babar Sattar, "A. Journey Back to Barrack? Civilian Military Relations in Pakistan," *Paper prepared for the State and Solider in Asia Conference, East West Centre* 10, No. 7 (May 2009): 92.

<sup>108</sup> Ibid.

<sup>109</sup> Najam Rafique, "Pakistan Army: Towards New Professionalism," *Strategic Studies* 26 Autumn, No. 7 (August 1993), 373.

ignored economic development in East Pakistan, and when Bengalis increasingly found themselves shut off from military, bureaucratic and political positions in the country.

#### **1.4.1 The Last Days of Pakistani East Bengal**

Ayub Khan was President of Pakistan for most of the 1960s, but by the end of the decade, popular resentment had boiled over against him. Pakistan had fallen into a state of disarray, and he handed over power to Yahya Khan on 25 March 1969. In his first nationwide address, Yahya re-imposed martial law, saying, "I will not tolerate disorder. Let everyone remain at his post<sup>110</sup>."

Yahya Khan took over the administration after the fall of Ayub in 1969. Yahya Khan utilized Islam to legitimize his reign and to form political connections with Islamists. He is a Jamaat-e-Islami ally, the first military coalition with the Islamic leaders. Yahya was named "Islamic Champion". During the 1970 election campaign against the expected electoral challenges against Zulifkar Ali Bhutto and Sheik Mujib-ur-Rahman in Western and East Pakistan, the military leadership under the Yahya favored an unofficial coalition with religious political parties<sup>111</sup>.

Yahya Khan tried to establish a theology most essential to Pakistan's unity and protection. To retain control, the Awami League and the Pakistan People's Party were used by Yahya Khan Intelligence to institutionalize attacks by religious militant organizations on the principal political parties. All were accused of not being Islamic, capitalist and communist. The Yahya government began the conflict in 1971 as a fight for the Islamic identity of Pakistan. Yahya Khan claimed the opponents of Pakistan did their best to disrupt the system. The 1971 war took Pakistan down and Islam was

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<sup>110</sup> Ibid.

<sup>111</sup> Nasr, S. V, *Islamic Leviathan: Islam and the Making of State Power*, (London: Oxford University Press, 2001), 258.

used by military officials to support the doctrine and dignity of Pakistan, although this was not the case<sup>112</sup>.

In 1971 Ulema finds that Mujiburur Rehman is a secular king, supporting Yahya Khan in the civil war. Political and orthodox Islamist parties were then patronized and made politically powerful and founded by these ulma groups. The army began recruiting non-Bengalis members of the Razakah Force in East Pakistan and Islamist groups which supported Pakistan when the military action started in Eastern Pakistan. From the "Islamic standpoint, the IJT, which is the student arm of Jamaat-e-Islami, has an important significance for the number of volunteers working and the names of these Islamist brigades<sup>113</sup>.

Within a year of 28 July 1969 he had set up a framework for elections that were held in December 1970. In East Pakistan, the Awami League (led by Mujibur Rahman) held almost all of the seats, but none in West Pakistan. In West Pakistan, the Pakistan People's Party (led by Zulfikar Ali Bhutto) won the lion's share of the seats, but none in East Pakistan. Though Mujib had 162 seats in the National Assembly and Bhutto had 88 of PPP. The election results truly reflected the ugly political reality: the division of the Pakistani electorate along regional lines and political polarization of the country between the two wings, East and West Pakistan. In political terms, therefore, Pakistan as a nation stood divided as a result. Bhutto and Mujib were unable to come to an agreement on the transfer of power from to East Pakistan on the basis of this Six-Point Program. Many felt that the 6 points were a step towards secession. It since emerged that Mujib met Indian diplomats in London according to his daughter in 1969 from where he agreed to secede from Pakistan.

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<sup>112</sup> Nasr, S.V, "Military Rule, Islamism and Democracy in Pakistan," *Middle East Journal*, 58, No. 2 (March 2004), 170

<sup>113</sup> Haqqani, H, "Pakistan: *Between Mosque and Military*." (Washington D.C: Carnegie Endowment Press, 2005), 22.

Yahya Khan ordered a crackdown to restore the writ of the government. Operation Searchlight began on 25 March 1971 and extremely worsened order. However, the gulf between the two wings now was too wide to be bridged. Agitation now transformed into a vicious insurgency as Bengali elements of Pakistani armed Forces and Police mutinied and formed Bangladesh Forces along with common people of all classes to launch both conventional and hit and run operations.[citation needed]

Operation Searchlight ordered by Yahya was a planned military pacification carried out by the Pakistan Army to curb the Bengali nationalist movement in erstwhile East Pakistan in March 1971. Ordered by the government in West Pakistan, this was seen as the sequel to Operation Blitz which had been launched in November 1970.

The original plan envisioned taking control of the major cities on 26 March 1971, and then eliminating all opposition, political or military, within one month. The prolonged Bengali resistance was not anticipated by Pakistani planners. The main phase of Operation Searchlight ended with the fall of the last major town in Bengali hands in mid-May<sup>114</sup>.

The total number of people killed in East Pakistan is not known with any degree of accuracy. Bangladeshi authorities claim that 3 million people were killed, while the Hamoodur Rahman Commission, an official Pakistan Government investigation, put the figure as low as 26,000 civilian casualties. According to Sarmila Bose, between 50,000 and 100,000 combatants and civilians were killed by both sides during the war<sup>115</sup>. A 2008 British Medical Journal study by Ziad Obermeyer, Christopher J. L. Murray, and Emmanuela Gakidou estimated that up to 269,000 civilians died as a result of the conflict; the authors note that this is far higher than a

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<sup>114</sup> Veena Kukreja, and M.P.Singh,ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 179.

<sup>115</sup> Ibid.

previous estimate of 58,000 from Uppsala University and the Peace Research Institute, Oslo. According to Serajur Rahman, the official Bangladeshi estimate of "3 lahks" (300,000) was wrongly translated into English as 3 million<sup>116</sup>.

Yahya Khan arrested Sheikh Mujibur Rahman on charges of sedition and appointed Brigadier Rahimuddin Khan (later General) to preside over a special tribunal dealing with Mujib's case. Rahimuddin awarded Mujib the death sentence, and President Yahya put the verdict into abeyance. Yahya's crackdown, however, had led to a Bangladesh Liberation War within Pakistan, and eventually drew India into what would extend into the Indo-Pakistani War of 1971. The end result was the establishment of Bangladesh as an independent republic. Khan subsequently apologized for his mistakes and voluntarily stepped down.

### **1.5 The Years of Self-Avowed Socialism and Military Rule 1971-1977**

The division of Pakistan meant Zulfikar Ali Bhutto and his Pakistan Peoples' Party (PPP) found themselves governing the country.<sup>117</sup> This was perhaps the best time for civilian politicians to assert themselves over the military since the latter found itself humiliated and devoid of pride and public support after the 1971 incident.<sup>118</sup>

However, as has become commonplace for our politicians, Bhutto resorted to authoritarian rule that isolated his party cadre, and stifled opposition in the country. Although Bhutto had soared to popularity on his socialist mandate of 'roti, kapra & makaan', and he did nationalize many industries in the country, his failure to

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<sup>116</sup> Siddiq, Ayesha. *Military Inc. inside Pakistan's Military Economy*, (London: Pluto Press, 2007), 23.

<sup>117</sup> Ibid.

<sup>118</sup> Veena Kukreja, and M.P. Singh, ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Segal Publications India Pvt.Ltd, 2005), 186.

implement his land reforms and his action against prominent trade unions highlight a sharp dichotomy and dissonance in his ideology.<sup>119</sup>

## **1.6 1997 Operation Fair Play 1977**

Operation Fair Play was the code name for the coup d'état conducted at midnight on July 4, 1977 by the Pakistan military, led by Chief of Army Staff General Zia-ul-Haq, against the government of then-Prime Minister Zulfikar Ali Bhutto.<sup>120</sup> General Zia ordered the arrest of Bhutto, his ministers and other leaders of both the Pakistan People's Party and the Pakistan National Alliance. In a nationally televised address, General Zia announced that the National Assembly of Pakistan and all provincial assemblies were dissolved, and that the Constitution of Pakistan was suspended.<sup>121</sup>

The Martial Law enforced by President General Zia, it introduced the strict but modern form of conservatism which promoted the nationalistic and religious programs. Bhutto's taste for authoritarianism was only compounded by an economic crisis that gripped Pakistan. The floods in 1973-74 and the OPEC oil crisis that triggered a global recession all contributed to decreasing Bhutto's popularity in the country.<sup>122</sup> It thus only seemed inevitable that the military would re-assert itself, and the straw that broke the camel's back was the claim that Bhutto rigged the 1977 elections. As opposition to Bhutto mounted, General Zia ul Haq led 'Operation Fair play' on the 5th of July, 1977, and ended Bhutto's rule.<sup>123</sup>

Zia-ul-Haq's oppressive rule continues to haunt Pakistan's political and social fabric.<sup>124</sup> Zia abrogated the 1973 constitution, and added the infamous Eighth

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Siddiqa, Ayesha, *Military Inc. inside Pakistan's Military Economy*, (London: Pluto Press, 2007), 23.

<sup>122</sup> Ibid.

<sup>123</sup> Riaz, Ali, *Two Trends analyzing the Cause of Military Rule in Bangladesh* (Oakland: Old Micman Press, 1998), 65.

<sup>124</sup> Ibid

amendment that would debilitate Pakistan's democracy for the next twenty years. Zia's rule also blended a myopic view of Islam with authoritarian rule, which gave birth to many radical movements that plague Pakistan today.<sup>125</sup>

Zia also took the momentous decision to place Pakistan at the vanguard of America's war against the Soviet invasion in Afghanistan.<sup>126</sup> CIA and Pakistani funded 'mujahideen' took on Soviet forces in an operation that radicalized Pakistani society, and gave birth to the present blend of conservatism that has gripped Pakistan.

With the end of the incumbent Parliament's tenure on the 31st of May, however, it seems that democracy is finally entrenching itself in Pakistan. All parties seem united on holding elections on the 25th of July, and other state institutions such as the judiciary too seem to be on board with this idea.<sup>127</sup>

Zia's tenure was another significant setback to the democratic project in Pakistan since his constitutional amendments and use of Islam as a political gimmick were to shape Pakistan's political landscape for decades to come. It was only his death in a mysterious plane crash on the 17th of August 1988 that ushered in a new, albeit significantly curtailed period of democracy in Pakistan.<sup>128</sup>

## **1.7 The First Phase 1977-1979**

During this phase the primary objective of this regime was to demoralize PPP and to seek the co-operation of PNA leadership.<sup>129</sup> It was the first example in the history of Pakistan when the people of Pakistan officially showed their alignment

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<sup>125</sup> Siddiqi, Ayesha, *Military Inc. inside Pakistan's Military Economy*, (London: Pluto Press, 2007), 18.

<sup>126</sup> Ibid.

<sup>127</sup> Samuel Huntington, *The Soldier and the State: The Theory and Politics of Civil Military Relations* (Cambridge Massachusetts, : Harvard University Press, 1957), 225.

<sup>128</sup> Ibid

<sup>129</sup> "Memogate' Scandal Reveals Civil-Military Splits. Dawn. Retrieved from: <https://www.dawn.com/news/674146>

with religion.<sup>130</sup> It polarized the political culture of the state. It also ousted Z.A. Bhutto from politics, as it was the heartiest dream of PNA to do so. Slogans of Islamization of General Zia regime set the process in motion to undermine the popular forces with the help of political religious groups whoever popped in normal circumstances to get share in the power structure of the country. Some experts called it Mullah Military nexus.<sup>131</sup> It was the assumption of General Zia's regime that co-operation and interaction with anti- Bhutto religious right would legitimize their rule and ultimately would narrow the base of PPP. So, with the help of transform society on religious consecutive pattern it was used to remove the PPP Jialas (workers).

From 1977-79 General Zia opted for close interaction and co-operation of PNA parties. When military regime offered to setup a civilian cabinet, the Muslim League (Pagara) was first to join in July 1978. It was told to the masses by PNA leadership that they have joined the cabinet under the shelter of military just to facilitate the process of Islamization of country's system and prepare the polity for elections.<sup>132</sup>

During the first year rule of General Zia he selected his cabinet from the military elites, senior bureaucrats, lawyers, industrialists, technocrats and a segment of non- partisan feudal like Ayub Khan. But the decision making hegemony goes to the realm of civil military elites. General Zia was also desperately waiting for PNA co-operation against Bhutto.<sup>133</sup> The decision of the court was also an initiative against Bhutto in the favor of General Zia and new cabinet 13 out of

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<sup>130</sup> Ibid

<sup>131</sup> Ibid.

<sup>132</sup> Samuel Huntington, *The Solider and the State: The Theory and Politics of Civil Military Relations*, (Cambridge Massachusetts: Harvard University Press, 1957), 210.

<sup>133</sup> Ibid.

21 were from various components of PNA.<sup>134</sup> It was for the first time in the history of Pakistan that Jamat-e-Islami shared the power in the state apparatus. Jamat got the Ministries of Information and Broadcasting, Water and Power, and Production. General Zia and his military colleagues either held the important portfolios.<sup>135</sup> As PNA leadership became the part of the military regime and its policies throughout the period of Bhutto's trial from (August 1978-April 1979) the component parties of PNA remained the part of the cabinet. It was only after the Supreme Court's decision against Bhutto, the PNA cabinet decided to be distanced from General Zia. By getting the cooperation of PNA leadership, General Zia was able to convey the message not only to the masses of Pakistan but also to the world that PNA was the partner in upholding the execution of Bhutto.<sup>136</sup>

A white paper was issued by the Martial Law authorities comprising more than 2771 pages on the rigging of Bhutto in March 1978 to demoralize him. This cooperation of PNA with military proved useful to deal with political dissidents.<sup>137</sup> This inclusion of PNA leadership in General Zia's cabinet partly civilianized and humanized the military rule at least for the rightist elements.<sup>138</sup> The patch up of political beradri in the government was also essential for the military regime for another reason. When on 16 September 1978, the civilian president Fazal Elahi Chudhary resigned on his own. Giving the reason that current military regime did not have any intention to hold the elections in near

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<sup>134</sup> Ibid.

<sup>135</sup> Chuadhri Muhammad Ali, *The Emergence of Pakistan*, Lahore Research Society of Pakistan, (Lahore: Punjab University Press, 2003), 79.

<sup>136</sup> Hasan, Askari, Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 54.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

future.<sup>139</sup> He also revealed that in the future military was not only planning to amend the constitution but also this amendment would go beyond the doctrine of necessity.<sup>140</sup>

So, when the Civilian President resigned, the presence of PNA leadership in the cabinet got greater importance.<sup>141</sup> But ironically PNA military nexus couldn't produce alternative leadership during that period, which could serve the purpose of General Zia's regime as General Zia assumed himself the President as well as the chief of army staff. Moreover, they proved incapable of culminating the support base of dissidents left along with those rightist politicians, those were not willing to cooperate with the military.<sup>142</sup>

### 1.7.1 PNA Joined Military

The PNA was the combination of right wing parties every political party was fond of powers. Military required the co-operation of civilians in order to expand its political base along with facilitating its agenda to reform the political economic patterns of the society. PNA joined the military cabinet to share the credit of Islamization of the polity.<sup>143</sup> They also wanted to utilize the state machinery and patronage to strengthen their political influence to cash it in coming elections. But the PNA's leadership which was the part of president Zia's regime soon realized that the ruling generals and senior bureaucrats by passed them on important policy matters. PNA was also scattered in factional groups.<sup>144</sup> There was also another source of annoyance in some stars of PNA and that was the military

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<sup>139</sup> Ibid.

<sup>140</sup> Veena Kukreja, and M.P.Singh,ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 125.

<sup>141</sup> Ibid.

<sup>142</sup> Najam Rafique, "Pakistan Army: Towards New Professionalism," *Strategic Studies*. 26, No. 10 (December 1993), 108.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

regime till towards the Jamat-e-Islami that was supporting the military policies.<sup>145</sup> After the opening phase of Islamic laws in Feb.1979, fixing date of elections and the execution of Bhutto in April, PNA leadership left the cabinet with the intention that their initial objectives had been achieved (the execution of Z.A. Bhutto)<sup>146</sup>. In this context, the right wing politicians from PNA decided to pretend in independent manner, so they disassociated themselves from General Zia regime by withdrawing from the cabinet in April.<sup>147</sup> Yet they assured the ruling General of their continued support from outside. The PNA's decision to join the cabinet caused split within it. The NDP, Tehrek-i-istiqlal and JUP decided to part its ways with alliance, which weakened PNA. It proved helpful for military to gain its objective.

### **1.7.2 Bhutto's Victimization**

Bhutto was released on July 8.<sup>148</sup> It was a surprise not only for General Zia but also for PNA that he had not lost the public support. It seemed quite evident that if elections were held, Z.A. Bhutto and his party would win the elections again.<sup>149</sup> It was the turning point not only for Z.A. Bhutto but also for General Zia and PNA. The anti-Bhutto forces realized that agitated and street powers would dominate in the elections to lead Bhutto.<sup>150</sup> Z.A. Bhutto was still prominent force in the politics of the country. The fear of Z.A. Bhutto's returning to power, another kind of strategy was devised. Press began to portray Bhutto as criminal who had engineered the murder of his political opponents. So, deliberately an

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<sup>145</sup> Ibid.

<sup>146</sup> Riaz Hassan, "Islamization: An Analysis of Religious, Political and Social Change in Pakistan", Published By: Taylor & Francis, Ltd. Vol. 21, No. 3 (Jul., 1985), pp. 263-284.

<sup>147</sup> Babar Sattar, "A. Journey Back to Barrack? Civilian Military Relations in Pakistan," *Paper prepared for the State and Solider in Asia Conference, East West Centre* 10, No. 7 (May 2009): 93.

<sup>148</sup> Siddiqa, Ayesha, *Military Inc. Inside Pakistan's Military Economy*, (London: Pluto Press, 2007), 83.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

atmosphere was created in which anti-Bhutto political forces began to demand his trial and execution. Through his autocratic style and behavior Z.A. Bhutto had alienated many politicians from his support.<sup>151</sup>

### 1.7.3 Climax of Jamat-e-Islami

It was quite interesting to note that Jamat-e-Islami and ruling Generals were not fully complementing the political goals of each other, yet they realized that cooperation with each other would be mutually rewarding. Jamat-e-Islami was not so popular among the masses of Pakistan.<sup>152</sup> It was decided to enhance its alliance with military to cash on the crisis of legitimacy and dilemma of isolation with which General Zia was confronting day by day. The free hand was given to Jamat-e-Islami to engage itself in low-key political activities. So this party penetrated the varying situations in bureaucracy, the military, and mass media. Jamat-e-Islami also helped military in defusing the efforts of those forces which were against the military regime. It was quite significant in the immediate aftermath of Bhutto's execution.<sup>153</sup>

The other group, cultivated by military regime, was comprised of extremely orthodox Islamic leaders who opposed the modern democratic institutions and process, especially the existing electoral processes, political parties and legislatures elected on the basis of adult franchise.<sup>154</sup> They supported to maximize the establishment of a Shariah based on Islamic system, which bordered on

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<sup>151</sup> Riaz, Ali, "Two Trends analyzing the Cause of Military Rule in Bangladesh," *Bulletin of Concerned Asian Scholars* 30, No. 1 (April 1998), 56-57

<sup>152</sup> Ibid.

<sup>153</sup> Samuel Huntington, *The Soldier and the State: The Theory and Politics of Civil Military Relations*, (Cambridge Massachusetts: Harvard University Press, 1957), 5-7.

<sup>154</sup> Ibid.

theocracy. The military regime used them to dilute the pressure for early elections and restoration of political process.<sup>155</sup>

The political, social and economic issues were pushed to back and many nonissues began to dominate the political national horizon. Female announcers and artists were prohibited to appear on TV screen, the photograph of Jinnah on currency note was called un-Islamic and all civil servants were asked to have a beard. Arabic was selected as the national language and Non-Muslims were removed from the key-posts.<sup>156</sup> Time for religious programs was increased on TV and radio. Military used Zakat funds to support these Islamic fundamentals. Zakat fund was provided to Islamic Madrassas. Madrassas degrees were evaluated. But it created more confusion regarding the political and social direction of Pakistan's future.<sup>157</sup>

#### 1.7.4 Nusrat Bhutto Case

Air Marshal Asghar Khan, PirPagara, Musheer Pesh-Imam and Sardar Sher Baksh Mazari gave anti-Bhutto statements. After these statements of politicians Zia decided to devise a strategy against Z.A. Bhutto and his party. All the anti-Bhutto political, judicial and other forces made it their priority that trial and accountability of Bhutto should take place first and elections could be held later.<sup>158</sup>

After military coup the agitation had gone to silent. General Zia did not see any problem in conducting new elections within 90 days and transferring powers to

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<sup>155</sup> Ibid.

<sup>156</sup> Ayaz Gul, "Pakistan Coup React" *Date Line, Voice of America*, [www.fas.org/news/Pakistan/1/999/indexayubkhane notes.com](http://www.fas.org/news/Pakistan/1/999/indexayubkhane notes.com) (accessed August 3, 2021).

<sup>157</sup> Ishrat Husain, "Economic Policies under Shoaib," [www.iba.edu.pk/economic\\_policies\\_under\\_shoaibJuly1999](http://www.iba.edu.pk/economic_policies_under_shoaibJuly1999), (accessed January 10, 2021).

<sup>158</sup> Omar Noman, *A Political and Economic History Since Independence, Military Rule and Civil War*, (London and New York: Kegan Paul International Press, Revised Edition, 1992), 47.

PNA, which according to General Zia's estimation was bound to win the elections.<sup>159</sup> It was also the sensible perception of PNA regarding the result of the polls. But it was totally against the expectations of PNA and military when Bhutto was released from jail. Bhutto's trial was started, Lahore High-Court awarded him death sentence but it was appealed before the Supreme Court. Judgment was written and favored by Justice Anwar-ul Haq, Justice Muhammad Akram, Karam Elahi Chohan and Dr. Naseem Hassan Shah. Justice Darooob Patel, Gulam Safder Shah and Muhammad Haleem disagreed with this verdict.<sup>160</sup>

Z.A. Bhutto's wife Nusrat Bhutto challenged the Martial Law in September 1977. She accused the treason under Article 6 of 1973 constitution. Supreme Court in its judgment announced that the military coup was on the basis of the Doctrine of Necessity.<sup>161</sup> Judiciary gave its verdict in favor of General Zia and endowed his usurpation of power with legality.<sup>162</sup> The court described the coup d'état as 'Phase of constitutional deviation'. By accepting the doctrine of necessity judiciary had undercut its own authority by making Martial Law legally superior to the constitution.<sup>163</sup>

From 1977-79 General Zia skillfully cultivated judiciary. Chief Justices of High Court were appointed as provincial Governors. Those judges who were hesitant to pursue the goals of General Zia regime were removed or allowed to seek premature retirement.<sup>164</sup> All the High Courts of the country were facing dilemma

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<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 17.

<sup>163</sup> Ibid.

<sup>164</sup> Athar Osama, "*Facts and Fictions of Ayub's Economic Mirac.*" (2007), 12.  
<http://www.understandingpakistan.com/index.php/fact-and-fiction-of-ayub-economic-miracle-athar-osama/> accessed (January 23, 2021).

either to uphold military takeover constitutionally valid or invalid. In March 1978 Lahore High Court Chief Justice Molvi Mushtaq sentenced Bhutto to death. Appeal was filed in the Supreme Court; the verdict from 4 to 3 judges upholds the High Court decision.

Chief Justice Anwar-ul-Haq with three judges concurring wrote the judgment. On 4<sup>th</sup> April 1979, Ex-Prime Minister of Pakistan Z.A. Bhutto was hanged to death in the district jail of Rawalpindi. With the death of Bhutto a U turn came in the politics of Pakistan. Political forces permanently divided between pro-Bhutto and anti-Bhutto forces.<sup>165</sup> Mian Tufail, Chief of Jamat-e-Islami met with General Zia before the execution of Bhutto. It was decided if Bhutto was to be executed his party would favor the government.<sup>166</sup>

## **1.8 Second Phase of General Zia's Regime 1979-85**

After the death of Z.A. Bhutto, Political parties were kept out of power. The systematic efforts were made to advance the interests of military aggregation of institutional interests and also the entrenchment of institutional hegemony of military in the state structure of Pakistan.<sup>167</sup>

### **1.8.1 Promises of Elections**

Supreme Court legitimized the military government in the judgment of Begum Nusrat Bhutto vs Chief of Army Staff, recognized the Martial Law under the doctrine of necessity with the instructions of free and fair elections but unfortunately time period was not mentioned. Court also granted power to the CMLA to amend the constitution to perform the duties in good manners for

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<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Syed Asad Hussain, *Pakistan's Economy under Different Shadows, Politics and Policy*, November 8–14, 1999, <http://www.pakisatneconomist.com/issuew/1999/issue44/etc3.htm>, (accessed June 13, 2021).

holding free and fair elections.<sup>168</sup> President Fazal Elahi Chaudhary resigned saying that government was not sincere to conduct elections at any cost.<sup>169</sup> Election's promise was repeated from 1979 to 1983.<sup>170</sup> The ruling elite offered various reasons for delaying the general elections and subsequent transfer of power. But the local elections were conducted on nonparty basis to keep the people busy on local basis. General Zia declared that Islam doesn't believe in the rule of majority and majority makes the wrong decisions. The correct decision is needed the minority. These were the views of General Zia regarding democracy.<sup>171</sup>

General Zia established the military courts parallel to the existing of civil courts. First, these courts were trying to offend the martial law,<sup>172</sup> but later the jurisdictions of military courts were expanded to add the article in the constitution of 1973. This article stated that no civil court including High court was granted an injunction to make any order or entertain any proceedings in respect of the matter to extend the jurisdiction of military court with the article of 212-A.<sup>173</sup> Political parties act 1962 act was amended, system of separate electorate introduced, accounts record of the parties were made compulsory to submit before the election commission and party elections were made compulsory. Islamic system of democracy was introduced with non-political party basis. General Zia exclaimed that Islam didn't believe in the rule of majority, only a correct decision

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<sup>168</sup> Begum Nusrat Bhutto vs Chief of Army Staff, etc. (PLD 1977, Supreme Court of Pakistan PP-657-763.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Gustav Papanek, *Pakistan's Development: Social Goals and Private Incentives*, (New Delhi: Sonom Publishers, 1967), 109.

<sup>172</sup> Ibid.

<sup>173</sup> *Pakistan, "The Ayub Khan, Pakistan Index, Era,"* Mongabay.com,data (1994). [http://www.mongabay.com/history/pakistan/pakistan-the\\_ayub\\_khan\\_era.html](http://www.mongabay.com/history/pakistan/pakistan-the_ayub_khan_era.html),(accessed June 7, 2021).

needed to be honored even if it was supported by the minority (viewpoint, September 30, 1979).<sup>174</sup> In reality, Government was not sincere in implementing the Islam with its true spirit. Islamic council was also in favor of the government. Supreme Court legitimized the government with the help of doctrine of necessity for restoration of democracy not Islam. Shariat benches were created in all the High-Courts to adjust the anti-military judges.<sup>175</sup>

### **1.8.2 A Provisional Constitutional Order (PCO)**

After Military coup 1977, constitution of Pakistan 1973 was in abeyance, the working was under the CMLA order No. 1 of 1977, and Provinces were working under provincial Martial Law Order. Elections were postponed on various points by General Zia.<sup>176</sup> Military courts writs were going to lose it. High-Courts challenged its decisions.<sup>177</sup> Administrative hurdles were increasing for the government. Military courts wanted a separate system to function without the interference of the High-Courts. Article 212 (A) was included for the protection of the military courts.<sup>178</sup>

A meeting was held by General Zia with Justice Anwar-ul-Haq, Molvi Mushtaq and Sharifudin Pirzada at president Zia's residence. They scrutinized the draft and modified it in a new order of 1979. With the help of this order civil and High-Courts were prohibited to interfere in the proceedings of military courts. Article 212 (A) served military and it became possible with the consultation of Judiciary to give more time to military.

When Judiciary was bridled with Article 212 (A), a full bench of Sindh High

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<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Golam W. Choudhury, *Pakistan I: Transition from Civilian to military Rule, Military intervention in Pakistan*, (London: Scorpion Printing Press Ltd., 1988), 28.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

Court passed a judgment of judicial review.<sup>179</sup> The confusion was again increased in the military government. It came to conclusion that judiciary's interference in executive matters was horrible.<sup>180</sup> It was controlled with the promulgation of a provisional constitutional order (PCO). On 24<sup>th</sup> March 1981, judges of the Supreme, Federal Shariat and High-Courts were called to take a new oath and instructed to work under PCO.<sup>181</sup>

Chief Martial Law administrator responded by issuing the Provisional Constitutional Order in March 1981. The judge of Supreme and High Courts were required to take a new oath of office to uphold the PCO.<sup>182</sup> Not only it literally marginalized the effectiveness of judiciary but also in substance PCO replaced.<sup>183</sup> It banned all political parties and completely subordinated judiciary to the Martial Law administration. The same history of 1958 was repeated. Military had made its mind to expand the rule at any cost so it removed all the hurdles gradually. For prolonging its tenure it changed the constitution. President Zia assumed that judiciary was going out of his control.<sup>184</sup> He introduced the provisional Constitutional order (PCO) to subordinate judiciary. Fifteen judges of Supreme and High-Courts refused to take oath under PCO as consequences they were removed from their jobs.<sup>185</sup> These were Anwar-ul-Haq (Chief Justice), Durab patel, Fakhurddin G. Ibrahim, Molvi Mushtaq Hussain, K.M Samdani, Aftab Faruk, Amir Raza Khan, Khwaja Habibullah, Khalil Rehman, Khurshid from

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<sup>179</sup> Ibid.

<sup>180</sup> Qurratulain Akhtar, "Ayub Era at a Glance", September 2, 2006, [www.qurratulain.wordpress.com/2006/09/2/ayubs-era-at-glance/](http://www.qurratulain.wordpress.com/2006/09/2/ayubs-era-at-glance/) (accessed July 12, 2021)

<sup>181</sup> Ibid

<sup>182</sup> *Pakistan, The Ayub Khan, Pakistan Index*, Era, mongabay.com, data of 1994, [http://www.mongabay.com/history/pakistan/pakistan-the\\_ayub\\_khan\\_era.html](http://www.mongabay.com/history/pakistan/pakistan-the_ayub_khan_era.html), (accessed July 7, 2021).

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

Punjab High-Court, G.M shah, Abdul Hafeez Mamin from Sindh High-Court, Khuda Baksh Muree (Chief Justice) and M.A Rasheed from Baluchistan High-Court. General Zia controlled the situations with the help of mature and competent team. The summary of PCO was kept top secret till its completion by Sarifuddin Pirzada. The plan also was ready if judges were not going to take a new oath, courts would be run with the appointment of military officers.<sup>186</sup>

### **1.8.3 Majlis-e-Shoora**

Provisional constitutional order established a Federal Council (Majlis-e-Shoora) to be nominated by the President. Article 4 of PCO on 11 January 1982.<sup>187</sup> The president created the Federal Council Consisting of 288 members. With the formation of his council, General Zia was able to impose large number of decisions. The Federal Council was accountable to president Zia alone in fact it had no representative's character. This altered the basis, style and recruitment process of political leadership. The establishment of this Federal Council created political constituency.<sup>188</sup> Military's dominance remained in political affairs. But the new members of federal council proved a political nursery for coming elections.

### **1.8.4 Restoration of Democracy**

Movement for Restoration of Democracy (MRD) was the combination of twelve political parties this movement claimed in 1981 to restore the democracy.<sup>189</sup> This

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<sup>186</sup> Dawn official Correspondent, "Move Afoot to Bring Down Govt: Gilani," *The Dawn News*, December 23, 2011, <http://www.dawn.com/2011/12/23/no-institution-has-right-to-create-a-state-within-state-pm.html> (accessed January 20, 2021).

<sup>187</sup> Declan Walsh and Salman Masood, "In Pakistan, Talks Aim to Ease Split." *The New York Times*, January 14, 2012, <http://www.nytimes.com/2012/01/15/world/asia/pakistan-army-and-civilian-leaders-meet-amid-bitter-split.html?> (accessed January 23, 2012).

<sup>188</sup> Ibid.

<sup>189</sup> Official Correspondent, *The Economic Times*, January 11, 2012, [www.economic-times.com.indiatimes.com](http://www.economic-times.com.indiatimes.com) (accessed February 12, 2012).

movement couldn't achieve its objectives.

'The movement failed on the following accounts.

- The incident of PIA plane hi-jacking by Al-Murtza (Son of Z.A. Bhutto) an undermined movement (Yusuf, 1999, p.204).
- Mr. Jatoi the leading person of the movement was accused by PPP of hobnobbing with the government.
- This movement was only on local basis.
- It was poorly planned.
- PPP kept itself at distance and without the alliance of the famous party at that time.
- Political activities were banned strictly after the action of Al-Zulfikar movement.

These activities were encountered through different tactics, publications were banned and harsh manners were adopted against the violators.<sup>190</sup> Intercity and Interprovincial travel of politicians was banned, and close door meetings of Political leaders were strictly banned and some of them were under house arrest. This could way for military government was prosperity of the people.<sup>191</sup> Majority of the people settled in Middle East and Europe, foreign aid from capital block from Russian intervention was also in the favor of military government. These incidents favored military to strengthen its tenure and overcome the movement of

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<sup>190</sup> Ibid.

<sup>191</sup> Farrukh Saleem, "Coup d' etat," *The News*, January 1, 2012, <http://www.thenews.com.pk/Todaysprint> accessed (January12,2012).

MRD.<sup>192</sup> Military was also successful to implement the right wing group about propagating of Islam.

### **1.8.5 Presidential Referendum 1984**

When the right wing political parties and military made a plan to solve the issue of Z.A. Bhutto, after it all the political matters would be dealt. The sentence of death for Z.A. Bhutto kept all the political parties silent. US aid to Pakistan was also conditional on General Zia's legitimacy.<sup>193</sup> The US president pressurized General Zia about his legitimacy. Military made a mind to conduct elections in the country. Before the elections President General Zia decided to legitimize his presidency to seek the people's mandate. It was decided to organize a referendum on 19 December 1984.<sup>194</sup>

In referendum voters were required to reply the questions either Yes or No. The referendum order provided that "Yes" answer would be electing General Zia as President of Pakistan for next five years. There was given no extra explanation or detail.<sup>195</sup> The Constitution of Pakistan 1973 provided indirect method of presidential elections in Article 41 but General Zia issued an order of Presidential order No. II on December 1984. No court, including the Supreme Court, tribunals or other authority could be called it question, or permit it to be called in question the validity of any provision of that order.<sup>196</sup> The deserted polling stations on referendum day showed turn out were 62.15%<sup>197</sup>.

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<sup>192</sup> Rizvi, "Military President Nexus" *The Daily Nation*, May 9, 1995, [www.thenation.com.pk.may.95](http://www.thenation.com.pk.may.95) (accessed February 2, 2021).

<sup>193</sup> Ibid.

<sup>194</sup> Referendum order 1984, *Gazette of Pakistan, Extraordinary*, Pt. I, 1<sup>st</sup> December 1984, No.F.17 (2)/84- Pub.

<sup>195</sup> Ibid

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

### **1.8.6 Dawn and dusk of democracy under General Zia-ul-Haq**

General Elections were being held after long period of eight years on nonparty basis. So, much interest of the people was seen.<sup>198</sup> The solution of local issues of the people was the slogan of the candidates in these nonparty based elections. The candidates were not prominent personalities. Most of them were General Zia's selected parliamentarians (Majlis-e-Shoora). An official Muslim League was established from elected house.<sup>199</sup> General Zia nominated Muhammad Khan Junejo the Prime Minister of Pakistan. Junejo was Sindhi politician, a gentleman, humble and veteran politician. He was not famous out of his Province. He once served as the Provincial Minister in the West Pakistan government of president Ayub Khan. After taking oath Junejo formed a cabinet which included five members of General Zia's cabinet out of 13.<sup>200</sup>

### **1.8.7 Revival of Constitutional Order 1985**

The constitution of Pakistan 1973 was restored in 1985 with the Revival of Constitutional Order 1985 (RCO), it was mentioned that National assembly would amend the constitution in the favor of General Zia. In October, assembly passed the 8<sup>th</sup> amendment and Martial Law was uplifted (PLD 1986 status, P-13). RCO provided a strong president and National Security Council (NSC) was introduced.<sup>201</sup> Military was given powers in emergency. General Zia decided to form a national security council (NSC) with the proclamation of Article 232 of the constitution of Pakistan 1973; National Security matters were dealt by this

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<sup>198</sup> Zahid and Jeremy, *The Times Online*, 14 March 2009. [www.thetimesonline](http://www.thetimesonline) (accessed January 1, 2021).

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

committee. President could consult with the Prime Minister.<sup>202</sup> It consisted of 11 members, President, Prime Minister, Chairman of Senate, Chairman Joint Chiefs of Staff Committee, Chief of Army, Navy and Air Force. Military was given the right for direct intervention in national affairs.<sup>203</sup> Military Officers were in majority to veto the decisions of the committee. This decision of General Zia made the political institutions very poor. President was the appointing authority and it made the President so powerful<sup>204</sup>.

A quasi parliamentary form of government was introduced by him. General Zia relied on his military officers in civil jobs mostly military officers were appointed. Federal and Provincial seats were filled with either present or retired military officers.<sup>205</sup> Public or Semi Public seats were filled by them ten percent quota was fixed in Central Superior Services for military, District Management Group (DMG), Foreign Service of Pakistan (FSP) were filled with the majority of military in Zia era. A number of materialistic benefits were provided in awarding house, shops and settled in foreign countries.

General Zia introduced i.e. “*a de facto presidential system*” which have a fostered division of power with the emphasis on gross root democracy through local governments.<sup>206</sup> To implement his mental approach he changed the constitution of Pakistan 1973, with the consultation of his private members and top bureaucracy.<sup>207</sup> General Zia issued the revival of the constitutional order (RCO), it amended the 57 articles, added 6 and deleted 2 Articles from constitution of

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<sup>202</sup> Official Correspondent, “Corps Commanders Conference,” *The News*, March 6, 2008, The ISPR, Press Release 30/2008, Rawalpindi, (accessed January 23, 2021).

<sup>203</sup> Ibid.

<sup>204</sup> Revival of the constitution 1973 order No. 14, 1985 Article 152-A (1) & (2)

<sup>205</sup> Ibid.

<sup>206</sup> Talat Masood, “Bridging the Civil Military Divide,” *The News Pakistan*.” (2009), (accessed January 12, 2021).

<sup>207</sup> Ibid.

Pakistan 1973 in 1985 and chapter 3-A of part vii about shariat Court was already added in 1979. A paralyzed parliamentary form of government let to remain to protect the powers of the President All the hi-profile appointments were in the hands of the President of Pakistan General Zia, dissolving the assemblies with 58(2)(B)<sup>208</sup>, insertion of Article 270- A about to validating the marital law including the military courts with direct referendum president was allowed to remain in uniform as Chief of Army Staff.<sup>209</sup>

### **1.8.8 Council of Islamic Ideology**

The Council of Islamic ideology was established to set the political system of Pakistan on Islamic principles. It submitted its report in April 1982 it recommended the separate electorate system, universal adult franchise, and it strongly recommended the parliamentary form of Government.<sup>210</sup> President sent it back for reconsideration when it was submitted again. It was recommended with sanctions on political parties.<sup>211</sup>

### **1.8.9 A Federal Council Committee**

A Federal Council Committee also recommended changing the constitution according to the situation. It also supported the right of the political parties but unfortunately the ruling Generals accept the report only to amend the constitution and remaining recommendations were rejected. An Ansari report was also not

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<sup>208</sup> Article 58(2)(B) refers to a provision within the 1973 Constitution of Pakistan that granted the President of Pakistan the power to dissolve the National Assembly (the lower house of the Parliament) under certain circumstances. This article gave the President the authority to dismiss the Prime Minister and dissolve the National Assembly, which effectively resulted in the dismissal of the entire elected government.

<sup>209</sup> Fareed Zakaria, "Pakistan's Besieged Government," *The New York Times*, (2012) <http://www.nytimes.com/2012/01/12/opinion/Pakistan> (accessed January 15, 2021).

<sup>210</sup> Ibid.

<sup>211</sup> Council of Islamic Ideology, *Constitutional recommendations for the Islamic system of government*, Islamabad, (1983), 23.

accommodated by the president which was submitted in 1983.<sup>212</sup> President Zia-ul-Haq wanted to remain in power at any cost. His colleagues also had same opinion about it. President Zia unfolded his plan gradually. He introduced the local body's elections on nonpolitical party basis. He took undertaking that power would be transferred if he would be elected as President.<sup>213</sup>

#### **1.8.10 Constitution of Pakistan 1973 and 8<sup>th</sup> Amendment with Prime Minister Junejo**

The 8<sup>th</sup> amendment balanced the powers of the prime minister and the president of Pakistan. The most effective powers of the President were to dissolve the assemblies without any consultation, the appointment of Army and Naval Chief, Admiral and Provincial Governors, powers were also assumed to the President. This amendment validated the military coup of 1977 and President could hold the office of Chief of Army Staff.<sup>214</sup>

Junejo attempted to control military like Bhutto but could not succeed.<sup>215</sup> He insisted on the retirement of General K.M. Arif who was Vice Chief of Army Staff and General Rahim Khan who was Chairman Joint Chief of Staff Committee (JCSC) (relative of Zia) upon completion of three year tenure.<sup>216</sup> The National Assembly demonstrated its political will by electing Fakhar Imam as its Speaker against General Zia-ul-Haq's candidate.<sup>217</sup> Martial Law was still imposed in the country and Junejo Promised to lift it.

The National Assembly and Senate passed resolution demanding removal of marital law. Three provincial assemblies (NWFP, Sindh, and Punjab) passed the

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<sup>212</sup> Ansari report on form of Government Islamabad Printing Corporation Pakistan Press, (1983). 11.

<sup>213</sup> Ibid.

<sup>214</sup> Article 66, Constitution of Pakistan 1973

<sup>215</sup> Cyril Almedia, "For Whom the Bell Tolls," *The Dawn*, December 23, 2011, (accessed January1, 2021).

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

bills against the Martial Law and Junejo announced the end of Martial Law on December 30, 1985. General Zia-ul-Haq introduced 8<sup>th</sup> amendment in 1973 constitution after the withdrawal of Martial law. It enhanced the power of President and created balance of Power between the Prime Minister and the President. According to it, the President could dismiss the Prime Minister as well as dissolve the assemblies. However, Parliament could make some changes in the original draft of 8<sup>th</sup> amendment. For example, it removed a proposal, which gave their presentation to the military in policy making.<sup>218</sup>

The National Assembly was allowed to elect the Prime Minister from March 1990 and the provincial assemblies could elect their Chief Minister from March 1988.<sup>219</sup> The President could appoint provincial governors with the advice of the Prime Minister. General Zia saved himself by nominating a peasant and a gentleman Prime Minister. General Zia never transferred the power to the civilian leaders but it was just an eye wash. A shared formula of military and politicians evolved the relationship of client and patron.<sup>220</sup>

General Zia considered that his handmade parliament would work according to his own will. But it proved an unnatural alliance.<sup>221</sup> After taking oath Junejo announced on very next day that he would reinstall the pure democracy on political party basis. He encouraged the political parties to reunite themselves. Junejo did not feel well under the supremacy of Zia. But following events unabridged the alliance of General Zia and Junejo. Junejo exclaimed that he

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<sup>218</sup> Official Correspondent, "Pakistan's Army Warns of Grievous Consequences Over Prime Minister Gilani Comments" *The Economic Times*, January 11, 2012, [www.economic-times.com.indiatimes.com](http://www.economic-times.com.indiatimes.com) (accessed February 12, 2021).

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Tanvir Ahmed Khan, "Civil-Military Tensions," *The Daily News Pakistan*, (2012), <http://www.thenews.com.pk/todaysprint>. (accessed January 28, 2021)

would put the Generals in SUZUKIS (Small Cars). It was an unpleasant for the Generals. The life style of the Generals was discussed in Media.<sup>222</sup>

A series of anti-military debates started which was not in the favor of military. Junejo started to make many decisions without consulting General Zia-ul-Haq. General Zia-ul-Haq's appointed Director of Intelligence Bureau (IB) Major General Agha Naik Muhammad was replaced by Junejo, without consulting General Zia-ul-Haq by Aslam Hayat, a civilian, after his successful visit to America. He also removed Dr. Mahbobul Haq, Dr. Asad and Dr. Attiya Anyatullah from cabinet positions who had been appointed by General Zia-ul-Haq. Junejo appointed Yasin Watto a former PPP leader as Finance Minister.<sup>223</sup>

Junejo also started interference in military affairs and refused to extend the tenure of General Zia-ul-Haq's close associates General K.M. Arif and General Rahim-ud-Din and played key role in the selections of General Mirza Aslam Beg as Vice COAS.<sup>224</sup> General Sahibzada Yaqoob as Foreign Minister and appointed Zain Noranias Minister of Foreign affairs and General Majeed Malik as Chairman of Public Account Committee of Parliament.<sup>225</sup> He ordered the Federal Anti-Corruption Committee to check the corruption in civil services and armed forces.<sup>226</sup>

### **1.8.11 Geneva Accord**

An agreement on Afghan peace process was signed under the supervision of UN representatives. General Zia wanted to hold the dialogues till the permanent solution of Afghanistan. Junejo held a meeting with the political parties including

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<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Dawn Official Correspondent, *The Daily Dawn Pakistan*, (2011, <http://www.dawn.com/2011/11/14/military-intervention-2.html> (accessed January 20, 2021).

<sup>226</sup> Ibid.

PPP for consensus, parties favored the early settlement. All the political parties wanted an attachment of Pakistan from Afghan issue as soon as possible. Benazir Bhutto (daughter of Z.A. Bhutto) participated in this meeting with the condition if Zia would not come, it was accepted by Junejo.<sup>227</sup> The domestic support and the encouragement of US emboldened Junejo to sign on peace accord on Afghanistan on 14<sup>th</sup> April 1988. After coming back from USA P.M. Junejo's intentions were totally against military. It annoyed General Zia and there was total misunderstanding between civil and military authorities.<sup>228</sup>

### **1.8.12 Explosion in Ojhri Camp**

On 10<sup>th</sup> April 1988 an explosion blew the depot of ammunition at Ojhri Camp. It was the heavy loss of life and property. Pakistan army was criticized all over the world. The Prime Minister of Pakistan adopted harsh manners against it. He exclaimed that concerned authorities would face the music.<sup>229</sup> The two hi-profile military officers (General Hamid Gull and General Akhtar Abdul Rehman) were expected to face the music. President Zia wanted to protect the mat any cost. These were the major reasons which set the stage for General Zia and P.M. Junejo<sup>230</sup>.

### **1.8.13 Dissolution of the Assemblies**

The above-mentioned activities of P.M. Junejo threatened President Zia. The interests of the military were going towards the brink.<sup>231</sup> President Zia wanted to keep himself in power with the help of his colleagues. He preferred military and

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<sup>227</sup> Official Correspondent Dawn, "No Question of Military Take Over: CJ," *The Daily Dawn* Pakistan, December 12, 2011 (accessed February 1, 2021).

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> The missing millions, for *Eastern Economic Review*, Wall Street Journal, February 16, 1988.

<sup>231</sup> Ibid.

ignored the political setup. He came to the conclusion that civil government was ignoring his advice and interests of the military. So, in this context on 29<sup>th</sup> May 1988, he dismissed the civilian government. General Zia exclaimed. The armed forces of Pakistan are responsible for not only safeguarding the country's territorial integrity but also its ideological basis.<sup>232</sup> It was not clear which was the benefit of the ideology in dissolving the parliament.<sup>233</sup> General K.M Arif used such words that military of Pakistan had right to intervene in domestic politics. General Zia also mentioned that constitutional provision allowed military commanders to take over the reins of the state in emergency.<sup>234</sup>

It is how that military was not sincere about civil set up. It wants to edit own hegemony at any cost. The same month a Gallup poll recommended P.M. Junejo an honest person. He worked for the pure democracy in Pakistan but was not allowed. General Zia made speech on TV that present government failed to introduce the Islamic reforms and elevate the poverty. Insurgency and starvation increasing were discussed. With the removal of present government, promise was made about the new elections in six months.<sup>235</sup>

Political parties welcomed the dissolution and demanded new elections on party basis which was rejected by General Zia-ul-Haq in last elections. Junejo was from Muslim League (Pagaro group) now it was disliked by General Zia. He wanted to win his cronies. He had lost his options after dissolving the assemblies. He considered restoring the assemblies through judiciary. He was also considered to

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<sup>232</sup> The Muslim, 14 March 1984

<sup>233</sup> Fareed Zakaria, "Pakistan's Besieged Government," *The New York Times*, (2012) <http://www.newyorktimes.com> (accessed January 26, 2021).

<sup>234</sup> Defense journal (Karachi) vol. viii, No. 12, 1982, 35-38

<sup>235</sup> Official Correspondent, Head Lines, "Pakistan Reviews: Official U.S. NATO Ties," *The Daily Dawn*, November 26, 2011, <http://www.dawn.com/2011/11/26/pakistan-asks-U.S.-to-vacate-shamsi-airbase-within-15-days.html> (accessed January 21, 2021).

become the Ameer-ul-Mominin of the Islamic republic of Pakistan but his luck stopped to favor him more. On the other hand Junejo didn't challenge his dismissal and he silently went home. After the death of President General Zia ul Haq, Supreme Court decision came that General Zia's nonparty elections and dissolving of the Assemblies were illegal.<sup>236</sup>

#### **1.8.14 General Zia's Local Government System**

Basic democracies couldn't achieve its objectives in president Ayub era. After president Ayub this local system was completely freeze in General Yahya's Period. After the debacle of Dhaka, P.M. Bhutto took the power. Bhutto converted the political system on the local basis. But he couldn't politicize the people in perfect manners. A lot of Policies of Bhutto were failed one of them was local government. He couldn't conduct the local elections in his tenure.<sup>237</sup> President Zia took the power, he was soldiers and his mind was to eliminate the political parties and to introduce the new system on ideological basis. He had some objectives in his mind which could be fulfilled only in this way. First, legitimization of his rule, second, divided the people on federal, provincial and local basis.<sup>238</sup>

Third, constitution of Pakistan 1973 was in abeyance and he wanted to keep the people busy in local elections and no one would claim about its (constitution) revival. It was more interesting that local bodies' elections were conducted on their perfect time in 1979, 1983, and 1987 but general elections were conducted in 1985 on non-party based after 8 years for first time and never allowed the

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<sup>236</sup> Ayaz, Amir, "Colonels Coups Chances Almost nil," *The New Pakistan*, (2011), [www.thenews.com.pk](http://www.thenews.com.pk) (accessed November 12, 2021).

<sup>237</sup> Official Bureau, "General Kayani Fighting to Survive U.S. Media," *The Economic Times*, June 17, 2011, [www.economictimes.com](http://www.economictimes.com). (accessed January 3, 2021)

<sup>238</sup> Ibid.

parliament to work more than three years. It was pre-planned to introduce the local body's elections on non-political party basis.<sup>239</sup> It was the same planning of General Zia as like of British in this region before the partition to prolong its tenure of ruling with divide and rule policy.<sup>240</sup>

General Zia divided the people on rural and urban basis. He adopted the same policy of President Ayub when in elections president Ayub was rejected by East Pakistan he ignored it in all fields of life. Urban areas disliked Bhutto and he was liked in rural areas. So, General Zia promoted the urban areas (Anti-Bhutto) and ignored the rural areas (Pro-Bhutto). On other hand political influence was more in rural areas.<sup>241</sup> General Zia was against this trend. He chalked out his plan with slogan of welfare of the people. Political parties were banned. It was the single way to link with the people in the manners to legitimize him.<sup>242</sup> He conducted the local elections on non-party basis. As after twenty years the local system was again implemented. For implementing this system round about nine ordinances were issued. In 1979 the induction of 17737 elected councilors in 84 district councils, 4100, Union Councils, 12 Municipal Corporations; 117, Municipal Committees, 285 Town Committees & 39 Cantonment Boards, all over the country with a mandate to develop the potential of their respective areas and solve day to day problems of their communities is a manifestation of this realization.<sup>243</sup> The total system was derived from Z.A. Bhutto's local government ordinance. It

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<sup>239</sup> Official Correspondent, Head Lines, "Pakistan Reviews: Official U.S. NATO Ties," *The Daily Dawn*, November 26, 2011, <http://www.dawn.com/2011/11/26/pakistan-asks-U.S.-to-vacate-shamsi-airbase-within-15-days.html> (accessed January 21, 2021).

<sup>240</sup> Badar Alam, "Confidant Nawaz Tread a Tricky Path," *The Dawn News*, (2012), and *The News Pakistan*, December 11, 2011.

<sup>241</sup> Iftikhar A. Khan, "Discussion on the Military Budget in Parliament," *Dawn*, Newspaper (2010).

<sup>242</sup> Official Bureau, "General Kayani Fighting to Survive U.S. Media," *The Economic Times*, June 17, 2011, [www.economictimes.com](http://www.economictimes.com). (Accessed January 3, 2021).

<sup>243</sup> *Ibid.*

was issued with the name of Local Government Ordinance 1979. This ordinance was also implemented in Kashmir & Federal Government.

## **1.9 Civilian Government in Pakistan 1988-1999**

Controlled democracy and the decade of presidential high-handedness Pakistan's 1990s oscillated between rule by Nawaz Sharif and Benazir Bhutto. The 'Daughter of the East', Benazir made a remarkable return from obscurity in 1988 when her PPP surged to power in that year's elections. However, General Zia's legacy continued to stifle democracy in Pakistan, with Benazir coming in direct conflict with the now far more powerful position of President, and the army. Indeed, it was the eighth amendment that paved the way for President Ghulam Ishaq Khan's dismissal of Benazir's government in 1990.<sup>244</sup>

The 1990 elections saw Nawaz Sharif's Islami Jamhoori Ittehad (IJI) come to power, but his tenure too was marked by conflict with the military and the President. Nawaz made the wise decision to keep Pakistan out of the First Gulf War, and laid the grounds for what would become Nawaz's brainchild—the motorways in his tenure, but his time in office too was cut short when the military forced both him and Ghulam Khan to resign in 1993 after Nawaz and Khan could not agree on key policy measures.<sup>245</sup>

1993 and 1996 were the next elections cycles which saw Benazir emerge victorious in the former, with Nawaz coming to power again in 1996.<sup>246</sup> It was his heavy mandate in 1996 that allowed Nawaz to pass the Thirteenth amendment that limited the President's powers and finally gave breathing space to civilian rule. Nawaz, however,

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<sup>244</sup> Hussain Haqqani, *Pakistan Between Mosque and Military*, (Washington D.C: Carnegie Endowment Press, 2005), 152.

<sup>245</sup> S. Ifkhar Murshed, "The Military Coups," *The News Pakistan* (2011), [www.thenews.com.pk](http://www.thenews.com.pk) (accessed September 1, 2021).

<sup>246</sup> Viknat Rathore, *The American Role in Pakistan, 1947–1958*, (New Delhi: Radiant Publishers, 1982), 143.

triggered inter-institutional conflict when his supporters first led a raid on the Supreme Court in 1997 and later when he tried to remove army chief General Musharraf. The latter action, sadly, proved to be too much for the army to digest, with the military triggering a military coup, and once again pushing Pakistan into the grips of military rule.<sup>247</sup>

### **1.10 The General Musharraf Coup in 1999**

On October 12, 1999, General Musharraf, who was then the Chief of Army Staff, initiated the coup. While Prime Minister Nawaz Sharif was out of the country, General Musharraf seized control of the government and declared a state of emergency. He announced that the military had taken over, citing the deteriorating political and economic situation in the country.

As part of the coup, General Musharraf suspended the constitution, dissolved the National Assembly, and imposed martial law. He declared himself the Chief Executive, assuming both executive and legislative powers. The judiciary was also placed under his control, allowing him to consolidate authority. After the coup, General Musharraf established the National Security Council (NSC) as the highest decision-making body in the country. He implemented a series of reforms and policies, including curbing corruption, improving governance, and focusing on economic development. General Musharraf's rule was characterized by a mix of military control and limited civilian participation through a system called "guided democracy"<sup>248</sup>.

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<sup>247</sup> Alfred C. Stepan, *The Military in Newly Democratic Regimes; the Dimension of Military Contestations-Rethinking Military Politics*, (New Jersey: Princeton University Press, 1988), 315.

<sup>248</sup> Guided democracy refers to a political system in which there is a combination of military control and limited civilian participation. The term "guided" implies that the military, particularly the military leadership or a specific military ruler, exercises significant influence or control over the political process and policymaking. While there is some semblance of civilian participation, the military

General Musharraf faced several challenges and controversies during his tenure. These included opposition from political parties, pro-democracy activists, and Islamist groups. There were also concerns regarding human rights violations, restrictions on freedom of speech, and media censorship. General Musharraf's policies and actions, including his role in the Kargil conflict with India, were subjects of domestic and international scrutiny. Transition to Democracy: Under increasing pressure, General Musharraf announced a gradual transition to democracy in 2002. He held parliamentary elections and allowed the formation of a civilian government with a limited role for the military. In 2007, he stepped down as Chief of Army Staff and was sworn in as a civilian President.

### **1.11 Indirect Intervention**

The death of Zia-ul-Haq led to the appointment of Ghulam Ishaq Khan as President. Khan had vast, unchecked Presidential powers and was known to be close to the Pakistani military. Khan had dismissed both Benazir Bhutto in 1990 and Nawaz Sharif as Prime Minister in 1993, though the latter resulted in his own resignation and is known in Pakistan as the Waheed Kakar formula.<sup>249</sup>

### **1.12 Unsuccessful coup Attempts**

There have been numerous unsuccessful coup attempts in Pakistani history. The first noted attempt was the Rawalpindi conspiracy in 1951 led by Maj. Gen. Akbar Khan along with left-wing activists and sympathetic officers against the government of

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maintains a guiding or supervisory role to ensure that the political system aligns with their objectives and interests.

<sup>249</sup> Doctor Qaisar Rashid, *The Moment of Truth*, 65. News, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=47858&Cat=9&dt=5/19/2011> (accessed October 19, 2011), pp 33.

Liaquat Ali Khan, Pakistan's first prime minister.<sup>250</sup> Prominent poet-intellectual Faiz Ahmed Faiz was suspected of involvement.<sup>251</sup> In 1980, a plot by Maj. Gen. Tajammul Hussain Malik to assassinate Zia-ul-Haq on Pakistan Day on March 23, 1980 was exposed and thwarted.<sup>252</sup> In 1995, a coup attempt against the government of Benazir Bhutto led by Maj. Gen. Zahirul Islam Abbasi with the support of Islamic extremists was foiled. An alleged coup attempt planned by Mustafa Khar during his exile during General Zia ul Haq's reign was thwarted beforehand due to Seth Abid playing double agent and informing the military about the plot. Allegedly, some disgruntled army officers were provided details of a safe house where weapons procured from India directly by Mustafa Khar after negotiating with an Indian agent in their London High Commission. This has been discussed in great length and detail by Tehmina Durrani in her award-winning book 'My Feudal Lord' where she admits to playing a passive role under duress of her then husband Mustafa Khar<sup>253</sup>.

The first military coup of 1958, led by General Ayub Khan, has set up a pattern in Pakistan where today, most of the policy matters,<sup>254</sup> such as the foreign or domestic are crafted with the tacit approval of the Pakistani military. The Pakistani military continues to dominate the government either directly at the center or indirectly in charge of several institutions. This core imbalance in civil-military affairs is primarily due to what Pakistan inherited at the time of the independence of Pakistan.<sup>255</sup>

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<sup>250</sup> Chuadhri Muhammad Ali, *The Emergence of Pakistan*, Lahore Research Society of Pakistan, (Lahore: Punjab University, 2003), 73

<sup>251</sup> Stephen Philip Cohen, *Introduction to The Idea of Pakistan*, (Washington, DC: Brookings Institution Press, 2004), 24.

<sup>252</sup> Ibid.

<sup>253</sup> Jaswant Singh, *Jinnah India-Partition Independence*, (New Delhi: Rupa.Co, 2009), 47

<sup>254</sup> Ibid.

<sup>255</sup> Rogin, Josh. Exclusive: Secret Pakistani-U.S. Memo Offering Overthrow of Military Leadership Revealed." (2011). retrieved from: <http://foreignpolicy.com/2011/11/17/exclusive-secretpakistani-u-s-memo-offering-overthrow-of-military-leadership-revealed>.

## **CHAPTER- 2**

### **CAUSES OF MILITARY INTERVENTION IN PAKISTAN**

#### **2.1 Introduction**

This chapter highlights the causes of military intervention in Pakistan and its effects on the polity of the country. The military- bureaucracy oligarchy occupied a dominant position and has been in effective command of state power ever since the creation of the state. This oligarchy installed politicians and political parties in office to provide a façade of parliamentary government for a decade; it then decided to expel them in 1958, when the prospects of the impending general elections seemed to pose a challenge to its supremacy. The intervention of this oligarchy and more particularly, of the military, became more effective and intensified when the new state started facing problems of vast magnitude. These included inexperienced and inadequate administrative staff, a massive refugee problem, poor economic resources, regional conflicts, the decline of the Muslim League and the advent of coalitional politics and unstable governments. This ultimately led to the collapse of the parliamentary system, the utter failure on the part of the political leadership to provide a functioning civilian government by developing a consensus on the rules of polity, and the total indifference of the elites towards the masses and their problems.

It is interesting that India and Pakistan provide illustrations of the contrasting as well as changing patterns of civil-military relations. The most outstanding contribution of British rule in India in the field of military administration was the norm and practice of civil-military relations which emphasized overall civilian control and the military's

aloofness from politics.<sup>256</sup> However, in Pakistan, after little more than eleven years of the façade of civilian parliamentary government, the military intervened and imposed its own rule. On four occasions, the military intervened overtly and imposed Martial Law throughout the country: October 1958, March 1969, July 1977 and October 1999. The military justified its extreme action on the ground of instability in the country.

In 1958, General Muhammad Ayub Khan justified the coup on the basis that the country had to be rescued from chaos. This became the *mantra* for all the succeeding military takeovers. This was the fallout of the circumstances of the pre-1958 period, during which Pakistan was facing ideological and ethnic divisions as well as administrative and security problems.<sup>257</sup> The poor institutionalization of the Muslim League, and the centralization of power within it, hindered the establishment of a truly participatory democracy. The frequent dissolution of the provincial and national governments made it difficult to lay the foundation for a parliamentary system. Political and constitutional crises added to the tensions between the Centre and the provinces.<sup>258</sup> Such problems made it possible for the bureaucracy and military to maintain a superior position in the power structure of the country.

Pakistan represents an example of how an apolitical military could slowly be drawn into the political field due to the failure of political institutions and politicians, low political mobilization, as well as external factors. In the first instance, being well-organized and skilled, it helped every government to maintain law and order, until it slowly became an important factor in the decision-making process, and ultimately

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<sup>256</sup> Yeena Kukreja, *Military Intervention in Pakistan: A Case Study of Pakistan*, (New Delhi: Not only Tartenders 1985), 30

<sup>257</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 40.

<sup>258</sup> Sumita Kumar, *The Army in the Power Structure in Pakistan in Behera*, (New Delhi: Knowledge World, 2004), 49.

displaced civil authority. Therefore, a study of military interventions in politics can help to make some general remarks about the causes which allow a professional military to assume an overtly political role.<sup>259</sup> In short, there are multiple causes of military intervention in the political sphere of Pakistan, as mentioned below. No single factor can be cited as the sole factor for the militarization of the country. Today, Pakistan stands at the cross-roads of history. Pakistan is fighting against the menace of Talibanization of the Tribal Areas. The basic causes of repeated military intervention in the politics of Pakistan, which turned the polity into a praetorian state, are explained in the next section.<sup>260</sup>

## **2.2 Historical perspective of Military Involvement**

Military engagement in politics started from the Roman period; continued in feudal era and remained part of constitutional regimes especially those of third world countries from their political independence.<sup>261</sup> It is common both in democratic or authoritarian regimes of present era. Even in developed world, though military is restricted to its defense affairs under the guidance of civilian government; it still exerts much influence on the government policies.<sup>262</sup> Many researchers have described that the civil-military relations in Asian countries usually depends on their historical factors relating to their formative phase as a state and nation. Most of the Asian militaries have a prominent role in colonial period and then in process of state building and nation making.<sup>263</sup> The other important thing is that from early days, military began to involve in political decision making, projects of social

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<sup>259</sup> *Ibid*, 50.

<sup>260</sup> *Ibid*.

<sup>261</sup> Igwe, O. *Politics and Globe Dictionary* (California: Eagle Publishers, 2005), 10.

<sup>262</sup> Onder, M. *What Accounts for Military Interventions in Politics: A Cross National Comparison*, (Washington D.C: Bilimler Dergisi Press, 2010), 11.

<sup>263</sup> Alagappa Jorden, *Coercion and Governance: The Declining Political Role of the Military in Asia*, (Glasgow: Stanford University Press, 2001), 23.

developments, commercial activities and in internal security matters etc.<sup>264</sup> Thus, separation of military from politics as prescribed by Huntington could only be relevant to the West, if not a mere fiction. They espoused an alternative model of democracy, namely 'guided democracy' prevalent in most of third world in which military was considered as an integral part of the political system rather than an agency outside the political avenue. By studying theories of military involvement, it is evident that military involvement in political affairs is less likely in the countries where social economic development is high and the political institutions are developed and strong enough. Contrarily military involvement in political affairs is more likely where states have heterogeneous structure with ethnic dominance, low socio-economic development and weak political institutions such as in less developed countries of Africa, Latin America and Asia.<sup>265</sup>

### **2.3 Extreme Political Instability**

The decline of civilian institutions in Pakistan was set in motion primarily as a result of the serious crisis of political leadership within a couple of years of Independence. After Quaid- e-Azam, Liaquat Ali Khan's assassination resulted in the conversion of the office of the Governor General into an instrument of bureaucratic intervention.<sup>266</sup> From 1951 to 1958, Pakistan had only two Governors-General and one Commander-in-Chief while seven Prime Ministers toppled one after the other. Bureaucratic intervention, preemption and opposition among the political leaders made a sham of the parliament and the cabinet government. The façade of "parliamentary politics"

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<sup>264</sup> Kuehn, A. C. "Guest Editors' Introduction: Civil-military Relations in Democratizing Asia-Structure, Agency and the Struggle for Civilian Control," *Asian Journal of Political Science* 187, No. 69 (September 2011): 112.

<sup>265</sup> Al-Hamdi, D. M. "Military in-and-out of Politics: A Theoretical Approach to Military Disengagement," *International Journal of Humanities and Social Science* 27, No. 5 (January 2014): 193.

<sup>266</sup> Rizvi, The Military: Role Enhancement and the Political Process in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 16.

persisted but in reality the focus of power had shifted to the bureaucratic and military institutions.<sup>267</sup> Liaquat Ali Khan's mysterious assassination left the ambitious bureaucracy in total command. A strong nexus was also formed between the civil-bureaucracy and the military. It is not surprising that in Pakistan's first two decades, 'the locus of power centered on the civil services rather than the political leadership, whom it dominated, or the army with which it closely collaborated.'<sup>268</sup> As the political forces fragmented and political institutions declined, the bureaucratic elite gained the upper hand and dominated policy making.

The appointment of Ghulam Muhammad, a former bureaucrat, as Governor General (October 1951) followed by another bureaucrat with an army background, Iskander Mirza, in August 1955, set the stage for the ascendancy of the bureaucracy, supported by the military in the background. They had close connections with the Army Chief, General Ayub Khan, who was reluctant to come into the limelight, but extended support to them in their resolve to establish a centralized bureaucratic and administrative polity.<sup>269</sup> The 'ruling alliance', drawn mainly from the top echelons of the bureaucracy and the army, adopted 'a concerted strategy' to exploit and manipulate rivalries among the political leaders. This accentuated political fragmentation and ministerial crises.<sup>270</sup> When in 1954, the political leaders attempted to take on the bureaucratic-military axis by reducing the powers of the Governor General, as head of state to a titular office in the British Parliamentary tradition, the

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<sup>267</sup> Shafqat, *Civil-Military Relations in Pakistan from Zulfikar Ali Bhutto to Benazir Bhutto*, (Lahore: Sange-e-Mile, 2010"), 126.

<sup>268</sup> Hassan Gardezi and Jamil Rashid, *Pakistan: The Roots of Dictatorship*, (Lahore: Vanguard Books Ltd, 1983), 72.

<sup>269</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 76.

<sup>270</sup> Ayesha Jalal, *The State of Martial Rule: The Organs of Pakistan's Political Economy of Defense*, (Cambridge: Cambridge University Press, 1990), 296.

Governor General retaliated by dissolving the Constituent Assembly and removing the Government.

As far as the functioning of democratic institutions in Pakistan is concerned, one finds that after the sudden demise of Quaid-i- Azam, followed by Liaquat Ali Khan's assassination, the political elite which came to power in West Pakistan headed by Ghulam Muhammad and Iskander Mirza, had absolutely no faith in democratic institutions. They flouted all recognized parliamentary practices and played havoc with all established conventions. The supremacy of the Pakistani executive in matters of governance over the legislative wing was similar to the former vicereign system. Naturally, the image of the National Assembly as a representative body and law-making agency was tarnished. In Pakistan no government was removed in accordance with democratic norms, a vote of no confidence on the floor of the National Assembly. The decision to form a new ministry was taken behind closed doors and resulted from the realignment of political factions outside the Assembly.

Thus, during 1947-58, in a formal, constitutional sense, Pakistan's history has been marked by political instability. In a non-legal, non-constitutional sense, it reveals the steady institutional development of the civilian and military bureaucracies. Slowly and gradually political power slipped from political parties into the hands of the civil service and the army.<sup>271</sup> One can assess the intensity of political instability by the fact that within a short span of two and a half years (March 1956 to Oct 1958), Pakistan had six prime ministers. During these years, the political situation in Pakistan was seemingly 'fluid', marked by continuous palace intrigues and horse trading. The Presidency, under the power-hungry Iskander Mirza, was the vanguard of this

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<sup>271</sup> Kukreja Sing, *Military Intervention in Pakistan: A Case Study of Pakistan*, (Kolkata: Dewan Publisher, 2005), 57.

instability. Interestingly, during these years Ayub Khan as Army Chief had been nurturing dreams and vainly arrogating to himself the role of the savior of Pakistan through military intervention in politics. Unfortunately, the flagrant failure of political leadership culminating in the promulgation of Martial Law on October 7, 1958, provided him with this opportunity as he was appointed Chief Martial Law Administrator by President Iskander Mirza. Unsurprisingly, within just a month, Ayub Khan coerced Iskander Mirza to resign and banished him to London. In this way Ayub Khan got the direct opportunity to translate his political ideas into reality.

#### **2.4 Factionalism: The Breakdown of the PML**

Research about the ascent of the army in Pakistan typically focuses on the vacuum in the political system due to disintegration of the Muslim League after Partition and the decay of political institutions in general.<sup>272</sup> When Pakistan came into existence it had no well-developed party organization which had a significant bearing on the process of state formation in Pakistan. According to Rafique Afzal, Pakistan has not been able to steer its way to a stable, consensus-based political culture leading to national harmony. This has been due to the absence of national political parties.<sup>273</sup> The Muslim League (ML), which took credit for the creation of Pakistan, has never been able to transform itself from a nationalist movement to a national party that could lead the nation on the path to democracy, constitutionalism and planned economic development.

The Muslim League achieved Pakistan and expected to fulfill all new requirements, but this was only possible with a new dynamic program headed by dedicated leadership. It should have set a definite goal to carry out promises made in its

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<sup>272</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 87.

<sup>273</sup> Ibid.

manifesto of 1944. In this way, the League could have diverted the energies of the people toward their sovereign destiny and successfully erected a solid edifice of the state on the ashes of British Imperialism. Unfortunately, the League remained a party without a programme.<sup>274</sup> The Quaid-i-Azam did not live to respond to the necessity, and his followers did not seem to feel or care about it. In this context, the Urdu daily *Nawa-e-Waqt* remarked that the Muslim League was like a caravan without a destination. The League has done nothing but thrown dust in the eyes of the people.”<sup>275</sup>

Lawrence Ziring, an astute observer of Pakistani politics, has placed the burden of responsibility for the decay of party politics on the political leaders and the “structural weakness” of the Muslim League.<sup>276</sup>

Thus, according to Ziring, the bureaucratic-military elites entered the political arena not by intent but by default. In any democratic system, the basic principle is the establishment of contact with the masses through the political party in power. The people in Pakistan believed in the same value and expected that the League would add a new life to its glorious past. The Muslim League had done little to resolve popular confusion and to mediate between the Government and the people. The popular means of contact between the masses and their party were the open general annual conventions the most popular feature of the old All-India Muslim League but during the first nine years of Pakistan’s existence, no such convention was held. Council sessions were held but they related mainly to amendments to the League Constitution for one reason or the other.

Another factor which accelerated the Muslim League’s waning prestige was internal

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<sup>274</sup> Safdar Mahmood, “Decline of the Pakistan Muslim League and its Implications (1947-54),” *Research Journal of Social Sciences Pakistan* 1, No. 1(July 1998): 135.

<sup>275</sup> *Nawa-e-Waqt*, August 13,1950 (Editorial)

<sup>276</sup> *Ibid.*

disputes. The legacy of factional scramble for positions of power and profit was continued. The League leaders would not judge issues at a national level, but would take them as matters of personal prestige.<sup>277</sup> This trend greatly weakened the organization from within. The reason for the failure of democracy to take root in Pakistan lies in the entire political process in which the state and successive governments have based themselves. An overview of Pakistan's political history suggests that state construction and the consolidation of Pakistan have been on a conflicting course vis-a-vis the social dynamics underlying political processes. Pakistan, due to the absence of a well- developed political party organization,<sup>278</sup> has been unable to integrate its provinces or distribute resources equitably between the predominant province of Punjab and the weak ones of Sindh, the North-West Frontier Province (now Khyber Pakhtunkhwa) and Baluchistan, as well as between the diverse linguistics groups within them. Like other post-colonial states, where the democratic unfolding of political process has been hampered, Pakistan, too, has relied on its civil services the steel frame of the Raj and, ultimately, on the army to maintain the continuities of government.<sup>279</sup> Thus, the party that was a big political and social force and combated triumphantly against the British and the Congress simultaneously for a separate homeland, was reduced, within a few years, to such feeble stuff that it failed to save Pakistan from dictatorial army rule.<sup>280</sup>

Democracy means self- government. Democracy and political parties are inextricably linked with each other and there is no concept of a successful democracy without true political parties. The political parties organize and give direction and destination to

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<sup>277</sup> Ibid.

<sup>278</sup> Ibid.

<sup>279</sup> Lawrence Ziring, "*Pakistan: The Enigma of Political Development* Boulder." (Westview, Macinzy Books, 1980), 198

<sup>280</sup> Ayesha Jalal, *The State of Martial Rule: The Organs of Pakistan's Political Economy of Defense*, (Cambridge: Cambridge University Press, 1990), 87

the masses by providing them with platforms for political purposes. The failure of the political parties and leadership to meet the challenges creates a political void and causes democracy to degenerate into absolutism by the intervention of non-democratic forces such as the military and bureaucracy. This is precisely what happened in Pakistan within the first decade of its Independence.

## **2.5 Failure of Political Leadership**

Theoretically, the test of leadership is to lead the country and the nation out of a crisis situation. The dynamic leadership of Jinnah is a witness to this reality. Muslims of the sub-continent under the leadership of Jinnah successfully fought the forces of British imperialism and Hindu nationalism culminating in the creation of Pakistan. After the death of Jinnah, his political successors badly failed to create consensus politics. The second line leadership could not translate the political achievements of Jinnah into a vibrant, moderate and forward-looking democratic polity. Factionalism, provincialism and power politics marred the first decade of Independence. Pakistan had seven Prime Ministers and eight cabinets during 1947-58. The ruling parties maintained power by using state patronage and coercive apparatus in a highly partisan manner. The situation was not much different at the provincial level where different political parties and leaders engaged in struggle for power in violation of parliamentary norms.

The Constituent Assembly established at the time of independence was unable to frame a constitution as the members and the political parties did not work towards evolving a consensus on the operational norms of the political system. The objectives of the Constitution were approved in March 1949 after a contentious debate; some members did not take part in the vote on the Objectives Resolution. Subsequently, the Constituent Assembly deliberated on the framework of the Constitution during March

1949 and October 1954: when they agreed on a draft of the Constitution, Governor General Ghulam Muhammad dissolved the first Constituent Assembly before the latter could take up the draft for final consideration and vote.<sup>281</sup> Governor General Ghulam Muhammad, in violation of established parliamentary norms, dissolved the above cited Assembly in a reactive move. There was unwarranted and continuous interference by the head of state in the political sphere of the country. Traditionally, the head of state is a nominal and titular office in parliamentary democracy whereas there was repeated interference into politics by two heads of state Ghulam Muhammad and Iskander Mirza.<sup>282</sup>

The political successors of Jinnah been sane enough, the interference of heads of state might have been averted. Those who were to steer the ship of the state of Pakistan were predominantly unscrupulous, corrupt and power hungry. None of them could rise to the level of a statesman. They remained self-centered petty politicians. The result was inevitable extreme political instability, palace intrigues, the ever-growing influence of the bureaucracy and the military in politics. Thus, military leaders felt justified in taking over when politicians failed to provide efficient and popular governance.

Rizvi, while analyzing the political developments of Pakistan's early period asserted that "political decay" occurred because Pakistan suffered from a lack of competent leadership and well organized political parties. The growth of regional and parochial forces, political bargaining and open defiance of the norms of parliamentary democracy encouraged instability which reduced the effectiveness of the governmental machinery, while on the other hand, the military was gaining

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<sup>281</sup> Mahmood, *Decline of the Pakistan Muslim League and its Implications (1947-54)* in Nadeem Malik, ed. *Research Papers on Pakistan (Vol.1)*, 272.

<sup>282</sup> Rizvi, *The Military: Role Enhancement and the Political Process in Pakistan Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 39.

strength.<sup>283</sup> Huntington has also noted that such conditions are conducive for praetorianism, emphasizing that it was the inability of the political leaders to build a party system during the pre-military hegemonic political phase in Pakistan.<sup>284</sup>

According to Khalid Bin Sayeed, the pre-military hegemonic phase was a “period of conflict”. Apparently this was a conflict between the political leaders and the bureaucratic-military elites over the nature and direction of the political system (i.e., the constitution, the role of religion in the polity, socio-economic reform, and the quantum of provincial autonomy).<sup>285</sup> However, Sayeed believed that the sources of conflict were rooted in the tradition and culture of the regions that constituted Pakistan. The behavior of political leaders merely reflected these cleavages. East Bengal’s political leadership had a degree of consensus on the issue of provincial autonomy. However, the West Pakistani political leaders were divided not only along parochial lines, but also along “feudal” cleavages, particularly in Punjab and Sindh. Ridden with these cleavages, the political leaders could neither create a consensus among themselves, nor effectively challenge the bureaucratic elites.<sup>286</sup> They lacked the capacity to aggregate public interests and build political institutions. Sayeed’s central thesis is that the incompetence and divisiveness of the political leaders brought about the collapse of the party system and facilitated the ascendancy of the bureaucratic- military elites.

## **2.6 Interference of the Heads of State**

In a parliamentary democracy, the head of state has no room for political maneuvering. The office of the head of state is nominal and non-partisan. Simply

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<sup>283</sup> Rizvi, *The Military and Politics in Pakistan* (Karachi: Progressive Publishers, 1974), 89.

<sup>284</sup> Samuel P. Huntington, *Political Order in Changing Societies*, (California: Yale University Press, 1996), 33.

<sup>285</sup> Sayeed, *The Political System of Pakistan*, (Boston: Houghton Mifflin Company, 1967), 23.

<sup>286</sup> Ibid.

speaking, the head of the state has no political role to perform as such. In violation of well-established parliamentary theory, Ghulam Muhammad and Iskander Mirza violated this norm and actively maneuvered, politics notwithstanding legal tradition and the dreadful consequences of their actions. The head of state (Governor General 1947-57, President 1956-58) gradually assumed effective power and manipulated the divided political leaders and weak political parties. He was directly involved in making and breaking governments at the federal and provincial levels. The active involvement of the head of state in day-to-day politics further fragmented the political forces and undermined the democratic process.

Two heads of state, Ghulam Muhammad (1951-1955) and Iskander Mirza (1955-1958) were former bureaucrats. Iskander Mirza started his career in the military but later shifted to the bureaucracy. They never made any secret of their contempt for parliamentary democracy and relied heavily on their connections in the senior bureaucracy and the military to manage political and state affairs.<sup>287</sup> Their manipulation of political forces was well-known and they did not allow a Prime Minister to function freely. It may be noted that no elections were held at the national level. The two Constituent Assemblies were elected indirectly. Direct elections were held once at the provincial level during 1947-58. Not surprisingly, Ghulam Muhammad, in a show of utter disregard for democratic conventions, dismissed the Government of Khawaja Nazimudin in 1953 despite the fact that Khawaja Sahib enjoyed the confidence of the majority of the house. This led to what is known as 'constitutional coup' in the history of Pakistan. Ghulam Muhammad repeatedly used PRODA for his nefarious political ends. The constituent assembly reacted back and in

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<sup>287</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 76.

a hasty show of power repealed PRODA; in the same session of the constituent assembly powers of the Governor General were also curtailed. The constituent assembly under the premiership of Bogra had a bill passed in the Assembly making it obligatory for the Governor-General to act on the advice of the Prime Minister.<sup>288</sup> At that time the Governor General was on a foreign tour. Upon learning about this development, Ghulam Muhammad hurried back, and in a reactive move dissolved the first constituent assembly in September 1954.

The federal authorities, especially the head of states, interfered in provincial political and administrative affairs as well, thereby compromising the limited autonomy given to the provinces. The federal government interfered in provincial affairs through the Provincial Governor or exercised the special powers to remove provincial governments and impose direct rule by the federal government through the Governor. Provincial politics was linked so closely with federal politics that any realignment at the federal level or a change of federal government often produced political changes at provincial levels.<sup>289</sup>

These political conditions were bound to compromise the ability of civilian governments to assert their leadership over the military. The military top brass got ample freedom to deal with their internal affairs and to consolidate their position. The political governments assigned to the military the highest consideration for formulation of Pakistan's foreign and security policies.<sup>290</sup> The decision to join U.S. sponsored defense pacts in the mid-1950s was made at the initiative of the military top brass. General Ayub Khan, C-in-C of the Army played a key role in aligning Pakistan with the United States. The divided political leaders often cultivated ties with

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<sup>288</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 186

<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*

the military so as to strengthen their own positions in the domestic political context vis-à-vis their adversaries.<sup>291</sup>

General Ayub, who was watching the situation very closely, wrote: “The President had thoroughly exploited the weaknesses in the Constitution and had got everyone with the political life of the country utterly exposed and discredited.”<sup>292</sup> However, President Mirza could not have pursued his Machiavellian policies without the backing of the military. Indeed, General Ayub as commander-in-chief, had been the most powerful member of the central government during 1954-55 when the integration of West Pakistan had been brought about through outright coercion. This policy had set in motion a chain reaction that President Mirza was trying to control through further central and bureaucratic manipulation. Mirza and Ayub were the two dominant leaders of a civil-military oligarchy that had decided that Pakistan could be governed best by tightening the grip of these two institutions on its government and people. This tradition of political interference by heads of state continued through Zia to General Musharraf.

Finally, the last blow to the feeble and embryonic parliamentary democracy in Pakistan was dealt by President Iskander Mirza, who in a blatant show of opportunism declared Martial Law in October 1958 and appointed Ayub Khan as the CMLA. Such is the sad story of the failure of political leadership and its harmful fallouts on the body politic of Pakistan. Since then Pakistan has remained the victim of repeated military interventions and disruption of political processes.

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<sup>291</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 109.

<sup>292</sup> Ayub Khan, *Friends Not Masters: A Political Biography*, (London: Oxford University Press, 1967), 87.

## 2.7 Role of Judiciary

The greatest political development in modern times has been the substitution of medieval absolute monarchies by popular democracy under the philosophical assertion of popular sovereignty. Democracy means self-government or in the words of Abraham Lincoln “government of the people for the people by the people.” One of the distinctive characters of democracy is the concept of limited government. It means that the powers of the executive are well defined by the constitution and they operate within the legal parameters provided therein. As opposed to monarchies and dictatorships democracy exists for the welfare of the people. All the democratic constitutions of the world provide a list of the fundamental rights of the people which are recognized and guaranteed by the superior judiciary. In a democracy, the higher judiciary is not only the guardian of the constitution but also the guarantor of the fundamental rights of the people and a check on the arbitrary rule and excesses of the executive. Unfortunately, the higher judiciary in Pakistan did not play this Pakistan’s inception, and became subservient to the executive. Chief Justice Munir in his epoch-making judgment in 1955 in the Maulvi Tamizudin Case upheld the incomprehensible and arbitrary action of Governor General Ghulam Muhammad of the dissolution of first constituent assembly under the Doctrine of Necessity<sup>293</sup>. Justice Munir opened the door for military and civil political adventurers in Pakistan. Consequently, Pakistan has been suffering since 1950’s till the dismissal of Chief Justice Iftikhar Chaudhri by General Musharraf in 2007.

The power struggle at the centre between the president and the prime minister created a crisis. Prime Minister Khwaja Nazimuddin, dismissed in April 1953, silently sulked.

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<sup>293</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 71.

He bore the pain of insult but did not seek justice in a court of law. The emboldened Governor-General on October 24, 1954, dissolved the Constituent Assembly and declared a State of Emergency throughout Pakistan. He claimed that the Constituent Assembly had 'lost the confidence of the people and could no longer function.' The dissolution of the Constituent Assembly led to a series of 'legal disputes and a period of constitutional confusion and crisis.'<sup>294</sup> The President of the dissolved Assembly, Maulvi Tamizuddin, challenged the Proclamation as "unconstitutional, illegal, ultra vires, without jurisdiction, inoperative and void."<sup>295</sup> He challenged the Governor-General's power to appoint a new cabinet, and petitioned the Sindh Chief Court.

In accordance with the democratic traditions, the Sindh Court upheld Tamizuddin's contention and on February 4, 1955, ruled that the five members of the central government, who were not members of the Assembly, were not to exercise ministerial powers. The Federation of Pakistan and central ministers then appealed to the Federal Court, which held that the Sindh Chief Court, in giving such a decision, had acted without jurisdiction, pointing out that section 223- A (of the Government of India Act 1935), under which the Sindh Court had given its judgment, was invalid as it had not received the Governor-General's assent under Section 5 of the Indian Independence Act, 1947.<sup>296</sup>

The decision of the Federal Court, announced on March 26, 1955 had far-reaching repercussions: it implied that all the acts passed by the Constituent Assembly in its constituent capacity were invalid because none of them had received the assent of the Governor-General. The Federal Court thereby ruled that the Governor General's

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<sup>294</sup> G.W. Choudhry, *Democracy in Pakistan*, (Dacca: Green Book House, 1963), 75.

<sup>295</sup> Salamat, *Pakistan 1947-58: An Historical Review*, (Karachi: Oxford Press, 1963), 56.

<sup>296</sup> *Ibid.*

assent was necessary for all legislation passed by the Central Legislature.<sup>297</sup> Notwithstanding the dynamics of democracy Chief Justice Munir upheld the decision of the Governor General on technical grounds and paved the way for Ayub Khan's Martial Law.

Justice Muhammad Munir, a Judge in the colonial mould, upheld General Ayub's military takeover in 1958 on the basis of the doctrine of 'successful revolution being legal'.<sup>298</sup> Thus, the country paid a hefty price for granting judicial legitimacy to the draconian act. The higher judiciary failed to perform its basic role of the 'guardian of the constitution' in a democratic polity. Its fundamental failure was to check the arbitrary actions of heads of state in violation of established democratic traditions and provided the legal cover to the otherwise illegal and unconstitutional role thereby opening the door for subsequent military coups in Pakistan. Thus, the Higher Judiciary shares the burden of the militarization of Pakistan.

## **2.8 The Pakistan Army and the India Syndrome**

In Pakistan, the army is the ultimate arbiter in the affairs of the state. Through most of Pakistan's history, the military has remained the central focus of power. For half of its existence, Pakistan has been under military rule or military dominated governance.<sup>299</sup> The rest of the time, the army has still maintained a significant influence in politics. In this context an astute scholar aptly comments, 'The army and bureaucracy have been the self- appointed guardians of the Pakistani state since independence. Political parties and constitutions have come and gone or been transformed, but these twin

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<sup>297</sup> *Ibid.*

<sup>298</sup> Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 47.

<sup>299</sup> Veena Kukreja and M.P.Singh, ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 156.

unelected institutions have remained the pillars of the state.’<sup>300</sup>

The period between 1947-58 was characterized by the trappings of parliamentary governments, but the soul of democracy had long since been smothered by the absence of general elections and the lack of continuous participation through political parties as the vehicle for mobilization. From 1951, effective power was firmly in the hands of a bureaucratic- military oligarchy, notwithstanding successive changes in the form of governments and the installation of political parties and leaders in apparent charge of the state apparatus.<sup>301</sup> The early military- bureaucracy establishment maintained its dominant role, which was facilitated by the disarray of political parties that could not organize political support.

There was little military organization to speak of when Pakistan was created in 1947. Soon after her birth, the small-sized and inexperienced Pakistani military moved towards an improvement in resources, and by 1958 the ‘ex-colonial’ military was in a position to be able to challenge the civilian political institutions and took over total control of the political system. Despite a weak military organizational establishment, the Pakistani armed forces enjoyed three massive political advantages over civilian organizations, as suggested by S.E. Finer, namely: a marked superiority in organization, a highly emotionalized symbolic status, and a monopoly of arms. Because of the peculiar features of the military organization hierarchy, discipline, cohesiveness, *esprit de corps*, and the military virtues such as bravery, obedience, self-abnegation and patriotism, the Pakistani military formed a more prestigious and highly organized corporation than any civilian body.<sup>302</sup>

It has also been argued that Pakistan’s pursuit of parity with India in defence potential

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<sup>300</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 103.

<sup>301</sup> Kukreja and M.P.Singh, eds. *Pakistan Democracy, Development and Security Issues*, 36.

<sup>302</sup> Kukreja, *Military Intervention in Pakistan A Case Study of Pakistan*, 76.

put army into a commanding position in the corridors of power.<sup>303</sup> This phenomenon, also known as the 'India syndrome', continued to operate for half a century after Partition. It has been pointed out that threat perceptions vis-à-vis India produced two major schools of thought among the elite: one conservative, which looked at India as a potentially hegemonic power in the region; the other ultraconservative, which saw India seeking to destroy Pakistan at the first opportunity.<sup>304</sup> In addition to the internal crisis, the Pakistani political leaders and the elites alike perceived a threat from India. This insecurity, combined with the Kashmir dispute, brought the military into the political arena almost from the inception of Pakistan. In this India-Pakistan tension, a militarily strong Pakistan was considered imperative. This encouraged the military elites to participate in the political arena. Both Jinnah and Liaquat were conscious of the weakness of Pakistan's military strength vis-à-vis India. The Kashmir War (1948) and cease-fire ensured that in Pakistani politics the military elites would not be staying out of Pakistani politics for too long.

The administrative and political weaknesses of the country and the high ambitions of the army's top brass introduced the military factor into its national politics at an early stage of its life. The country was caught in a vicious circle in which political instability created opportunities for military interference. The egocentric commanders intervened to preserve the unity of the motherland. In a society in which individuals overshadowed institutions and a democratic political system was preached but not practiced, the fibre of national unity remained weak and under stress.<sup>305</sup>

The civilian government relied on the Army for the restoration of their authority in

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<sup>303</sup> Veena Kukreja, and M.P.Singh,ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 196.

<sup>304</sup> Ibid.

<sup>305</sup> Khalid Mahmud Arif, *Working with Zia Pakistan's Power Politics 1977-1988*, (Karachi: Oxford University Press, 1995), 230.

situations of law and order and to cope with natural calamities. These operations helped to build the image of the military and exposed the weakness of the political leaders. These 'aids to civilian authorities' operations enabled the senior commanders to get firsthand knowledge of the troubled political situation and provided them with experience of handling civilian affairs. This also created the impression at a popular level that the military could salvage any situation when the civil governments failed and that the latter were able to survive largely because the military came to the rescue in difficult situations.

The military take overs and the imposition of martial laws in October 1958, March 1969, July 1977 and October 1999 were preceded by law and order situations and serious legitimacy crises for the then existing governments. Many sections of public opinion looked towards the military to rescue the country from a difficult and troubled situation. Ayub succeeded in seizing power because he had the support of the military and could control the actions of Mirza, who abrogated the constitution of 1956 and ushered in Martial Law in Pakistan. There is evidence to suggest that "a broad tactical outline" to impose Martial Law in the country was being prepared and that it received the final approval of General Ayub on September 20, 1958.<sup>306</sup> Later, even when Iskander Mirza was still president, General Ayub disclosed that it was at his initiative that the president imposed martial law. "I said to the President: 'Are you going to act or are you not going to act? It is your responsibility to bring about change if you do not, which heaven forbid, we shall force a change.'<sup>307</sup>

Therefore, the military faced no problem in displacing a political government and justifying its assumption of power. The generals could point out to the political chaos,

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<sup>306</sup> Muqem Khan, *"The Story of the Pakistan Army."* Karachi: Oxford University Press, (1963): 23

<sup>307</sup> Sayeed, *"Politics in Pakistan the Nature and Direction of Change."* New York: Praeger Publishers, (1980), 87.

maladministration and corruption under the ousted regime.<sup>308</sup> Like many a Third World country, Pakistan inherited a fragile and volatile political system. A distinctive characteristic of these countries has been that political leadership had no experience in self-government. In most cases the political leadership came from the feudal base. Such leadership had her vested interests and could not translate the newly won national freedoms into vibrant and dynamic democracy. In Pakistan's peculiar setting, after the sudden demise of the father of the nation, political leadership utterly failed to meet any of the challenges it faced. Political wrangling among the freewheeling and power hungry politicians during the first decade of Pakistan's existence created a dismal situation in the country. The political leadership lost its prestige. This created a political void in the country and the ambitious military leadership stepped into politics to fill the gap.

## **2.9 Homogeneity of the Pakistan Army**

The military's strength in Pakistan is also a result of its strong ethnic and regional cohesion. The Punjab provides the majority of officers, followed by the North West Frontier Province and Tribal Areas. The Army officer cadre and other ranks are predominantly Punjabis and Pakhtuns.<sup>309</sup> The officers of these two ethnic groups have not only developed strong mutual ties but have also established links with the civilian bureaucratic elite, most of whom have a similar ethnic background. In fact, only three Army Chiefs in Pakistan's history came from outside of the Punjab and NWFP. These were General Mohammad Musa (COAS, 1958-66; from Balochistan, but not a Baloch), General Mirza Aslam Beg (COAS 1988-1989; an Urdu-speaking refugee

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<sup>308</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 79

<sup>309</sup> Stipen P. Cohen, *The Pakistan Army*, (California: University of California Press; First Edition . 1984), 89.

from U.P., India, settled in Karachi, Sindh), and General Musharraf (COAS, 1998-2007; an Urdu-speaking refugee from Delhi, initially settled in Karachi). The Punjabi-Pakhtun composition of the Army has been a major source of grievance for Sindhis and the Baloch, who are underrepresented in the Army. This ethnic imbalance has enhanced the military's efficacy in politics.<sup>310</sup>

A theory of military intervention maintains that this has been a cover for continued Punjabi domination over the rest of Pakistan. This view is strongly held by politicians, intellectuals, and journalists, in Sindh, and in Balochistan. Not only are Sindhis and Baluchis underrepresented in both the officer corps and the ranks, but there are important differences in regional styles. Historically considered, tensions have existed between the Punjab and these other areas. Then, too, there may be strategic considerations that inadvertently reinforce the impression of Punjabi dominance. Thus, the relative homogeneity of the Pakistani Army, dominated by Punjabis and Pakhtuns, facilitated its direct and indirect participation in the body politic of the country.

## **2.10 Absence of Land Reforms**

Large landholdings or feudalism are medieval hangovers and inherently opposed to democracy. Landlordism and democracy cannot go together hand in hand because they are the antithesis of each other. Landlords are a privileged class, with vested interests to serve through politics and are status quo oriented. They are averse to change. Democracy exists for the welfare of all without discrimination. This is a paradox in the sense that both cannot coexist under one political system. Europe and North America abolished large landholdings to allow democracy. India followed suit

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<sup>310</sup> Rizvi, *The Military: Role Enhancement and the Political Process* in Abbas Rashid, ed. *Pakistan: Perspectives on State and Society*, (Lahore: Sang-e-Mile, 2004), 98.

in the first decade of her independence. Neither Ayub Khan nor Bhutto nor any other ruler in Pakistan was earnest in the abolition of huge landholdings, as landlords are the most powerful indigenous class in Pakistan. Electoral politics being highly biased towards rural areas, landlords predominate in the political landscape of Pakistan. The bureaucracy and the army also mainly come from that class. By virtue of that class status of bureaucrats and military officers, the big landlord lobby is directly and deeply entrenched in the Pakistani state.<sup>311</sup>

Politically, landlords are the most effectively organized class in the country: unlike the subordinate classes, landlord-led factions dominate the rural vote.<sup>312</sup> Democratic norms and institutions have failed to compete with more powerful traditional forces that are highly resistant to change.<sup>313</sup> In the absence of land reforms no truly national and educated middle class emerged which could play a positive role in the affairs of the country. Consequently, Pakistan remained hijacked politically by big landlords of Sindh, Balochistan and Southern Punjab. At the top emerged a 'civil-military-political' oligarchy always looking for backdoor opportunities to rule the country.

## **2.11 Absence of Independent Election's Commission**

Another factor which facilitated the army's rise to power in Pakistan was that the country had no democratic elections for eleven years after Independence, and democratic values had scarcely struck roots.<sup>314</sup> An independent and powerful elections commission is the guarantor of free, fair and multi-party based elections. Taking only two examples from the democratic list of the world, America and India

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<sup>311</sup> Sumita Kumar, *The Army in the Power Structure in Pakistan in Behera*, (New Delhi: Knowledge World, 2004), 49.

<sup>312</sup> *Ibid*, 26.

<sup>313</sup> Pamela Constable, "Pakistan's Predicament," *Journal of Democracy* 12, No.1 (September 2001): 188.

<sup>314</sup> Veena Kukreja, and M.P.Singh,ed, *Pakistan Democracy, Development and Security Issues* (New Delhi: Sage Publications India Pvt.Ltd, 2005), 156.

are the references in point. The elections commissions in these two countries are very powerful and prevent any sort of rigging, whether pre-poll or otherwise during elections by the contemporary executive (ruling party) or anyone else. The elections commission in Pakistan has always been the favorite of the ruling party. Unlike India, both pre-poll and during the polling day rigging more or less with certain exceptions have become a permanent feature of Pakistan's politics. The national elections of 1977, 1990, 1993 and 1997 are cases in reference. The Elections Commission, usually under influence of the ruling party, has never played the democratic role assigned to it. Soon after the result has been announced, post-elections blame games begin, culminating in political wrangling between the mainstream political parties and sometimes degenerating into national crises leading to martial law. The military coups of 1958 and 1977 are cases in reference. As Veena Kukreja observes: "In Pakistan, the vitiation of the electoral process led to the continuous narrowing and increasing unrepresentativeness and unresponsiveness of a self-perpetuating political elite that so irretrievably discredited the parliamentary structure and process that it got brushed aside by the military elite by a decade after its birth."<sup>315</sup>

## **2.12 International Factor**

The post-World War II world order was known for its rigid bipolarity. The whole world was more or less divided into two hostile blocs, the capitalist bloc led by the U.S. and Communist bloc led by USSR.<sup>316</sup> These Cold War years were characterized by ideological military and political confrontations between these two powerful blocs and were locked in a struggle for dominance in world politics.

Both blocks were looking for allies worldwide. America invited India in the early

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<sup>315</sup> *Ibid*, p. 531.

<sup>316</sup> John Spanier and Steven W. Hook, eds. *American Foreign Policy since World War II* (Washington, D.C. Congressional Quarterly Inc, 1995), 102.

1950s to become a part of U.S. sponsored policy of containment against Communist block. But Nehru refused to identify India with the 'Western World and toed the path of neutrality in the East-West confrontation. Pakistan welcomed the U.S. move and happily became a part of U.S. sponsored military pacts-SEATO and CENTO respectively.<sup>317</sup> The Pakistani Army was at the center of this move. For the U.S. it was easy to deal with military leadership than political elite. America extended her tacit support to the military intervention into politics in Pakistan in 1950s. Whereas Pakistan's real concern was her security vis-à-vis India. The nature of international politics during the Cold War years was a major factor of the military interventions in Pakistani politics.

As a result, America's patronage of Pakistan's military rulers contributed to the inability of democracy to take root in the country. In the face of Indian hostility, Pakistan thought it would be best to meet security needs by forming an alliance with America and participating in U.S led Western treaties (SEATO and CENTO) in the 1950s. Despite all its talk of democracy, the U.S. finds its own interests are better served when the military has a very prominent role in Pakistan's national matters. This is because the U.S. finds it easy to deal with an unelected dictator rather than an elected political leadership that represents the whole nation. The history of external powers' interest and intervention in Pakistan's internal matters is long and sad.

The U.S. patronized General Ayub Khan so that it would have an ally in the region. It wanted to check the spread of communism, of which Soviet Russia and China were the two main protagonists. The U.S. fully backed General Zia-ul-Haq with respect to the Soviet invasion of Afghanistan and Pakistan's support to the Afghan resistance.

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<sup>317</sup> *Ibid*

This was the U.S. strategy even during the General Musharraf regime. Declaring its attack on Afghanistan in October 2001 as a “war against terrorism,” the U.S. enlisted General Musharraf’s support as a “close ally” in this war. Before this, the General did not enjoy favor from the U.S. The perception in Pakistan was that as long as the USA needed General Musharraf, it would be continued to support him regardless of how that affects democracy in Pakistan.

## CHAPTER- 3

### MUSHARRAF'S MARTIAL LAW THE ROLE OF EXECUTIVE

#### 3.1 Introduction

In Pakistan, the military has had direct rule over the country for significant periods, but it has also played the role of a guardian during civilian eras, except for a few exceptions. Since the inception of Pakistan, the military became a strong institution due to the perceived threats to the new country, leading to heavy investment in defense at the expense of other institutions. Military commanders held significant power in governing Pakistan, with General Ayub Khan becoming a formal partner in the power corridors in 1954 and later imposing Martial Law in 1958<sup>318</sup>.

This pattern of military takeovers was repeated in 1969, 1977, and 1999. The involvement of the military in political affairs was also influenced by support from world powers, particularly the United States, despite their claims of supporting democracy<sup>319</sup>. Weak civilian institutions, incompetent and corrupt political leadership, as well as the lack of political awareness and low literacy rates among the population, further contributed to the military's involvement in politics. Civil society and public mobilization elements remained weak due to these factors. This state of affairs continues to have an impact in present times.

The military in Pakistan has developed its corporate interests, leading to the necessity of maintaining its involvement in the political system to safeguard these interests.

This reality is highlighted by Ayesha Siddiqa in her book "Military Inc: Inside

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<sup>318</sup> Ahmad, I. *Pakistan the Garrison State: Origins, Evolution, Consequences*, (Karachi: Oxford University Press, 2013), 66-67.

<sup>319</sup> Dahl, R. A. *Polyarchy: Participation and Opposition*, (New York: Yale University Press, (1973), 290.

Pakistan's Military Economy<sup>320</sup>." Given these reasons for direct military intervention and the establishment of military rule, it becomes unlikely that complete separation of the military from the political system can be expected, even if it adopts a civilian façade<sup>321</sup>.

In 1999, Nawaz Sharif's second run as the Prime Minister came to an end through a bloodless coup. Pakistan's Army Chief of Staff General Musharraf came to power and became the President of Pakistan. His rule started in 1999 and ended in 2008. Almost ten years of military rule made it very difficult for Pakistan to develop the political and economic environment that enables democracy to take roots within a country. Apart from that, the international relations that Pakistan developed with the United States, during the aftermath of 9/11 attacks, increased the military's power and role like never before within Pakistan.

As discussed in the preceding chapter on Zulfikar Ali Bhutto, Benazir Bhutto and Nawaz Sharif, factors such as struggle to diminish military power, lack of ability to create political and economic stability as well as international interference, allowed the military to legitimize their existence not only in politics but also in the decision-making process. This chapter also focuses on discussing how the military has adopted a new way of using their power to influence politics behind the curtains. The Rise and the Fall General Musharraf's military rule from 1999-2008 can be described as a "brand of lifestyle-liberalism mixed with a different brand of dictatorial politics."<sup>322</sup> It was also "unfashionable" and looked down upon by other states in the international

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<sup>320</sup> Khokhar, N. I. "Civil military relations in Pakistan: Musharraf era (1999–2003)" Doctoral dissertation. Islamabad, Pakistan: National Defence University, (2016): 68.

<sup>321</sup> Rahman, Z. S. "Rethinking Civil-Military Relations in a Pakistan," *Journal of Socialomics* 8, No. 3 (February 2017): 77.

<sup>322</sup> Special Report: The military strikes back 1999-2008." Dawn. Retrieved from <https://www.dawn.com/news/1372376>. Last accessed 21/02/2022

arena, as the era of military interventions had come to an end, putting General Musharraf's position into trouble.

The United States also placed automatic coup related sanctions on Pakistan under the "section 508 of the annual foreign assistance appropriations act." Unlike his predecessors, General Musharraf did not declare a Martial Law after dismissing the elected government of Nawaz Sharif in 1999. General Musharraf chose the title of Chief Executive instead of being a Martial Law administrator. As a Chief Executive, General Musharraf had a considerable amount of support from westernized elites, radical groups<sup>323</sup> of civil society and NGOs as well as from new Prime Minister M.Z. Jamali who was elected in an elections controlled by military.

All these factors enabled General Musharraf to create a government consisting of a carefully selected political elite and a group of bureaucrats and technocrats. Since the judiciary has the history of endorsing and working with military rules, the higher judiciary gave General Musharraf "three years after his coup to hold elections."<sup>324</sup> In 2002, General Musharraf fulfilled the promise and held elections by which "pro-military alliance won a plurality of seats, while a coalition of Islamist parties made a surprisingly strong showing." As a response to the elections, 18 political parties of Pakistan's formed an Alliance for Restoration of Democracy (ARD)<sup>325</sup> but General Musharraf was able to neutralize the effectiveness of this alliance through court's verdict in his favor.

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<sup>323</sup> Radical groups are organizations or movements characterized by their advocacy for extreme and revolutionary political, social, or religious ideologies. These groups often challenge established norms, institutions, and systems in their pursuit of rapid and fundamental change. Radicalism can manifest in various forms, such as political extremism, religious fundamentalism, or social revolution.

<sup>324</sup> Ibid.

<sup>325</sup> The ARD (Alliance for the Restoration of Democracy) was a political alliance formed in Pakistan in the early 2000s. The ARD aimed to challenge the military regime of General Pervez Musharraf and restore democratic governance in the country.

In the same year, General Musharraf also made changes to the Constitution to strengthen his position by announcing himself the Chief of Army and the President of Pakistan simultaneously. In 2003, General Musharraf created an agreement with Islamic opposition parties, bringing the constitutional changes in front of the Parliament and assuring that General Musharraf will resign from his military rank or position in 2005. In 2004, the government created the National Security Council (NSC) that legitimized the military's role and enabled it to supervise the civilian cabinet. The aim of this Council was to institutionalize the governance role of the army. Apart from this change, General Musharraf also bend the rules and bring his close ally, Finance Minister Shaukat Aziz, to the position of Prime Minister. This particular action marginalized opposition parties and signaled that General Musharraf is not complied to follow the rules as agreed upon.<sup>326</sup>

The incident of 9/11, 2001 and General Musharraf's Secure dominance like the Soviet invasion of Afghanistan brought profits for the Zia ul Haq administration, the 9/11 attacks in 2001, saved the General Musharraf administration from the downfall in the era of unwanted coup. When General Musharraf came to power, the United States placed a sanction that stopped its financial assistance to Pakistan; however, after 9/11 the United States considered Pakistan as a vital ally in the international anti-terrorism coalition and maintained that "Musharraf's government is the best hope for stability in Pakistan and Afghanistan." Moreover, the Congress removed restrictions and allowed large scale United States financial aid to Pakistan. According to the 9/11 Commission Report, "the Bush Administration also refrained from expressing any strong public criticisms of Pakistan's internal practices," yet argued that it is necessary to strengthen civilian political institutions. Due to this alliance with the United States,

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<sup>326</sup> Sehti. Najam. "What the Country Needs" Friday Times Lahore, (2003): 20.

General Musharraf became a powerful leader whose military dictatorship was legitimized because of the “continuous waivers of coup related aid restrictions,” hindering the process of democratization in Pakistan. Even if the democratic political institutions were strengthened, Pakistan’s political parties and civil society became destabilized and weak as military influence became profound.

According to Pakistani Political Analyst Najam Sethi, “Musharraf’s major policy shifts after 9/11 have come through compulsion by external pressure or events and that, while the direction of Pakistan’s policy change has been appropriate, the momentum of change is too slow and awkward and unsure to constitute a critical and irreversible mass.” This support from the United States, made General Musharraf powerful, but he was a marginal satisfier” that did only minimum of what was expected of him. Therefore, many political analysts and correspondents claimed that it is essential that the “country’s secular political parties”<sup>327</sup> be allowed to emerge and function into the system so that the country can become stabilized and endure democracy. Similar to the Zia ul Haq era, foreign aid from Western country’s legitimized military rule and diminished the chances of democratic institutions to take root in Pakistan. Despite the fact, that the United States claims that it would help restore democratic institutions so that Pakistan can thrive economically and become a moderate Muslim State, by negotiating with the military. However, I argue that United States financial assistance enabled it to monitor political developments by using the military as its implementer and as a result “Pakistan’s fragile democratic institutions continuously remain under threat from the authoritarian influences of the country’s powerful military and quasi-feudal economic structures.”

In Pakistan the judiciary's role has been complex. It has consistently been treated as

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<sup>327</sup> Sehti. Najam. “What the Country Needs” Friday Times Lahore, (2003): 21.

an institution apart from the tainted tussles of politics.<sup>328</sup> On October 12, 1999 Chief of the Army Staff, General Musharraf deposed the Prime Minister, Mian Muhammad Nawaz Sharif. In 2007 judiciary was targeted as Chief Justice Iftikhar Chaudhry was deposed.<sup>329</sup> This was one of the major crises the General Musharraf government faced. At root, it was a crisis of legitimacy of the centralized military regime. "Removing a chief justice by order was unthinkable, even in Pakistan. But Chaudhry's courage was the catalyst. For the first time in Pakistan's history a chief justice stared a general in the eye and did not blink. This gave the people the strength to protest in defense of the law and the most basic tenets of democracy."<sup>330</sup>

### **3.2 Military Disengagement & Assessment of Civilian Control**

The military withdrawal depends on various variables. These variables create different situations in which military regime may return or retain the power or share it with civilians.<sup>331</sup> So the study of military withdrawal from politics is always helpful for the comprehension of nature and degree of civilianization in a specific regime.<sup>332</sup> The main factors involved in the military withdrawal from politics are endogenous and exogenous variables. The endogenous variables relates to organizational structure of military such as its professionalism, expertise, sense of responsibility and cooperate.<sup>333</sup>

The exogenous variables are environmental factors that create withdrawal influencing the military from the outside. These factors exist in domestic, regional or international

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<sup>328</sup> Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, (Cambridge: Cambridge University Press, 1995), 22.

<sup>329</sup> International Crisis Group. "Winding Back Marial Lawin Pakistan" Islamabad/Brussels, (2007)

<sup>330</sup> Graham Usher, "Musharraf's Himalayan Blunder." *Al Ahram Weekly*. <http://Weekly.ahram.org.eg/2007/841/in1.htm>. Accessed August 20, 2021.

<sup>331</sup> Finer, S. *The Man on Horseback: The Role of the Military in Politic*, (New Jersey: Transaction Publishers 2002). 120.

<sup>332</sup> Maniruzzaman, T. *Military Withdrawal from Politics: A Comparative Study*, (Florida: Ballinger Publishing Company 1987), 206

<sup>333</sup> Huntington, S. P. *The soldier and the state: The theory and politics of civil-military relations* (New York: Harvard University Press 1957): 145.

environment.<sup>334</sup> To understand the level of civilianization, it would be necessary to learn the process of decision-making in some areas of the political systems. The decision-making entity which has authority to make policy and to implement, it is defined as a dominating element.<sup>335</sup> Open and inclusive political process for selections of leadership, process of decision-making in public policy, decision making power of peace keeping by deploying the military inside the territory of state, formulation of national defense policy and structure of military organization are the various areas which help to determine the role of controlling authority.<sup>336</sup> By analyzing civilian or military dominance in these areas, each political system can be clearly positioned along the scale continuing from full-fledged civilian rule to military rule.<sup>337</sup>

### **3.3 Validating Military Government**

Immediately, after the military's takeover, Pakistan began to experience the unfolding of a blueprint developed by the earlier military regimes and ratified by the superior courts. As proclamation of emergency was declared; the constitution was put in abeyance, PCO was issued to provide a temporary governing framework, and General Musharraf assumed the office of the Chief Executive. In January 2000, when the Supreme Court entertained the military coup, the judges of the superior courts were compelled to take fresh oath of office pledging to serve under the PCO. Six out of a total of thirteen judges of the Supreme Court refused to take the oath and resigned from the bench including the then Chief Justice Saed-uz-zaman Siddiqui and Justice

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<sup>334</sup> Danopoulos, C. P. *From Military to Civilian Rule in Contemporary Greece*, (New Jersey: Armed Forces & Society 1984), 229.

<sup>335</sup> Aurel Croissant, D. K. *Beyond the fallacy of coup-ism: Conceptualizing civilian control of the military in emerging democracies*, (New York: Taxies Publication, 2010), 408.

<sup>336</sup> Wilkinson, P. *Terrorism versus democracy: The liberal state response*, 2nd edition. (London: Routledge: Taylor and Francis Group, 2006), 285

<sup>337</sup> Aurel Croissant, D. K. *Beyond the fallacy of coup-ism: Conceptualizing civilian control of the military in emerging democracies*, (New York: Taxies Publication, 2010), 342.

Wajih-ud-Din Ahmad, who later contested the presidential elections in 2007.<sup>338</sup>

Pakistan's higher judiciary repeatedly validated military interventions and sanctioned constitutional amendments that have fundamentally altered the legal and political system. Protecting the constitution through the 'doctrine of state necessity', the judiciary has relied on the weak argument that the army's intervention could be justified because of the pressing need for political stability. This doctrine was first developed in justify the extra-constitutional dismissal of the legislature by a titular head of state. Drawing on the precedent of those decisions, the Supreme Court validated General Ayub Khan's 1958 declaration of martial law, General Zia ul Haq's 1977 coup and General Musharraf's 1999 coup. While these Supreme Court judgments gave military regimes the trappings of legality, repeated military interventions have hampered the growth of civilian institutions and moderate political parties and forces.<sup>339</sup>

A reconstituted Supreme Court decided the case of Zafar Ali Shah v General Musharraf (2000) and validated the coup on the grounds of the doctrine of state necessity. The Court granted unlimited powers to the military regime, including the power to amend the constitution. The court, however, suggested the military regime to hold general elections no later than three years from the date of the coup.<sup>340</sup> The Supreme Court in the Zafar Ali Shah case held in part:

That the 1973 constitution still remains the supreme law of the land subject to the condition that certain thereof have been held in abeyance on account of state necessity that the supreme court continue to function under the constitution. The mere fact that

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<sup>338</sup> Richard Blue and Richard Hoffman, *Pakistan Rule of Law Assessment - Final Report, Management Systems International Corporate Offices*, (Washington, Elomanity Press, 2008), 29

<sup>339</sup> International Crisis Group, "Reforming the Judiciary in Pakistan," *Asia Report N°160*, (2008).

<sup>340</sup> Azmat Abbas and Saima Jasam, *A Ray of Hope: The Case of Lawyers' Movement in Pakistan*, (Karachi: Oxford University Press, 2009): 58.

the judges of the superior courts have taken the new oath under the Oath of Office (judges) Order No. 1 of 2000, does not in any manner derogate from this position, as the courts had been originally established under the 1973 constitution, and have continued in their functions in spite of the proclamation of emergency and PCO No. 1 of 1999 and other legislative instructions issued by the chief executive from time to time.<sup>341</sup>

### **3.4 US and Others' Reaction to General Musharraf's Policies**

Pakistan's political circumstances were in chaos and assembled with uncertain matters. The issues were not properly addressed. The institutions were treated on basis of personal gaining power instead of strengthening them. Apart from this, the growing Islamic militancy had paralyzed the security system within state. It was constant threat to Pakistan's image as peaceful state internally and externally. The judicial crisis disturbed respects for institutions.<sup>342</sup>

In these circumstances, it was growing political rumor that Martial Law would be imposed by General Musharraf through an emergency proclamation. When Condoleezza Rice was asked about the possibility of Martial Law regime in future, she said "it was quite obvious that Washington would not be supportive of extra-constitutional means". In addition, she expressed possible reaction of Washington likely to be, "Pakistan needs to be preparing for a hold free and fair elections".<sup>343</sup>

The next day, the Commander of U.S. Central Command, Adam William Fallon

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<sup>341</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2010), 461-62.

<sup>342</sup> Admiral (2007, November 6). U.S. Warned Musharraf Against Emergency Declaration. *CNN.com*

<sup>343</sup> Jane, P. (2007, November 11). Bhutto's Persona Raises Distrust. As Well As Hope. *New York Times*

met with General Musharraf in Islamabad and warned against declaring state of emergency and that would “Pakistan-US Relationship at risk”<sup>344</sup>. On the other hand, it was another statement from Washington that in case of imposing emergency, General Musharraf government will be secured due to increasing tendency of Islamic militancy in Pakistan. Some pro-Musharraf friends in Washington argued that General Musharraf should be given chance because as ‘sole commitment’ against war on terrorism of Islamabad with Washington. General Musharraf did efforts to convince that security threats from terrorism and extremism had paralyzed state, so that he should be given open choice. Few political observers argued that due to deal between General Musharraf-Benazir, should be considered a green signal for General Musharraf. whereas, Washington Administration argued that it supported moderate forces in Pakistan as matter of reconciliation in positive direction.<sup>345</sup>

As far as issue of imposing Emergency in Pakistan, by General Musharraf is concerned, Washington would not support it because elections would ultimate future way for democratic institutionalization process. Finally, General Musharraf imposed emergency and it was suspension of fundamental laws again. General Musharraf advocated emergency by arguing that it is the need of time and he had to take up this action due to threats from the extremist forces, facing to Pakistan continuously. This way of thinking, General Musharraf paralyzed the state’s institutions. The mass movement was launched against emergency. Throughout

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<sup>344</sup> Zahoor Ahmed and Manzoor Afridi, “Controlled Democracy and Political Opposition in Pakistan: A Case Study of Musharraf Era” Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, 2014.

<sup>345</sup> Simon, G. (2007, November 4). Pakistan’s Media Slams Musharraf’s ‘Second Coup. *Reuters* Unofficial speech transcript at [<http://www.indybay.org/newsitems/2007/11/05/18458318.php>]

country, massive public protests were organized by different organizations.<sup>346</sup>

General Musharraf government used state's power to curb the mass movement, cracked down and finally events reflected as extreme form of dictatorship. Washington expressed 'grave concern' at the crackdown, calling such "extreme and unreasonable measures," contradictory to the goal of a fully democratic Pakistan. General Musharraf amended 1952 Army Act, allowed military trials of civilians, calling human rights group and potentially providing a retroactive sanctioning of 'disappearances' traced to country's security services and criticized by the Supreme Court.

Washington called the emergency of Pakistan as serious setback regarding democratization process. International community showed serious consequences.<sup>347</sup> Pakistan's neighbors were not pleased with General Musharraf's act. India stated that internal developments in Pakistan are not hopeful for smooth working relationships. In the difficult times that Pakistan is passing through.<sup>348</sup> In response to prevailing circumstances as to what called unwarranted criticism and excessive reactions from abroad. Commonwealth Ministerial Action Group suspended Pakistan's membership. It issued, "a condemnation of the abrogation of the Pakistani Constitution and threatened Pakistan with suspension from the Commonwealth unless General Musharraf repeals the emergency provisions, retires from the army, releases all political detainees, and removes curbs on media freedom by November 22".

Commonwealth Ministerial Action Group (CMAG) issued a "condemnation of the abrogation of the Pakistani Constitution and threatened Pakistan with suspension

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<sup>346</sup> Jane, P. (2007, November 11). Bhutto's Persona Raises Distrust, As Well As Hope. New York Times

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

from the commonwealth unless General Musharraf repeals the emergency provisions, retires from the army releases all political detainees, and removes curbs on media freedom by November 22. Islamabad expressed “deep disappointment and regret” to the CMAG statement, saying it reflected “ignorance to the ground realities”. On November 22, the CMAG made good on its suspension threat pending restoration of democracy and rule of law there. Islamabad expressed “deep regrets” at the “unreasonable and unjustified” decision, saying it “does not take into account the objective conditions prevailing in Pakistan<sup>349</sup>.” International human rights groups were vociferous in their criticism: New York-based Human Rights Watch decried the “coup against Pakistan’s civil society” and demanded that Pakistan immediately return to constitutional rule and end its crackdown on the judiciary, media, human rights activists, and political opponents. London based Amnesty International warned that the “wholesale abrogation of fundamental human rights protections” represented a “blatant breach of international law” and it also demanded the restoration of human rights and justice.<sup>350</sup>

General The Pakistani media were largely unanimously in their criticism of what was widely seen to be a bald-faced attempt by General Musharraf to maintain his own power in the face of increasing pressures.<sup>351</sup> Many leading U.S. press outlets urged “the Bush Administration to end its reliance on General Musharraf, seeking him as an obstacle both to more effective counter terrorism efforts and to democratization”. On December, 15, President General Musharraf lifted the state

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<sup>349</sup> Zahoor Ahmed and Manzoor Afridi, “Controlled Democracy and Political Opposition in Mediterranean Center of Social and Educational Research Publishing Pakistan: A Case Study of Musharraf Era” Mediterranean Journal of Social Sciences, Rome-Italy, 2014.

<sup>350</sup> Ibid.

<sup>351</sup> Bhutto’s own niece has called the political posturing “sheer pantomime” (Fatima Bhutto, “Aunt Benazir’s False Promises,” *Los Angeles Times* (2006, May 14).

of emergency in what he claimed was a “complete restoration of the constitution”.<sup>352</sup>

In a speech to the Pakistan nation, he again asserted that the emergency was declared as a last resort “against my own will” in order to defeat a “conspiracy” to “derail the democratic process. General Musharraf also took credit for laying “the foundation of real democracy.”<sup>353</sup> Skeptics saw little evidence that the lifting of the emergency would lead to meaningful change, given what they see as repressive media curbs and a stacked judiciary. One senior Pakistani analyst visualized General Musharraf’s move a “public relations exercise”.<sup>354</sup>

### **3.5 Civilianization of Military Rule in Pakistan from 1999 to 2005**

Prime Minister Nawaz Sharif’s sudden attempt of sacking the Army Chief in his absence gave military the opportunity to take over the civilian government on 12 October 1999, without any violent clash.<sup>355</sup> This time, contrary to past interventions, one of the main reasons of the coup, was tussle between the Nawaz Sharif and Army as well as rivalry in power politics between the civil and army leadership.<sup>356</sup> After taking over the charge of Chief Executive of Pakistan, General Musharraf imposed emergency rule under PCO, suspended the Constitution along with elected assemblies on 13 October 1999 (See Appendix-A).<sup>357</sup> In his concise address to the nation on 17 October 1999, he declared future program about restoration of democracy, structure

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<sup>352</sup> Text of Pakistan President’s Speech on Lifting Emergency. *BBC Monitoring South Asia* (2007, November 17). U.S. Trying to Revive Musharraf-Bhutto Deal. *Reuters* <http://web.amnesty.org/library/print/ENGASA330412007> last accessed 23/04/2021

<sup>353</sup> Benazir Terms Pledge ‘Vague, Insufficient’. *The NEWS* (2007, November 13). Bhutto to Musharraf: It’s Time to Quit. *Agence France Presse* (2007, November 14).

<sup>354</sup> Human Rights Watch. <http://hrw.org/english/docs/2007/11/04/pakist17241.htm> (2007, November 3). Indian External Affairs Ministry Press Release(2007, November 17).

<sup>355</sup> Musharraf, P. “Sab se pahle Pakistan.” Lahore: Lahore : Ferozsons (2006),..

<sup>356</sup> Moskalenko, V. B., & Nikolaevich, V. A, *Political History of Pakistan, 1947-2007*.(Karachi: Oxford University Press, 2013), 112.

<sup>357</sup> Mahmood, Z. “Political Turmoil And Military Era of General Musharraf (1988-2007),” *Journal of the Punjab University Historical Society* 13, No.2 (April 2015): 239-251.

of new government, good governance, revival of economy, insuring of accountability, and continuation of foreign policy.

Moreover, he said that Constitution has been suspended temporarily for saving the nation and Military had no intentions to stay any longer than the required necessity to pave the way for a true democracy. In his address, he announced his seven point agenda i.e. rebuilding national confidence and morale; strengthening the federation; removal of inter provincial disharmony and restoration of national cohesion; reviving the economy and restoration of investors' confidence; ensuring law and order and to dispense speedy justice; depoliticizing the state institutions; devolution of power to the grass roots level; and ensuring swift and across the broad accountability.<sup>358</sup>

Immediately after military coup, a negative international reaction came to the military rule. Commonwealth of Nations suspended the membership of Pakistan. General Musharraf was regarded as a 'power usurper' by the world opinion. The USA made the sanctions more strict which were already imposed in May 1998 after nuclear explosion. Thus, he showed his firm resolve 'to pave the way for democracy' as soon as possible. However, that situation changed when General Musharraf became ally of the US after the incident of 9/11 (See Appendix-B).<sup>359</sup> However, when legality of the coup was challenged in the Supreme Court of Pakistan in January 2000, General Musharraf imposed Oath of Office (Judge's) Order to take new oath or quit the post. The majority of the judges took new oath to continue their job; whereas, nineteen judges including six judges of the Supreme Court did not take oath and quitted their offices.<sup>360</sup> Thereafter General Musharraf appointed docile judges who would favor the regime and protect it from any legal challenges in the future. Later output was up to

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<sup>358</sup> Ibid.

<sup>359</sup> Bennett-Jones, O. *Pakistan: Eye of the Storm*, (New Jersey: Yale University Press, 2002), 209.

<sup>360</sup> <sup>360</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 201.

expectations of the government. On 12 May 2000, the Supreme Court through various petitions validated the military takeover on the base of 'Doctrine of State Necessity'.<sup>361</sup>

Though, the Supreme Court justified the coup and gave the power of amendment in Constitution to General Musharraf but it had also fixed the timeframe of three years for accountability and transition to civil government. After the verdict, military regime gained strength and confidence at the expense of independence of judiciary.

General Musharraf issued the Presidents Succession Order 2001 by which he replaced President Muhammad Rafiq Tarar on 20 June 2001. On that occasion it was told that General Musharraf was going to India for peace talks in July 2001. So he assumed the office of President for doing negotiation from a better position.<sup>362</sup> General Musharraf possessed Army's traditional hatred for political leadership. He was good at public relations skills but needed political skills to cover the lack of legitimacy. Being trained in an authoritarian environment of the army's institute despite the demonstration of liberalism, he considered himself a final authority. Consequently, he made many mistakes as taking actions on his own in the situations where vast consultation was required.<sup>363</sup>

### **3.6 Devolution of Powers Plan**

To decentralize the system and devolve the powers, General Musharraf constituted a National Reconstruction Bureau (NRB) under the chairmanship of General Tanvir Naqvi. The NRB carved out a 'Devolution Plan' under which the local governments were elected on non-party basis from 30th December 2000 to 5th July 2001 and made

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<sup>361</sup> Syed Zafer Ali Shah V. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869 (Supreme Court of Pakistan 04 27, 2002).

<sup>362</sup> Ibid.

<sup>363</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 148.

finally functional on 14th August 2001.<sup>364</sup> According to the Local Government Ordinance 2001, the local bodies were comprised on; District Governments; Tehsil/Town Governments and Union council Governments. This pattern of local government was present in all the provinces, except the cantonment areas which remained under the control of armed forces. This arrangement was also not implemented in the Federal Administrated Tribal Areas (FATA).<sup>365</sup>

The devolution of powers plan presented mixed receptions from masses and political parties. People had been feeling convenient in settling local issues while political leadership was considering it as systems which marginalize the political parties. The critics also described that local bodies were used as instrument in the referendum 2001 and in general elections 2002 to help wining an officially patronized party.<sup>366</sup>

The new system gave enough powers to elected nazims at the cost of bureaucracy as well as the provincial and national level politicians.

The weakness of the bureaucracy by eliminating the post of deputy commissioner and failure in implementing Police Order 2002 caused further decline in service delivery and governance. This situation decreased ability of good governance. These reforms boosted the politics of identity and further encouraged the patronage as was done in Zia-ul-Haq regime. The politics of thana-katchury stretched to provincial and national level from the local bodies. Local administration was further politicized; resultantly already weak institution became more vulnerable.<sup>367</sup> The subordination of the

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<sup>364</sup> Pervez Musharraf, *Line of Fire*, (Lahore: Feroz & sons, 2006), 65.

<sup>365</sup> Shafqat, S, *New Perspectives on Pakistan: Visions for the Future*, (Karachi: Oxford University Press, 2008), 131

<sup>366</sup> Mezerra, M. a. *Devolution row: An assessment of Pakistan's 2001 local governance ordinance*, (Hague: The Netherlands Institute for International Relations, 2010): 54.

<sup>367</sup> <sup>367</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 177.

bureaucracy and abolishment of old magistracy system caused much harm and a gap in working relationship between the bureaucrats and elected representatives.<sup>368</sup>

### **3.7 Mechanism of Accountability**

The other step was taken towards accountability and transparency by restructuring the already working Ehtesab Commission into National Accountability Bureau (NAB) (See Appendix-C). The NAB under the chairmanship of General Amjad was tasked to investigate the corrupt practices of politicians, bureaucrats and businessmen. After some time, however, General Amjad was asked to alleviate the concerns of the finance department, Civil service and other entities. When General Amjad was not in compromising mode, he was replaced with General Shahid Aziz in October 2005, with the advice of sparing a few politicians up to next election. Once again NAB took high profile cases such as case of sugar price, oil price and their losses to exchequer. Those cases, later on, were dropped on the direction of General Musharraf. So, he had to resign on such interferences.<sup>369</sup> The files of known corrupt politicians were closed who shifted their loyalties to pro-government parties. The politicians belonging to opposition were got involved in numerous cases. This led to accusations that the NAB became a partisan body.<sup>370</sup> The NAB Ordinance was also challenged before the Supreme Court which held that it was not ultra vires to the Constitution. However, the government was directed to make some amendments in the NAB Ordinance according to the directions contained in the judgment.<sup>371</sup>

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<sup>368</sup> Ibid.

<sup>369</sup> Shahid Aziz, *Yeh Khamoshi Kahan Tak*, (Islamabad: Seven Springs Publisher, 2012), 84.

<sup>370</sup> Aslam Siddiq, *Military Inc: Incide Pakistan's Military Economy*, (Karachi: Oxford University Press, 2007), 187.

<sup>371</sup> Khan Asfandiyar Wali "Petitioners versus Federation of Pakistan," PLD 2001 Supreme Court 607. Supreme Court 04 24, (2001).

### **3.8 The Event of 9/11 and its Implications**

As the events of 11<sup>th</sup> September 2001 in the USA changed the political scenario of the world, it left deep impacts on the policies of Pakistan and the region. Pakistan at once became ally of the US against terrorism, quitting the support of Taliban government<sup>372</sup>. On changing its strategy, the US sported stability of Pakistan and strengthened the position of General Musharraf. The US also provided huge economic resources and ignored Pakistan's nuclear program. Since, Pakistan was without a constitutionally legitimate government. The entire responsibility of the decision had fallen on General Musharraf alone. So he lost his determination to oppose the Americans and accepted all their demands<sup>373</sup>. So, he agreed on the reversal of Afghan policy, sharing of intelligence, and on providing airbases for America military operation as well as logistic support. On the other hand those events provided General Musharraf an opportunity to extend his stay in power with the financial and political support of the US government. However, his unlimited stay was at the cost of sovereignty and the constitutional government. The subsequent steps taken by him towards civilianization can be explained in that perspective.

### **3.9 Presidential Referendum 2002**

The General Musharraf presidential referendum in 2002 was a controversial event that aimed to extend General Musharraf's tenure as the President of Pakistan. It was a significant milestone in his political career and marked a key moment in the country's history under military rule. General Musharraf came to power through a military coup in 1999, overthrowing the elected government of Prime Minister Nawaz Sharif.

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<sup>372</sup> Syed Sami Ahmad, *History of Pakistan and the role of Army* (Karachi: Oxford University Press, 2007), 19.

<sup>373</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), p.480

General Musharraf established a military-backed government and assumed the role of Chief Executive, later becoming the President of Pakistan<sup>374</sup>. The Referendum: In April 2002, General Musharraf announced a national referendum to seek public approval for his presidency and to legitimize his rule. The referendum was held under the framework of the Legal Framework Order (LFO) implemented by General Musharraf, which amended the constitution to consolidate his power<sup>375</sup>.

The referendum required voters to cast a "Yes" or "No" vote in response to the question of whether they had confidence in General Musharraf's presidency. The voting process involved a simple majority, with a "Yes" vote indicating support for General Musharraf to continue as President. The referendum was held to validate the amendments introduced by the LFO. These amendments included extending the tenure of the President, granting him the power to dissolve the National Assembly, and establishing the National Security Council (NSC) as a key decision-making body. Controversies and Criticism: The referendum faced criticism and controversy from various quarters. Opposition political parties argued that the referendum lacked transparency and was an attempt by General Musharraf to legitimize his rule without a fair democratic process. There were allegations of voter manipulation, coercion, and irregularities in the conduct of the referendum<sup>376</sup>.

Results and Implications: The official results of the referendum indicated overwhelming support for General Musharraf, with a reported voter turnout of around 70%. The majority of voters endorsed General Musharraf's presidency by casting "Yes" votes. However, the credibility of the results was widely questioned due to the

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<sup>374</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 197.

<sup>375</sup> *Ibid.*

<sup>376</sup> Ian Talbot, *Pakistan a Modern History, Solon among the Subalterns, Economic Development*, (London and India: Palgrave Macmillan Publishers Revised Edition (2009), 178.

aforementioned concerns regarding the fairness of the referendum process. The referendum allowed General Musharraf to extend his term as President and solidify his grip on power. It provided him with a veneer of democratic legitimacy, despite the criticism surrounding the process<sup>377</sup>.

However, the General Musharraf presidency continued to face challenges, including opposition from political parties, civil society, and human rights organizations. The referendum and subsequent events marked a period of transition and further consolidation of General Musharraf's rule, which would eventually face significant opposition and lead to further political developments in Pakistan<sup>378</sup>.

The General Musharraf presidential referendum in 2002 was a significant event in Pakistan's political history, aiming to secure public approval for General Musharraf's presidency and extend his rule. It was conducted amidst controversies and criticism, raising questions about its fairness and transparency. The referendum allowed General Musharraf to continue as President and further solidify his authority, albeit with ongoing opposition and challenges during his tenure.

### **3.10 General Elections of 2002 and its Aftermath**

After promulgation of LFO, General Musharraf declared that general elections would be held by the end of 2002 according to the time frame given by the Supreme Court. Moreover, he opted to form a loyalist party. That task was entrusted to Chaudhary brothers. They worked with great devotion and political skill to establish such a party.<sup>379</sup> Many people joined the party due to support and patronage of Tariq Aziz,

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<sup>377</sup> Imtiaz Ahmad, *Pakistan the Garrison State: Origins, Evolution, and Consequences 1947-2011*, (Karachi: Oxford University Press, 2013), 56.

<sup>378</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 491.

<sup>379</sup> Pervez Musharraf, *Line of Fire*, (Lahore: Feroz & sons, 2006), 82.

political Secretary of General Musharraf. Political wings of agencies and NAB also played an important role.

The party was finally announced on 20th August 2002. Then, Political Parties Amendment Act was issued on 28th June 2002 to enforce new eligibility conditions for the candidates as well as parties. Despite lifting ban on political activities, the government severely restricted the public processions, rallies and big gatherings without prior approval.<sup>380</sup> The two main parties, PML (N) and PPP had to contest elections without their leaders. Because Nawaz Sharif was in exile after his conviction in hijacking case and Benazir Bhutto was living in self-imposed exile since 1999, to avoid court trail on accusations of corruption.<sup>381</sup>

The general elections were held on 10th October 2002. All the political parties decided to participate in the election, competing on 272 general seats of National Assembly of Pakistan. The PML (Q) appeared as largest party winning 78 seats which later on increased to 118 including new comers and reserved seats. The PPP got total 87 seats and MMA captured total 60 seats against the usual results of previous elections, while the performance of PML (N) remained poor. The overall turnover of the voters was 40.69 percent.<sup>382</sup> The above mentioned position of political parties in the national assembly was repeated somehow in the provincial assemblies. It is worth noticing that influential independent candidate also appeared successful in the national and each provincial assembly which later on switched over to the expected ruling parties.

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<sup>380</sup> Group, C. O. "*Pakistan National and Provincial Assembly Elections*" London: (2002) [www.thecommonwealth.org/publications](http://www.thecommonwealth.org/publications).

<sup>381</sup> Hussain Haqqani, *Pakistan: Between Mosque And Military*, (Washington DC: Carnegie Endowment for International Peace, 2005), 121.

<sup>382</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 211.

The PML (Q) was also a largest party in Senate and was able to elect its head, Mohammad Mian Somro as the chairman of the house. In that elections though the PML (Q) was a larger party in National Assembly of Pakistan yet it could not get a clear majority to form the government. So it firstly tried itself to made coalition with PPP which stressed to drop the charges of corruption against Benazir Bhutto and to release Asif Zardari, failing which it tried to make a deal with MMA but could not succeed because demands of both parties were unacceptable to the military ruler.<sup>383</sup> Then a group of members of PPP got agreed to make a forward block namely PPP-Patriot through political maneuvering. The group joined the government with PML (Q) after getting six ministers along with removal off the NAB cases.

To facilitate such horse trading, the Article 63(A) which prevented floor crossing was suspended. After required floor-crossing, the Article 63(A) was restored on 31st December 2002 to ensure that those parliamentarians might not return back who had crossed over to support PML (Q). After attaining the majority, Zufarullah Jamali was elected as Prime Minister on 24th November 2002 with 172 votes in a house of 342. Mr. Jamali remained a non-assertive Prime Minister. "He went to the extent of calling General Musharraf his boss;".<sup>384</sup> Thus, even after the formation of civilian government, General Musharraf was at well-dominating position of President in the new political structure. He had a Prime Minister, willing to work on his instructions, the parliamentarians, following his program, and a docile political party, being controlled quit easily.<sup>385</sup> The civil government apparently started working with the

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<sup>383</sup> El-Khawas, M. A. "Musharraf and Pakistan: Democracy Postponed," *Mediterranean Quarterly* 20, No. 1 (2009):94-118.

<sup>384</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 163.

<sup>385</sup> Muhammad Waseem, "Pakistan: Beyond Elections," *South Asian Journal* 176, No. 38 (August 2004): 390-405.

establishment of legislative and executive institutions. But the real power was still rested in the hands of military, headed by General Musharraf.

The military dominance in the political set up was intact because the PML (Q) had thin majority in National Assembly, and was in need of the support of military ruler, without which allied parties might abandon the coalition at any point.<sup>386</sup> That assumption came true during several events, such as a dispute appeared among the allied parties on 16th November 2002 and 12th March 2003 at the occasion of oath taking ceremonies of National Assembly, and Senate respectively.

### **3.11 Lack of Social Reforms under in General Musharraf Period**

General Musharraf Unlike the preceding military coups, General Musharraf faced challenges from ethnic groups within Pakistan. In 2005, there was an increased unrest between the military and tribal groups of Baluchistan due to the rape of women by the army in the regions. The Baluchistan Liberation Army (BLA) attacked various infrastructures, projects and staffs and the local tribal leaders demanded for political autonomy as well as control over the regions natural resources<sup>387</sup>. However, General Musharraf objected to the political autonomy of Baluchi people and engaged in a counter-insurgency paramilitary operation leading to an increase in human rights violations and humanitarian crisis (See Appendix-E). In addition to tension with tribal groups, M General usharraf also started to lose the support of NGOs, trade unions and human rights activists. Women and minority groups lacked equality within the political system and women had difficulty of voting as well as not being granted to run for office due to oppression from social and religious conservatives. The tide of

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<sup>386</sup> Moskalenko, V. B., & Nikolaevich, V. A. *Political History of Pakistan, 1947-2007*, (Karachi: Oxford University Press, 2013), 29.

<sup>387</sup> "Waking up to the war in Balochistan". BBC News. 29 February 2012. The civil war has left thousands dead – including non-Baloch settlers and has gone on for the past nine years, but it hardly made the news in Pakistan, let alone abroad.

shift towards democracy in the international realm took its toll in Pakistan, as small institutions started to address numerous human rights violations such as “forced disappearances,” torture and discrimination against women and religious minorities. NGOs were allowed to publish critical material and trade unions were allowed to exist but not to engage in strikes or collective bargaining. As the international politics changed so did domestic politics within Pakistan that posed a threat to General Musharraf’s rule which led to his dismissal in 2008.

Apart from human rights violations of NGOs and activists, the military placed censorship on most material published by the media. If the media broadcast anything that questioned the authority of armed forces, then the media outlets and journalists were harassed by the military officials, suppressed by blasphemy law or shutdown. In 2002, foreign press corps were attacked by angry mob and Indian journalists were not granted visas. In the same year, Wall Street Journal reporter Daniel Pearl was kidnapped and murdered by Islamic fundamentalists.

Apart from Islamic fundamentalists, journalists suffered from physical attacks from hired thugs and police. In 2003, Shaheen Sehbai, an editor, was pressured to resign because he published an article against the intelligence agencies. In 2005, journalists lacked the ability to report the crisis taking place in the tribal areas near the Afghanistan borders as the vehicles of reporters were fired upon killing two and injuring two journalists. The continuous tribal area troubles, human rights violations and the lack of freedom of press decreased the support for General Musharraf’s regime. I argue that these events encouraged these groups to create an alliance that became essential during the Lawyers Movement that brought an end to General Musharraf’s military coup in 2008.

### 3.12 Enlightened Moderation and a Period of Seismic Changes 1999-2008

General Musharraf's rule was another defining period in Pakistan's history. These nine years once again witnessed near unprecedented economic growth much of it owing to economic rewards from Pakistan's participation in the War on Terror to the impact the WoT had on Pakistan's security and peace.<sup>388</sup> It was also under General Musharraf's rule that digital media gained immense traction and growth, a phenomenon that would ironically lead to his downfall. General Musharraf also promulgated the 17th amendment that undid a lot of the democratic gains Pakistan achieved in the thirteenth amendment.<sup>389</sup>

Pakistan's exposure to democracy and to globalization through a vibrant digital media, and the societal changes that emerged out of a rising middle class,<sup>390</sup> however, eventually proved too much for General Musharraf's stranglehold on the political landscape, and led to the lawyer's movement and the opposition to the emergency of 3rd November, 2007 which culminated in General Musharraf giving up power.<sup>391</sup> The rise of a religious middle class also served as the impetus behind Nawaz Sharif's return, and it was his presence and the return of Benazir Bhutto that toppled Pakistan's third military regime.<sup>392</sup> 2018 will mark a decade since Pakistan has had uninterrupted democratic rule. This period has seen tremendous democratic gains such as the passing of the 18th amendment, the passage of the seventh National

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<sup>388</sup> Ibid.

<sup>389</sup> Robert Looney, "Failed Economic Take offs and Terrorism in Pakistan and Budgetary Consequences of Defense Expenditures in Pakistan" (2004), and Shahid Kardar, *Democracy and Development*, July 3, 2001. Available at [www. Dawn.com](http://www.Dawn.com), Pakistan (accessed august 3, 2021).

<sup>390</sup> Ibid.

<sup>391</sup> Iftikhar A. Khan, "Kayani to Stay on as CoAS till 2013," *The Dawn*, July 23, 2010 (accessed October 13, 2021).

<sup>392</sup> Ibid.

Finance Commission (NFC) award, and more recently, the Thirty First Amendment Bill that paves the way for FATA's merger with Khyber Pakhtunkhwa.<sup>393</sup>

This decade, however, has not been bereft of civil-military conflict. In fact, events such as the Dawn Leaks, the multiple military operations during the PPP and the incumbent government's tenures, the 2011 American operation against Osama Bin Laden and the Memogate Scandal that emerged in the aftermath of this operation all damaged the already precarious civil-military paradigm, and led to calls that the country might return to direct military rule.<sup>394</sup> With the end of the incumbent Parliament's tenure on the 31st of May, however, it seems that democracy is finally entrenching itself in Pakistan.<sup>395</sup> All parties seem united on holding elections on the 25th of July, and other state institutions such as the judiciary too seem to be on board with this idea.

### **3.13 Downfall of General Musharraf**

After the Sept. 11 attacks, General Musharraf became a firm ally of the U.S., which channeled billions of dollars to Pakistan in exchange for General Musharraf's support in the war on terrorism. For a while, General Musharraf seemed secure: The economy grew, relations with India improved, Pakistan's opposition parties were in disarray, and General Musharraf's army was able to wield increasing influence over business and government. Then, according to political commentator Rasul Bakhsh Rais, General Musharraf made a critical error. His undoing was his removal of the chief justice in March 2007, Rais says. "Onward, his standing was on shaky grounds, and the power began to slip away from him."

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<sup>393</sup> Ibid.

<sup>394</sup> Shuja Nawaz and Nadia Ghani, *Field Marshal Ayub Khan: A Selections of Talk and Interviews*, (New York: Oxford University Press, 2010), 33.

<sup>395</sup> Ibid

General Musharraf sought to oust Chief Justice Iftikhar Chaudhry because General Musharraf feared Pakistan's Supreme Court would raise legal barriers to his re-election as president. The move backfired lawyers and civil activists took to the streets demanding an independent judiciary, and one crisis followed another: There was public fury after more than 100 people were killed when Pakistani forces stormed the Red Mosque in Islamabad after it was taken over by extremists. Then, in November, General Musharraf declared a state of emergency a six-week crackdown in which thousands of political activists were jailed, the media were gagged, and the general purged Pakistan's supreme court of his enemies. An intense pressure from political parties and lawyers compelled him to resign on 18 August 2008.

## CHAPTER- 4

### GENERAL MUSHARRAF AND THE PARLIAMENT (2002-2007)

#### 4.1 Introduction

Pakistan grew out with the political frustration since independence<sup>396</sup>. Its political history is filled with military and civilian regimes<sup>397</sup>. General Musharraf regime should be divided into two parts e.g. military regime and civilian regime. From 1999 to 2002, General Musharraf enjoyed complete authority alone whereas from 2002 to 2008, he had to accommodate the civilian government. Double standard political regime had been observed during General Musharraf era. National and international political observers calculated his regime in the context of War on Terrorism. Washington had compromised democracy in Pakistan because of concrete steps taken by General Musharraf on War on Terrorism. On political front, he did almost all those things what his predecessors Ayub Khan and Zia-ul-Haq did to extend his power.

At the initial stage, General Musharraf did not touch judiciary and had taken oath under 1973 constitution as Chief Executive. In return, he was given political concession by the judiciary for next three years in keeping with promise to hold elections before expiry of 3 years<sup>398</sup>. Superior Judiciary had continued its practice according to 1973 constitution. Issue of Provincial constitution Order (PCO) was raised in January 2000, when the petitions against General Musharraf were conceptionally acknowledged<sup>399</sup>. Now General Musharraf Administration decided

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<sup>396</sup> Nawaz sharif. "Pakistan's One-Man Calamity". *Washington Post*. (2007).

<sup>397</sup> *Ibid*.

<sup>398</sup> *Ibid*.

<sup>399</sup> Admiral U.S. "Warned Musharraf Against Emergency Declaration". *CNN.com* (2007).

to approach those judges whose voices were favorable. Finally, judiciary was again hijacked and had entertained General Musharraf with oath ceremony under PCO, introduced by military regime. It was not new development in the political spectrum of Pakistan. Later on, General Musharraf implemented accountability, introduced pro-Musharraf political party, friendly opposition and National Security Council to dominate parliament.

With these developments, General Musharraf sidelined moderate and secular minded political parties and put forward MMA in parliament for securing maximum benefits under the shadow of War on Terrorism<sup>400</sup>. General Musharraf launched military operations against Taliban in northern areas and banned religious Jihadi organizations in Punjab and Karachi. These forceful military operations had promoted extremism and severely damaged the entire society.

The observers stated that General Musharraf support on War on Terrorism had shaken Pakistan's political and economic infrastructure. The foreign investors packed luggage and local investors preferred to move across the state. No doubt, Washington financially assisted Pakistan but the losses, faced by the Pakistani society was extremely tough<sup>401</sup>.

With these circumstances, General Musharraf scheduled new elections plan in 2008. This time, the situation was not comfortable for him. He was clearly told that all political parties will take part in election. The political elicits, Benazir Bhutto and Mian Nawaz Sharif signed Charter of Democracy with new political

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<sup>400</sup> Ibid.

<sup>401</sup> Simon, G. Pakistan's Media Slams Musharraf's 'Second Coup. *Reuters* Unofficial speech transcript at [<http://www.indybay.org/newsitems/2007/11/05/18458318.php>]. last accessed 3<sup>rd</sup> august 2012.

ambitions and plans<sup>402</sup>.

It was observed that lesson had been learnt from history and now planned political struggle against General Musharraf regime. In next, Judiciary was not pleased with General Musharraf so that the favorable circumstances were not board. It was the understood reality that General Musharraf King Party will not receive good results in coming election. In the presence of Nawaz Sharif and Benazir Bhutto, Muslim League (Q) was at the lowest ebb. Apart from other social problems, Lal Masjid (Red Mosque) episode and Bughti killing had lemmatized the scope of General Musharraf and Muslim League (Q)<sup>403</sup>.

The following events misplaced the political scene. Inflation, unemployment, extremist forces, distorted security circumstances, energy crisis and sinking economic conditions had paralyzed the Pakistani society. Situation touched dangerous level when Benazir Bhutto was killed<sup>404</sup>. It is recorded statements that General Musharraf government was asked many times to provide “fool-prove” security but requests were not entertained. With these socio-political circumstances, elections shades were scheduled with delay of few days. Now the expected elections results questioned General Musharraf regime and raised new challenges before new government. The political elites approached poling of reconciliation’ in the light of charter of democracy and coalition government was formed. Muslim League (N) shared government with Pakistan people’s party with new expectations and hopes<sup>405</sup>.

In meanwhile, both leadership signed Boharban Declaration to actualize the spirit

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<sup>402</sup> *ibid*

<sup>403</sup> Jay, S. & Peter, W. “Pakistan Alerted U.S. It Planned Emergency Rule.” *Wall Street Journal*, 21, No. 7 (October 2008): 370-376.

<sup>404</sup> *Ibid*.

<sup>405</sup> *Ibid*.

of charter of democracy. It is observed that Prime Minister, Yousaf Raza Gillani dismantled the imposed restrictions over the judges of the superior judiciary but now challenge to functionalize or restore Chief Justice, Iftikhar Ch. and others honorable judges. This issue became obstacle between PPP and Muslim League (N) which finally compelled Mian Nawaz Sharif to withdraw from ministries<sup>406</sup>. It happened as it was expected because unnatural political alliance faded democracy. So that struggle was started by Muslim League (N) others political parties, lawyers and civil society members to restore Ch. Muhammad Iftikhar<sup>407</sup>. Finally, the long march achieved destiny in Gujranwala when Mian Nawaz Sharif was assured that judiciary<sup>408</sup>, with letter and spirit, will be restored. Question before PPP was not concerned regarding restoration of Iftikhar Muhammad Ch and other judges but actual story was revolving around NRO Deal, which had been challenged already in Supreme Court. It was already argued that NRO Deal was not ethically acknowledged within civil society. Swiss Case and money laundering case were also filed against Asif Ali Zardari. Mr. Asif Ali Zardari was interested to maintain Justice Dogar status, favorable to General Musharraf. It has been observed that institutional interests were not followed and democratic values were manipulated by the civilian government. With this commitment and luck of challenges, the new elected government opened tussle with judiciary<sup>409</sup>. One of the primary element which made the contribution to the military takeover in the year of 1999 was effort of PM to get away from "Troika" model of power that are being shared in Pakistan. Three triangles arms were composed of the Army Chief,

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<sup>406</sup> Ibid.

<sup>407</sup> Ibid.

<sup>408</sup> Ibid.

<sup>409</sup> Wallace, B. "Skepticism Tinges Support for Bhutto." *Los Angeles Times* (2007). 345.

President and the Prime Minister with each balancing the other by not giving any permission to disturb or tilt the system to its advantage.

From the 1973 Constitution with the scraping off 58-2(b) and for the Prime Minister the power balance was shifted. In the Pakistan Constitution, the Article 58 2 (b) was the clause which was instituted by the General Zia-ul-Haq in 1985 and that gave the power to the president that they dismiss the government which was elected. The Army was stopped from the direct takeover.

That was the strong argument since this provision addition to the constitution, and there was not any martial law in Pakistan. There were complaints every time by the government and then as the result the assemblies were dissolved it was ordered that there would be new elections. Due to the instability, the 1990's era was marked and due to which war was caused by the president and the prime minister and the role of mediator was performed by the army chief. To all these issues the 58 2 (b) was not the proper issue rather it was the part of the problem.

However, when legality was challenged in the Supreme Court of Pakistan in January 2000, General Musharraf imposed Oath of Office (Judge's) Order to take new oath or quit the post. The majority of the judges took new oath to continue their job; whereas, nineteen judges including six judges of the Supreme Court did not take oath and quitted their offices<sup>410</sup>. Thereafter General Musharraf appointed docile judges who would favor the regime and protect it from any legal challenges in the future. Later output was up to expectations of the government. On 12 May 2000. the Supreme

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<sup>410</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, (Karachi: Oxford University Press Karachi, 2009), 480.

Court through various petitions validated the military takeover on the base of 'Doctrine of State Necessity'<sup>411</sup>.

After the verdict, military regime gained strength and confidence at the expense of independence of judiciary. General Musharraf issued the Presidents Succession Order 2001 by which he replaced President Muhammad Rafiq Tarar on 20 June 2001. On that occasion it was told that General Musharraf was going to India for peace talks in July 2001. So he assumed the office of President for doing negotiation from a better position<sup>412</sup>. General Musharraf possessed Army's traditional hatred for political leaders hip. He was good at public relations skills but needed political skills to cover the lack of legitimacy. Being trained in an authoritarian environment of the army's institute despite the demonstration of liberalism, he considered himself a final authority. Consequently, he made many mistakes as taking actions on his own in the situations where vast consultation was required.

#### **4.2 Item 11 of Federal Legislative List**

The Committee recommends that in view of a major devolution of powers and responsibilities to the Provinces in the constitutional reforms package, it is imperative that the extent of and modalities for distribution of work between the Federal Public Service Commissions, Provincial Public Service Commissions and the respective services be reworked and the services reorganized as to ensure provincial autonomy and good governance. It is also recommended that adequate indigenization of the services should also take place as part of this reform.<sup>413</sup>

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<sup>411</sup> Syed Zafer Ali Shah V. General Pervez Musharraf, Chief Executive of Pakistan, 2002.

<sup>412</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2009), 447.

<sup>413</sup> *Ibid.* Art. 11

The Committee recommended that the Islamabad High Court be conferred original civil jurisdiction in cases of the value of Rupees five million or above or such other amount as may be determined by an Act of Parliament. To promote harmony, stability and goodwill between the Baloch, Pakhtun and all the communities in the Province of Baluchistan, the Committee recommended that equity be maintained in all spheres of life till the structural problems involved are resolved by mutual dialogue and consensus.<sup>414</sup> It is further recommended:

- That the Federal Government will keep in mind the traditions being followed in the appointments of Constitutional offices in the Province.
- That the Provincial Government will strictly follow and enforce the zonal employment scheme;
- That the allocation of development funds in the Province will be done in a manner where in regional disparities and backwardness is given priority.”

General Musharraf’s proclamation of imposing emergency, as to justify in terms of, destroyed security circumstances of state approached a serious threat to life and property of the Pakistani citizens. Further, judiciary role was projected as negative, which claimed to be “working at cross purposes with the executive and legislature in the fight against terrorism and extremism thereby weakening the Government and the nation’s resolve and diluting the efficacy of its actions to control this menace.”<sup>415</sup> According to proclamation, “the situation required “emergent and extraordinary measures.” On day of emergency, General Musharraf enforced PCO as Army Chief for Supreme Court.<sup>416</sup> The judiciary was forced to

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<sup>414</sup> Ibid.

<sup>415</sup> ibid

<sup>416</sup> Simon, G. “Pakistan’s Media Slams Musharraf’s ‘Second Coup. *Reuters* Unofficial speech transcript at [<http://www.indybay.org/newsitems/2007/11/05/18458318.php>]. last accessed 22/06/2021.

take oath under PCO, which restricted judiciary to challenge orders of General Musharraf as under any authority.<sup>417</sup> In fact, fundamental rights, given by 1973 Constitution, were suspended by General Musharraf, as regarding about freedom from unlawful arrest and detention, freedom of movement, assembly, association, and speech.

Now the question before General Musharraf was to ask judiciary for taking oath under PCO in search for legitimacy. In this matter, situation was not favorable to General Musharraf likely to be past. General Musharraf approached Chief Justice, Iftikhar Muhammad Choudhry for resolving conflict. This time, Chief Justice's response was not positive and had refused simply to follow instructions, passed by G.H.Q. Again independence of judiciary was at stake. Finally General Musharraf efforts come true as Justice of Supreme Court Dogar finally took oath in the light of PCO from General Musharraf. Along with other six judges of Supreme Court judges adopted line of action, as defined by Justice Dogar. Dogar court was not accepted by the civil society and the lawyers associations throughout country.<sup>418</sup>

The 'Lawyer Movement', either literate or illiterate, whether young or old without any discrimination from public, had participated to restore the independence of the judiciary.<sup>419</sup> It was a civil march towards respect for judiciary, headed by Chief Justice Iftikhar Muhammad Ch. himself. The movement was welcomed throughout country and appeared as a serious challenging situation for General Musharraf. It was observed that General Musharraf had taken wrong perception

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<sup>417</sup> Ibid.

<sup>418</sup> Khan, M. "1973 Constitution – The Founding of the Federation, an unpublished paper read at a seminar." The Heritage of Prime Minister Bhutto," in Karachi. note 10 Lamb, C. (2007, November 18).

<sup>419</sup> Ibid.

regarding consequences. In meanwhile, 12 May incident shocked everyone, a tragic event happened when few lawyers were fired in Karachi. The day was called Black Day by the judiciary.<sup>420</sup> Mr. Iftikhar Ch. had to come back from Karachi due to insecure environment in Karachi. General Musharraf Administration was trying at best level to curb the movement but each step had fired back like Newton law.

### **4.3 Referendum Ploy and elections to the Office of the President of Pakistan**

In order to retain his position as President, General Musharraf also played a referendum ploy. According to reports, the regime had spent huge public funds on the referendum campaign and it compelled government officials including teachers and students to participate in rallies to be addressed by General Musharraf. It also forcibly used public and private transport for the purpose. On the evening of 30th April 2002, the official media announced a “huge victory” for the President.<sup>421</sup> There were reports of massive irregularities in the referendum whose facts and figures were also exaggerated by the officials. Impartial observers had reported massive fraud, rigging and intimidation in the referendum.<sup>422</sup> General Musharraf had to accept it and apologize for these “irregularities” during a nationwide television speech on 10<sup>th</sup> of July 2002.<sup>423</sup>

General Musharraf government had deprived judiciary of its independence to the

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<sup>420</sup> Human Rights Watch. <http://hrw.org/english/docs/2007/11/04/pakist17241.htm> (2007, November 3). Indian External Affairs Ministry Press Release (2007, November 17). Last accessed 22/07/2021.

<sup>421</sup> Ibid.

<sup>422</sup> Human Rights Watch, *World Report 2002*. Available at <http://hrw.org/wr2k2/asia9.html> last accessed 22/04/2021

<sup>423</sup> Human Rights Commission of Pakistan, *Current HR Information: Political Development 2002*. Available at <http://www.hrcp-web.org/about.cfm> 22/02/2021 01/04/2021

extent that the latter found itself incapable of giving decisions on important constitutional issues. The decision of SCP on the issue of referendum is worth quoting. Petitioners had challenged the referendum before SCP but it declined to grant a judgment on the question if the elections of the President by means of a referendum was lawful or otherwise. SCP made the observation that it “cannot anticipate the course of future events.” Although, there was a stipulation in the Constitution to hold a referendum on any subject of national importance, but it surely did not mean for the use to elect President of the republic – for which the rules and procedures are clearly prescribed. The court held that “the Chief Executive / President had not acted under Article 48(6) of the Constitution to hold a referendum but had promulgated the referendum order in pursuance of the Proclamation of Emergency and the Provisional Constitution Order No. 1 of 1999.”<sup>424</sup> (Reddy, 2002–b). However, most of political parties, media and independent observers had widely condemned the referendum ploy and termed it unlawful and unconstitutional.

#### **4.4 Anti-Musharraf Struggle**

Now the political parties channelized a platform for launching Anti-Musharraf campaign. The political leadership especially Muslim League (N) and PPP launched anti-Musharraf political rallies throughout country. Then it was the best time to compel General Musharraf for bargaining. The local organizations of the political parties mobilized common man against General Musharraf. A full-fledged political crisis was emerged in the context of judicial crisis.

The restoration of Chief Justice was considered the credibility of the political

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<sup>424</sup> B. Muralidhar Reddy, “A Controversial Move,” *Frontline*, (November 23 –December 06, 2002). Available at <http://www.hinduonnet.com/fline/fl1924/stories/20021206009112400.htm>

system.<sup>425</sup> Secretary of State, Condoleezza Rice telephonically informed that Supreme Court would not be subservient to military rule, and could derail President's General Musharraf's political plans<sup>426</sup>. In the meanwhile, General Musharraf had to face another political defeat when the exiled leadership was permitted to return Pakistan. It was wider stoppage of the General Musharraf government to deal this new political development. In September, the Islamabad police arrested political workers including the leadership of Muslim League (N) and PPP.<sup>427</sup> A statement from U.S. Embassy called the development, "extremely disturbing and confusing" and Secretary, Rice called the arrests "troubling". It has been observation, delivered by Itzar Ahan "U.S. Government not seeming to care about General Musharraf's crack down on the Supreme Court and making no mention of the issue in various briefings."<sup>428</sup>

On 6 October 2007, President Musharraf was elected again as President and secured approximately 57% votes, out of 1,170 members Electorate College. Other members of the Electorate College had preferred remained out of this process. General Musharraf had set his mind that he would leave uniform because of the prevailing circumstances, did not suit him. It was evident reality for General Musharraf that as a civilian President, he had to face more institutional challenges because the political understanding was developed among the political parties rather than military. It was a known fact that military influential institutional force was main contributing factor to sustain General Musharraf's regime.

The political parties showed reaction against General Musharraf's re-elections and

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<sup>425</sup> Benazir Terms Pledge 'Vague, Insufficient'. *The NEWS* (2007, November 13). Bhutto to Musharraf: It's Time to Quit. *Agence France Presse* (2007, November 14).

<sup>426</sup> Paul, Eckert, "Rice urges Pakistan to end state of emergency" *World news*, November 2007.

<sup>427</sup> *Ibid.*

<sup>428</sup> *Ibid.*

simply called violation of 1973 Constitution. Again General Musharraf had to face serious setback as the Supreme Court of Pakistan ruled that it would accept all those petitions, registered against General Musharraf's re-election. Question about legitimacy of the President General Musharraf's re-elections became question mark. In that scenario, General Musharraf thought that in case of leaving uniform, he might be fail to face against those writs, challenging to General Musharraf's legitimacy as a re-elected president. As matter of General Musharraf's idea of leaving uniform became question mark. General Musharraf's political friends suggested that he must be given assurance regarding his confirmation as President; uniform issue remained to be pending.<sup>429</sup> Finally the situation cleared as 'New Supreme Court'. under PCO given green signal to General Musharraf (See Appendix-F). All filed writ petitions were cancelled and Musharraf was given path to hold Presidency again. In second thought, General Musharraf planned to leave army chief status.

#### **4.5 Politics of Controlled Democracy**

It is not now a secret like to be past that General Musharraf had shown intention on various occasions to build a political understanding with Benazir Bhutto. In reality, General Musharraf wanted to have mutual understanding with PPP but conditionally. In the beginning, General Musharraf-Benazir talks failed because the former wanted PPP to be in next government set up but only to exclude latter from the political scene. The cases would not be examined again against both Benazir Bhutto and Asif Zardari would keep themselves from politics. Asif Ali

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<sup>429</sup> Sharif, N. . Pakistan's One-Man Calamity. *Washington Post* Simon, G. (2007, November 4). Pakistan's Media Slams Musharraf's 'Second Coup. *Reuters* Unofficial speech transcript at [<http://www.indybay.org/newsitems/2007/11/05/18458318.php>]

Zardari was released from jail and he had to leave country.

The dialogue failed and General Musharraf had to touch with second choice, called Muslim League (Q). For the formation of government in center, General Musharraf arranged a political alliance between Muslim League (Q) and MQM and finally few members of PPP were snatched with heavy price. In this way a government set up was established. Now the circumstances for General Musharraf were not as favorable as in the past.<sup>430</sup> Except many factors, one important factor that General Musharraf was politically weak, but still in doing extra-ordinary.<sup>431</sup> Now again a 'deal package' was introduced to patch up between General Musharraf and Benazir Bhutto. For this, the west was also interested to arrange a deal between both even though the common friends within state and a crossed were doing efforts for deal.<sup>432</sup>

This time, Benazir position was comparatively better. Recently, a historic document was drafted between Benazir and Nawaz Sharif, called Charter of Democracy. So that Benazir was in better position to deal General Musharraf. She went forward and signed a deal with General Musharraf. General Musharraf wanted to keep himself in the presidency and Benazir wanted to get rid of all those cases, registered against her and Mr. Asif Ali Zardari. Benazir knew that her political survival can be matured in case of closing of all cases.<sup>433</sup> These were the field cases in courts and NAB since 1988 to 1999, during different tenures. Benazir acknowledged that General Musharraf's survival was close to die but his breath had come alive only with her support.

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<sup>430</sup> The General Must Go. *Washington Post* Hussain, I. (2007, August 29). Deal-ing a Bad Hand. *Daily Time* Jane, P. (2007).

<sup>431</sup> Ibid.

<sup>432</sup> Ibid.

<sup>433</sup> Lamb, C. (2007, November 18). Threat to Strip Benazir Bhutto of Amnesty. *Sunday Times*

So as matter of fact, Benazir had to compromise with General Musharraf. Negotiations regarding power sharing formula were the staged between both. General Musharraf was conscious of his role in next political set up and Benazir Bhutto was worried to be elected as third time Prime Minister. Washington argued that it should be considered better when the role of General Musharraf will be sustained if the moderate political forces will be synthesized in new political set up. It was understood phenomenon that General Musharraf and Benazir wanted to keep Islamic militancy away from political spectrum. Benazir had to face threats from the Islamic militant organizations occasionally.

In this spectrum, General Musharraf had to face three serious suicidal attacks, fortunately alive. So the moderate political understanding, towards national and international matters, can be evolved in case of political alliance between both. Benazir and General Musharraf met in Dubai and agreed to draft finally. The said deal, called National Reconciliation Ordinance (NRO) Deal (See Appendix-G). General Musharraf issued National Reconciliation Ordinance (NRO) to facilitate all those political leaders who had to face litigation related to maladministration and corruption charges and their cases were still pending. The tenure was fixed from 1986 to 1999. In this ordinance, all cases were declared null and void, simply provided clean sheet to maximum number of politicians. Everyone had received benefits from NRO. The political intellectuals and civil society members argued that said deal damaged Benazir Bhutto because she violated Charter of Democracy.<sup>434</sup>

Ch. Shujat Hussain stated that General Musharraf offered NRO deal to Benazir

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<sup>434</sup> Pakistan Alerted U.S. It Planned Emergency Rule. *Wall Street Journal*, Jay. S. (2008, January 2). 56.

Bhutto only to disunite the opposition. Second, it is a known fact that Charter of Democracy was considered a real threat to political rule of Muslim League (Q).<sup>435</sup> Finally, Washington Administration welcomed a compromise understanding between General Musharraf and Benazir Bhutto. It is a fact that in these changing circumstances; General Musharraf Administration was interested to accept Benazir but neither to face Benazir-Nawaz Sharif alliance. Even then within Peoples Party, one group argued that Benazir did same thing as Pakistan People Party (Patriot Group), led by Mr. Aftab Sheer Pao, Faisal Saleh Hayat and others. Second group argued that Benazir Bhutto and Asif Ali Zardari were observing political distortion in the presence of these registered cases. So that Benazir had to deal NRO finally to give up all these cases. Benazir Bhutto stated that NRO should be considered a political deal for smooth transition of democracy from authoritarian regime.<sup>436</sup> In these circumstances, it was said that the military establishment played vital role for promoting understanding between Benazir and General Musharraf. It was simple power sharing settlement between military and civilian leadership again.

#### **4.6 Legal Framework Order (LFO) 2002**

The Legal Framework Order (LFO) of 2002 was a constitutional instrument implemented by General Musharraf, the President of Pakistan, during his military rule. The LFO introduced significant amendments to the constitution, aiming to consolidate General Musharraf's power and provide a legal framework for his governance.

Here is a detailed explanation of the Legal Framework Order (LFO) of 2002:

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<sup>435</sup> Ibid.

<sup>436</sup> White, G. and Ali, I. (2007, November 2). U.S. Warns Musharraf Not to Use Martial Law. *Washington Post* (2007, December 13), 73.

**Background:** General Musharraf came to power through a military coup in 1999, overthrowing the elected government of Prime Minister Nawaz Sharif. Following the coup, General Musharraf established a military-backed government and assumed the role of Chief Executive. However, his rule lacked constitutional legitimacy as he had not been elected through a democratic process.

**Objectives of the LFO:** The LFO was introduced to address the issue of General Musharraf's constitutional legitimacy and establish a legal framework for his governance. It aimed to amend the existing constitution to accommodate the realities of General Musharraf's military rule and provide a legal basis for his authority.

One of the significant amendments introduced by the LFO was to extend the tenure of the President. Previously, the President's term was limited to five years, but the LFO allowed General Musharraf to continue as President for an extended period.

The LFO granted the President the power to dissolve the National Assembly, the lower house of the Parliament. This provision gave General Musharraf authority over the legislative branch, allowing him to dismiss the elected government and call for new elections.

The LFO established the National Security Council (NSC) as a key decision-making body. The NSC comprised military and civilian officials and had significant influence in shaping national security policies and matters of governance.

The LFO provided the legal basis for the national referendum conducted in 2002, through which General Musharraf sought public approval for his presidency.

**Criticism and Controversies:** The LFO faced widespread criticism and controversy. Opposition political parties and civil society organizations argued that the amendments were aimed at consolidating General Musharraf's power and

undermining democratic principles. They viewed the LFO as a tool to legitimize military rule and accused General Musharraf of usurping the democratic process.

The LFO had a significant impact on Pakistan's political landscape during General Musharraf's rule. It solidified his position as President and provided a legal framework for his governance. However, the LFO also fueled discontent and opposition from political parties and civil society, leading to a period of political instability and further challenges to General Musharraf's rule.

In subsequent years, efforts were made to amend or repeal the LFO, and it eventually led to the adoption of the Seventeenth Amendment in 2003, which made further modifications to the constitution and provided some concessions to political parties.

In conclusion, the Legal Framework Order (LFO) of 2002 was a constitutional instrument introduced by General Musharraf to legitimize his rule and provide a legal framework for his governance. It brought significant amendments to the constitution, extending the President's tenure, empowering the President to dissolve the National Assembly, and establishing the National Security Council. The LFO faced criticism for undermining democratic principles, and its legacy contributed to a period of political challenges and eventual constitutional reforms in Pakistan.

#### **4.7 General Elections of 2002**

After promulgation of LFO, General Musharraf declared that general elections would be held by the end of 2002 according to the time frame given by the Supreme Court. Moreover, he opted to form a loyalist party. That task was entrusted to Chaudhary brothers. They worked with great devotion and political skill to establish such a party<sup>437</sup>. Many people joined the party due to support and patronage of Tariq Aziz, political Secretary of General Musharraf. Political wings of agencies and NAB also

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<sup>437</sup> Pervez Musharraf, *The Line of Fire*, (Lahore: Feroz & sons, 2010), 43.

played an important role. The party was finally announced on 20th August 2002<sup>438</sup>. Then, Political Parties Amendment Act was issued on 28th June 2002 to enforce new eligibility conditions dates as well as parties. Despite lifting ban on political activities, the government severely restricted the public processions, rallies and big gatherings without prior approval<sup>439</sup>. The two main parties, PML (N) and PPP had to contest election s without their leaders. Because Nawaz Sharif was in exile after his conviction in hijacking case and Benazir Bhutto was living in self-imposed exile since 1999, to avoid court trail on accusations of corruption.

#### **4.8 The 17<sup>th</sup> Constitutional Amendment**

General Musharraf and MMA accommodation created an understanding,<sup>440</sup> which included withdrawal of extension in judges service; formation National Security Council under an act; restriction on use power of President under article 58 (2b); deletion of local government laws from sixth schedule; vote of confidence from assemblies; consultation with Prime Minister; and General Musharraf would give up army post by December 31, 2004. After achieving the support of MMA, the Seventeenth Amendment Bill was passed with some changes in LFO by National Assembly on 29th December, 2003 and Senate on 30th December and finally approved by the President on 31 December 2003, while opposition boycotted each time. That Amendment was an alternate of 8th Amendment serving the same purpose. Its approval proved that civilian institutions were still weak and submissive before the

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<sup>438</sup> Mahmood, Decline of the Pakistan Muslim League and its Implications (1947-54) in Nadeem Malik, ed. *Research Papers on Pakistan (Vol.1)*; 249

<sup>439</sup> Wilkinson, P. *Terrorism versus democracy: The liberal state response*, 2nd edition (London: Taylor and Francis Group, 2006), 129.

<sup>440</sup> Mahmood, Z. "Political Turmoil And Military Era Of General Musharraf (1988-2007)," *Journal of the Punjab University Historical Society* 141, No. 16 (July 2015): 239-251.

power of military. After the approval of Seventeenth Amendment, General Musharraf went ahead to legalize his position through vote of confidence from Parliament and all Provincial Assemblies on 1st January 2004. Resultantly, he received 53% votes (658 out of 1170 votes) of Electoral College.<sup>441</sup> On the other hand, opposition's protest was a continuous phenomenon in the Parliament to the extent when General Musharraf addressed the joint session of the Parliament on 17 January 2004, there was a roar of noise due to desk thumping in protest by opposition parties.<sup>442</sup> Afterwards National Security Council (NSC) Act was approved on 19 April 2004.

The opposition boycotted as usual at voting stage of the Bill while MMA abstained from voting. General Musharraf took the response of MMA as breach of promise which was used later for an excuse to evade his commitment of quitting army post up to December 2004.<sup>443</sup> After some time, the issue of the military post of General Musharraf appeared again. When the opposition started demanding from General Musharraf to quit the office of Chief of Army Staff (COAS), while the pro-Musharraf ruling parties started a campaign for retention of the post because their survival was based on the support of a military ruler. They justified their stance highlighting the internal and external situations which were requiring a strong leader having the full support of the nation and the army to tackle the situation.<sup>444</sup> General Musharraf himself wanted to retain the office of COAS to control the military for the unity of command as well as to support weak and unstable political structure which was confronting strong resistant on political matters from opposition, religious groups and

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<sup>441</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), 280

<sup>442</sup> Ibid.

<sup>443</sup> Kronstadt, K. A. *Pakistan's Domestic Political Development*, (Washington DC: Congressional Research Service, 2004): 230-238.

<sup>444</sup> Moskalenko, V. B., & Nikolaevich, V. A, *Political History of Pakistan*," (Karachi: Oxford University Press, 2013) 209.

militants. That was evident by shuffling in prime minister-ship and many other tensions. Such as, the Prime Minister Jamali was asked to resign in June 2004 apparently due to clashes within the party. Ch. Shujaat Hussain, the head of PML (Q), was elected as next Prime Minister for a temporary arrangement. Then he was replaced by Shoukat Aziz who assumed the office of Prime Minister.<sup>445</sup> After the resolutions of the Punjab and Sindh Assemblies in September 2004, the National Assembly passed a bill and Senate approved it on 1st November 2004. Lastly, acting president signed the bill which allowed President to retain the army post along with the office of President of Pakistan. That Amendment sent a clear signal that real democracy would not be restored in near future.

The analyst also concluded that in case of General Musharraf holding two posts violates basic principle of democratic rule in a clear and serious manner.<sup>446</sup> Such measures of General Musharraf regime clearly showed that he had a strong hold over the ruling parties especially over PML (Q). Although he was not its formal head as Ayub Khan was the head of Convention Muslim League, yet he was patron and always supported it in every difficult situation of internal disputes or tensions with other allies. The party also responded its faith in the same coin. The prevailing situation created clientelism instead of strengthening democratic institutions, as General Musharraf claimed.<sup>447</sup> Having equipped himself with military post of COAS though made his position in the power structure un-sailable; General Musharraf did not stop expanding his power. He began to induct more army personnel into the

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<sup>445</sup> Ibid.

<sup>446</sup> Ibid.

<sup>447</sup> Ayesha Siddiq, *Military Inc: Incide Pakistan's Military Economy*, (Karachi: Oxford University Press, 2007), 41.

civilian administration. This number went to about 300 army officers who were occupying the senior posts of government and semi-government institutions.<sup>448</sup>

#### **4.9 Local Government Elections 2005**

The preparation for local bodies' elections began in August 2004. The government announced that the elections would be conducted according to previous practice on the non-party basis but the official stance of non-party principle was not observed completely. It was noted that flags, banners and party symbols were used frequently during the elections campaign. The party links were evident by the specific identity as the PML (Q) supported candidates were using the common name of 'enlightened moderates' for themselves; the 'friend of the people' was label of PPP candidates; 'truthful' for MMA; and 'friend of the homeland' for the candidates of PML (N).

During campaign, the ministers and parliamentarians whose party affiliations were evident announced development schemes in order to get favor of masses for particular candidates. The elections were conducted in two phases on 18th and 25th August 2005. The PML (Q) supported candidates won leading position followed by the PPP. The performance of PML (N) and others was poor.<sup>449</sup> In the wake of successful outcome of the local bodies' elections of 2005, the government attained sufficient confidence of wining next parliamentary elections and capturing the power for the coming term. Everything would have been fair for pro-Musharraf government, if it had not raised the issue of presidential election.

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<sup>448</sup> Imtaiz Ahmad, *Pakistan the Garrison State: Origins, Evolution, and Consequences*, (Karachi: Oxford University Press, 2013), 97.

<sup>449</sup> Commonwealth, T. "*Pakistan Local Bodies Elections*." London: Commonwealth Secretariat. (2005).

Despite of opposition, the government decided that the presidential elections would be held through the existing assemblies contrary to the constitutional timeframe.<sup>450</sup> It is also worth-noting that throughout the General Musharraf rule, where judiciary remained supportive to the government, it was for the first time that it differed with the decision of military regime in Pakistan Steel Mills Corporation (PSMC) case.<sup>451</sup>

There was a rise in violence, suicide attacks, and sectarian clashes. Militants started attack on high profile targets. They tried even to kill the General Musharraf more than once, and also tried to assassinate Prime Minister and top ranking military officers. Many scandals such as sugar hoarding, oil scandal and crashing of stock market also began to surface one by one. No investigation could be ordered against the influential accused persons. Besides those, there were other problems relating to security matters which began to influence gradually the pace of civilianization process.<sup>452</sup>

#### **4.10 Charter of Democracy: Lesson from History**

Charter of democracy is a signed political accord between Benazir Bhutto and Nawaz Sharif, on May 14 2006 in London, the third political consensus among the politicians, was expressed as democratic march towards institutionalization process in Pakistan. It is called third consensus democratic document after Objective Resolution 1949 and 1973 Constitution<sup>453</sup>. According to the Charter of Democracy, Constitutional Amendments introduced by General Musharraf will be no more practiced. Such as;

- State mechanism, placed by General Musharraf, including the National

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<sup>450</sup> Moskalenko, V. B., & Nikolaevich, V. A, Political History of Pakistan, (Karachi: Oxford University Press, 2013), 290.

<sup>451</sup> PLD, 2006: SC 697

<sup>452</sup> Imtiaz Ahmad, *Pakistan the Garrison State: Origins, Evolution, and Consequences*, (Karachi: Oxford University Press, 2013), 142.

<sup>453</sup> Bhutto, B. Musharraf's Electoral Farce. *Washington Post* Bhutto, B. (2007). Musharraf's Martial Plan. *New York Times* Editorial. (2007, December 31). PPP's New Leader. *Dawn*

Security Council will be abolished.

- Pakistan Armed Forces and National Security Council organs will be placed under civilian political control.
- Firm civilian government control and scrutiny over Pakistan's intelligence agencies.

In letter of spirit, the objective of Character of Democracy was to keep military away from interference within the political set up<sup>454</sup>. It was argued that the civilian leadership interpreted 'Charter of Democracy' as document to avoid institutional interference. A welcome and encouraging step of political parties was to consolidate democracy. In Pakistan, it has been termed as, "It is hardly an exaggeration to say that it is one of the most important, and despite its understated prose, the most stirring things to come out of Pakistan's confused milieu in a long time".<sup>455</sup> It was called Magna Carter of Pakistan, opened new window for democracy. National political consensus was staged out in result of great efforts of the political leaderships, reflected notion of matured political reconciliation. It was observed that the political parties articulated a process of democratic transitions<sup>456</sup>.

The Parliamentary Committee on Constitutional Reforms (PCCR) introduced following recommendations to the People's Government for establishment of democratic institutions.

The Federal Government, through the Ministry of Defense, shall provide equal opportunities for recruitment to all Provinces, including FATA, so as to ensure

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<sup>454</sup> Ibid.

<sup>455</sup> Ibid.

<sup>456</sup> Charter of Democracy, 2006

uniformity in the recruitment policy of the Armed Forces.”<sup>457</sup> The Government may specify a period of 90 days for the Tribunal to complete the trial in the Representation of Peoples Act, 1976 and that a consequential penalty on the parties be imposed for any delay.<sup>458</sup> Article 247: The Government should take immediate steps to implement the reforms announced by the President in respect of FATA, particularly, about major changes in the Frontier Crimes Regulation and providing opportunities to the National Political Parties to organize their activities in that area. The Government may also associate other parties who are stakeholders in the ongoing consultations regarding administration of Tribal Areas.<sup>459</sup>

Article 9; the Government should make appropriate laws regarding “security of person.”<sup>460</sup> Article 192; the Appointing Authority should bear in mind that the appointment of judges to the Islamabad High Court should include Judges from all the provinces and the Islamabad Capital Territory.<sup>461</sup> The Government may ensure that the Federal Secretary Finance is not appointed as the Auditor General of Pakistan. Concurrent Legislative List (Fourth Schedule): The Government should constitute an Implementation Commission for the devolution process and transition as a consequence of abolition of the Concurrent List. Article 161(1); the Government may expeditiously provide infrastructure for the utilization of water in the Provinces, where it does not exist.<sup>462</sup>

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<sup>457</sup> Ibid.

<sup>458</sup> Ibid.

<sup>459</sup> Ibid. art. 247

<sup>460</sup> Ibid. Art.9

<sup>461</sup> Ibid. Art.f192

<sup>462</sup> Ibid. Art. 125

#### 4.11 Benazir Bhutto's Return to Pakistan

In 2007, Benazir decided to return Pakistan for participating in next election. It is a known fact that Benazir Bhutto was threatened by the Jihadi Islamist organization. Tahreek-e-Taliban Pakistan was the organization which initiated plan to kill Benazir Bhutto. Even though Benazir expressed reservations against her security during exile and demanded tight security from Washington and General Musharraf. On many occasions General Musharraf was requested by Benazir to provide foolproof security.<sup>463</sup>

It is a fact that Benazir criticized Taliban Organizations in Pakistan and watched out them a serious threat to Pakistan. These events were in background as she reached Karachi. Benazir was warmly welcome by the supported in Karachi was encouraging indicator for the PPP. It was assumed that after NRO Deal with General Musharraf, Benazir had to face isolation but neither was it happened like perception. Benazir had to face first suicide attack after just and few hours she reached Karachi. More than hundred people were killed in the bomb blast, Benazir was saved. The situation was alarming for Benazir in political campaign. She was instructed to be careful during elections campaign. On 27<sup>th</sup> December, 2007, Benazir was assassinated, returning from Liaqat Bagh, Rawalpindi, attended political campaign. It was fully planned suicide attack; she was successfully targeted by the killers.<sup>464</sup>

Washington stated, "Cowardly attack", strongly condemned by the west media. Throughout Pakistan, massive public protests were started, shut down of services

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<sup>463</sup> Ibid.

<sup>464</sup> Bhutto to Musharraf: It's Time to Quit. *Agency France Press* (2007, November 14). Bhutto's own niece has called the political posturing "sheer pantomime" (Fatima Bhutto. "Aunt Benazir's False Promises." *Los Angeles Times* (2006, May 14).

and anticipation of violence.<sup>465</sup> Serious riots occurred in rural Sind Karachi. First report, issued by government was to confirm Benazir's assassination due to vehicle sunroof, hit her head. After few minutes, the report was issued that Benazir was target killing through proper shoot firing by a young man, close to her vehicle. In time of shooting fire at Benazir, a blast occurred near her damaged her vehicle badly and killed many others who surrounded her. As she was shifted to hospital for recovery, the roads were cleaned and washed, removed all ground evidences. During investigation, a senior police officer argued that everything was washed as he received orders from high authorities.<sup>466</sup>

In way of thinking a proper planning was staged to kill Benazir, indirectly to remove from political scene. It was a serious political setback for Pakistan which lost a major political figure.<sup>467</sup> Before killing, Benazir herself argued that she is facing serious reservations regarding security. She did not have that kind of required security measures as accordingly she was promised. She approached the Americans and General Musharraf to provide security for avoiding complicated situation but promise was not fulfilled. Pakistan People's Party (PPP) demanded that United Nations Organization (UNO) should be given mandate to investigate Benazir Bhutto case. However, the political chapter of Benazir Bhutto was finished. In meanwhile, General Musharraf's reconstituted Supreme Court acknowledged his re- elections as President and provided path to leave uniform. General Musharraf had no option except to now appear as civilian president. Secretary of state, Condoleezza Rice called this act 'General Musharraf acknowledged situation and his resignation as Army Chief called first step'. In

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<sup>465</sup> Ibid.

<sup>466</sup> Ibid.

<sup>467</sup> Ibid.

further, she said, "the most stabilizing thing for Pakistan will be to have free and fair elections."<sup>468</sup> General Musharraf said that he had planned to conduct elections in January but, not assured to inform exact date regarding uplifting emergency. It was obvious that Benazir Bhutto simply refused to do things according to deal with General Musharraf. Even though, she launched a long march and convinced others to finally sabotage General Musharraf.

It has been observed that General Musharraf was interested in controlled democracy. So that democracy will be mixed with blend of dictatorship. Such sort of financial and political interests of the army for interfering in the political process of Pakistan are to be listed respectively.

The army has such a large monetary stake in the country that it will never allow a populist civilian government to interfere with the status quo. A civilian government may be permitted to continue only so far as it does not interfere with the financial interests of the army. Only a revolution may bring about a change in this state of affairs. Any civilian government brought into office by normal sedate democratic channels will neither have the strength, nor will it be permitted, to pursue a political or economic policy, which the military does not regard as conducive to its interests.<sup>469</sup>

By keeping internal and external political scenario, General Musharraf allowed Benazir and Nawaz to take part in Pakistan's politics. It's a major fact that Lawyer's Movement extremely disappointed General Musharraf because all political parties channelized their resources to compel him to restore original democratic spirit. No doubt Benazir- General Musharraf were approached on deal but it lost its importance as emergency was imposed. Before assassination,

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<sup>468</sup> Bhutto, B. (2007, November 14). Musharraf's Electoral Farce. *Washington Post* Bhutto, B. (2007, November 7). Musharraf's Martial Plan. *New York Times* Editorial. (2007, December 31).

<sup>469</sup> Ibid.

Benazir publically warned General Musharraf that imposition of emergency will be serious violation of fundamental rights and her political party will be on road for long March against him. As General Musharraf imposed emergency, Benazir said "General Musharraf is over-launched long march towards Islamabad". So finally Benazir Bhutto's reaction was expressed as threat to internal security. Against this, Benazir Bhutto was home arrested.<sup>470</sup>

Benazir Bhutto asked international and national media and crossed political leaders to stop dictatorial acts and compelled him to patch way to democratic forces. Mian Nawaz Sharif strongly condemned General Musharraf's act regarding Benazir home arrest. He said that Benazir's changing stance from General Musharraf should be considered a winning situation for democratic institutions because now dictator is alone. Further, he said that he welcomed the swift change of Benazir Bhutto who was interested to provide concession to General Musharraf after deal. Qazi Hussain Ahmad, leader of Jamat-i-Islami welcomed Benazir's stance about General Musharraf. In this scenario, it was difficult for General Musharraf to provide maximum security to Benazir Bhutto. Now situation was difficult for General Musharraf to face new circumstances after Benazir's changing attitude. Benazir ruled out any further possibilities of concession in politics for General Musharraf. She said that she had no interest to conclude power sharing formula with General Musharraf. For Muslim League (Q), it was confrontation movement because as ally to General Musharraf, the party was not acceptable for public in elections campaign. Possibilities of negotiation with Benazir were at the lowest ebb and now public agitation against

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<sup>470</sup> Jay, S. & Peter, W. "Pakistan Alerted U.S. It Planned Emergency Rule," *Wall Street Journal* 156, No. 59, (November 2008): 409-421

General Musharraf crossed peak level.

## CHAPTER- 5

### GENERAL MUSHARRAF ERA AND INDEPENDENCE OF JUDICIARY IN PAKISTAN

#### 5.1 Introduction

Independence of judiciary has become a hallmark of a civilized society and salient feature of the modern state craft. Its independence and impartiality has become an indispensable element of a federal state which reconcile the conflicting desire of creating unity while retaining diversity and identity among participating units<sup>471</sup>. The constituent units entrust the central government powers and functions necessary to pursue the common interests and goals and retain autonomy in other areas. The powers and functions of the central government and federating units are clearly defined and elaborated in a written and rigid constitution that provides an equal status and authority to all participating units<sup>472</sup>.

The federal arrangement also provides for “an armory of safeguards” to protect the powers, authority, identity and interests of constituent units. Meanwhile, the written constitution guarantees the fundamental human rights of the citizens<sup>473</sup>. The federal state also provides for separation of powers among various branches of the government to create a system of checks and balances and to curtail the predisposition of despotism among those in authority. The federal arrangements are characterized by

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<sup>471</sup> See Aslı Ü. Bâli, *The Perils of Judicial Independence: Constitutional Transition and the Turkish Example*, 52 VA. J. INT'L L. 235, 237 (2012) (discussing democratization literature's “standard recommendations regarding the prerequisites for transitions away from authoritarianism,” including judicial independence); Robert W. Gordon, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, 11 THEORETICAL INQUIRIES L. 441, 443 (2010) (discussing “converge[nce]” of different visions of promoting rule of law “on an institutional program” that includes “courts staffed with ‘independent’ judges”); Gretchen Helmke & Frances Rosenbluth, *Regimes and the Rule of Law: Judicial Independence in Comparative Perspective*, 12 ANN. REV. POL. SCI. 345, 361 (2009) (“If there is any concept of modern governance that enjoys more widespread admiration even than democracy, it is judicial independence.”).

<sup>472</sup> Ibid.

<sup>473</sup> Ibid.

non- centralization, division and separation of powers guaranteed in written and rigid constitutions, an independent and impartial judiciary and will to unity while maintaining separate identity and territorial integrity of constituent units<sup>474</sup>.

Independent and impartial judiciary holds the key of protecting and preserving the constitution that binds constituent units together like a written covenant, and hence it guarantees the survival of a federation<sup>475</sup>. An attack on independence of judiciary can, thus, be regarded as an assault on the federation itself. Nonetheless, the judiciary has to play a decisive and pivotal role in three key areas: a) to safeguard the powers of constituent units or provinces for endurance and smooth functioning of a federation; b) to uphold the supremacy of the constitution and to defend the fundamental rights of citizens, and c) to keep an eye on the powers exercised by other government organs. Only an independent, vibrant and impartial judiciary can play this vital task<sup>476</sup>.

Pakistan is a federal state with four constituent units or provinces namely Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan besides centrally administered territories including Islamabad capital territory (ICT), Federally Administered Tribal Areas (FATA) and Federally Administered Northern Areas (FANA), now renamed as Gilgit–Baltistan. Pakistan has a written and relatively rigid constitution that provides for the basic structure of the state. It elaborately and clearly defines and divides the functions and powers of central and provincial government and also provides for separation of powers among three distinct branches of the government, namely,

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<sup>474</sup> See Stilt, *supra* note 1, at 338 (noting “large category of unexamined constitutions that have undergone change and emendation but in less clear directions”); Ruti Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 YALE L.J. 2009, 2057 (1996) (“In transitional constitutional processes . . . constitutions are not created all at once, but in fits and starts.”); Charles Tilly, *Contention and Democracy in Europe, 1650–2000*, at 13 (2004) (contesting “the existence of standard sequences of change from undemocratic to democratic regimes”); Noah Feldman, *Review: Constitutions in a Non-Constitutional World: Arab Basic Laws and the Prospects for Accountable Government*, 1 INT’L J. CONST. L. 390, 391 (2003) (urging scholars to “promote conceptual clarity by finding a way to talk about partial rule of law and partial constitutionalism”).

<sup>475</sup> *Ibid.*

<sup>476</sup> *Ibid.*

executive, judiciary and legislature. In the context of Pakistan being a multi-ethnic and multi-cultural federal state, its judiciary is expected to play highly important role. Notwithstanding these expectations, the record of Pakistan's judiciary has generally been not been exemplary. Mostly, it was assaulted and deprived of its independence by the military or civilian rulers throughout Pakistan's history. Occasionally, those on the whelm of affairs in the superior judiciary also chose, by intention or compulsion, a submissive role for themselves and the institution as a whole for the sake of personal motives and vested interests<sup>477</sup>.

Despotic governments cannot tolerate the independent and impartial judiciary. In order to advance their personal goals and undemocratic agenda, military rulers in Pakistan have generally targeted the superior judiciary by depriving it of its independence, self-esteem, integrity, and impartiality.<sup>478</sup> A judiciary subservient to the executive and deprived of its independence cannot protect the citizens' fundamental rights, safeguard the power of the federating units and keep a check and balance on the powers exercised by other government institutions<sup>479</sup>. Thus, the military rulers also assaulted on the federation of Pakistan or risked its survival by jeopardizing independence of its judiciary<sup>480</sup>. It was probably one of the reasons that caused disintegration of Pakistan in 1971 and, later on, undermined country's federal structure exemplified by tensions in center province relations and deterioration of interprovincial harmony. In this context, it becomes imperative to explore as how military government of General Musharraf treated the judiciary<sup>481</sup>.

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<sup>477</sup> Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh*, (California: University of California Press, 1991),276

<sup>478</sup> Ibid.

<sup>479</sup> ibid

<sup>480</sup> ibid

<sup>481</sup> Ibid.

## 5.2 Assaults on Independence of Judiciary

General Musharraf came to power in a military coup after he was dismissed as Chief of Army Staff (COAS) by the civilian Prime Minister Nawaz Sharif on October 12, 1999. The decision was made due to the differences that had emerged between the civilian government and the military leadership on the Kargil crises, “an enterprise” which General Musharraf reportedly undertook without Sharif’s “consent or knowledge.”<sup>482</sup> During the coup, the military arrested many leaders of the then ruling Pakistan Muslim League Nawaz (PML N). Those arrested also included the democratically elected Prime Minister Nawaz Sharif, and his family members and close aides, who were kept them in its custody for many months without being charged.<sup>483</sup>

On October 14, 1999, the military government declared a state of emergency in the country and suspended Pakistan’s Constitution and the National Assembly.<sup>484</sup> The statement said, “The Constitution of the Islamic Republic of Pakistan shall remain in abeyance,” and all federal and provincial ministers besides governors and chief ministers of four provinces “shall cease to hold office.” The statement further stated that General Musharraf would assume responsibilities as country’s Chief Executive, while President Rafiq Tarar would continue to hold his office. The regime issued “the Provisional Constitution Order” (PCO), which said: “No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the chief executive or any authority designated by the chief executive.”

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<sup>482</sup> Human Rights Watch, *World Report 2000*. Available at <http://www.hrw.org/wr2k/Asia 07.htm> last accessed 36/3/2021

<sup>483</sup> US Department of State, *Country Reports on Human Rights Practices - 1999*. Available at <http://www.state.gov/g/drl/rls/hrrpt/1999/441.htm> last accessed 24/03/2021

<sup>484</sup> Human Rights Watch, *World Report 2001*. Available at <http://www.hrw.org/wr2k1/asia/pakistan.html> last accessed 22/02/2021

It further said: “No court, tribunal or other authority shall call or permit to be called in question the proclamation of emergency on the 14th day of October 1999 or any order made in pursuance thereof.” However, the military government clarified that fundamental rights that did not contradict “the state of emergency proclamation” would remain in force.<sup>485</sup> The military leadership assured the then Chief Justice of Pakistan (CJP), Justice Saïd-uz-zaman Siddiqui, that the judiciary could continue to function under the constitution and the regime would not interfere with its independence.<sup>486</sup>

### **5.3 Quest to make Judiciary Subservient of Military Government**

After usurping powers, General Musharraf ventured to make judiciary completely subservient of the military rule. He severely damaged the freedom of the judiciary when he ordered the judges of the Supreme Court of Pakistan (SCP), Federal Shariah Court, and all four High Courts to take a fresh oath under PCO. Under this order, government ordinances, orders and directives promulgated under the PCO were no longer subject to judicial examination.<sup>487</sup>

The government had made the decision days before SCP was due to start hearings on the petitions under which petitioner had challenged the legitimacy of the army coup. The government was concerned that judges were being “bribed” to rule against it.<sup>488</sup> Reportedly, on the evening of 25<sup>th</sup> January 2000, General Musharraf summoned the then CJP, justice Siddiqui and told him to take a fresh oath under PCO, which the latter repudiated. Later on, Interior Minister, Moin-ud-Din Haider along with two

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<sup>485</sup> Proclamation – Text of Provisional Constitutional Order No.1 of 1999. Available at [http://www.fas.org/news/pakistan/1999/Proclamations\\_text.htm](http://www.fas.org/news/pakistan/1999/Proclamations_text.htm) last accessed 22/02/2021

<sup>486</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. (Karachi, Oxford University Press, 2012), p.480.

<sup>487</sup> Human Rights Watch, *Word Report 2001*.

<sup>488</sup> Jurist Legal Intelligence, *Pakistan Constitution, Government & Legislation*. Available at <http://jurist.law.pitt.edu/world/pak.htm> last accessed 22/01/2021

generals met justice Siddiqui at his residence and asked him “to reconsider his decision,” but he once again refused. Early next morning, an army colonel came at CJP’s residence and informed him to not go to SCP that day. The security personnel closed the area around his residence and did not allow anyone to enter or leave the CJP residence. The government forced CJP along with five other judges of SCP and nine of the High Courts to resign. However, 85 percent judges agreed to take new oath and continued to “serve” the country under military government. Four months later, “quiescent Supreme Court” led by new CJP, justice Irshad Hassan Khan, validated the coup under the “law of necessity” and set a three-year limit – starting from October 12, 1999 – for the full return of democratic rule.<sup>489</sup>

#### **5.4 Attack on the Office of the President and the Senate of Pakistan**

General Musharraf continued to play with the law and constitution of Pakistan in his bid to concentrate all powers around him. He unconstitutionally and illegally declared himself as President of Pakistan and then used all possible unfair means to legitimize his position. He even did not bother to respect the provisions of his own promulgated PCO which had provided, “The President of Pakistan shall continue in office.”<sup>490</sup> In June 2001, General Musharraf issued a decree amending the so called PCO and “threw out” the constitutionally and democratically elected President of Pakistan. After ousting Rafiq Tarar, he elevated himself as President. Meanwhile, he also dissolved the senate. SCP in its verdict in March 2000 had allowed General Musharraf to make “necessary” amendments in the Constitution to carry through the “business of

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<sup>489</sup> Abid Ullah Jan, “Musharraf or no Musharraf,” *Islamic Web-Community*, Jan. 02, 2003. Available at <http://www.myiwc.com/forums/showthread.php?t=3219> also available at [http://icssa.org/no\\_musharraf.htm](http://icssa.org/no_musharraf.htm). Last accessed 22/01/2021

<sup>490</sup>“ConstitutionSuspended Again.” Available at [http://ghazali.net/book3/ch2/ch2p2/body\\_ch2p2.html](http://ghazali.net/book3/ch2/ch2p2/body_ch2p2.html) last accessed 12/01/2021

governance” without disturbing its “salient features.”<sup>491</sup> But he violated both the Constitution and the ruling of SCP by ousting President Tarar in a way and “for reasons not provided for” in the Constitution, and also by elevating himself as President and by dissolving the Senate of Pakistan. Senate being a permanent body under the Constitution was not subject to dissolution.<sup>492</sup> Reportedly, the government had asked Tarar to resign in order to pave the way for General Musharraf to elevate himself as President.

However, Tarar had refused to oblige General Musharraf and faced unconstitutional removal from the office. Meanwhile, General Musharraf was successful to persuade the CJP, Justice Irshad Hassan Khan, to co- operate with him. Reportedly, General Musharraf had also “kept ready another decree” regarding dismissal of CJP and appointment of a “compliant successor” in case he had refused to swear him in. But CJP was “more than willing” and sworn him in as President at Aiwan-e-Sadar. Apparently, General Musharraf had taken this decision to signal New Delhi through his “self-elevation” before Agra summit that he was in “total control” of the situation in Pakistan.<sup>493</sup>

## **5.5 Amendment in the Constitution and Legal Framework Order**

General Musharraf’s drive against the rule of law got a new impetus when he tried to legitimize all of his acts including military coup, and decrees issued after October 1999. On 21 August 2002, General Musharraf, in a press conference, announced a legal package known as Legal Framework Order (LFO) (Appendix D), under which he declared, “I hereby make it part of the Constitution under the powers vested in me

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<sup>491</sup> Muralidhar Reddy, “By, of and for Musharraf,” *Frontline*, (August 31 – September 13, 2002). Available <http://www.frontlineonnet.com/fl1918/19180450.htm> last accessed 01/04/2021

<sup>492</sup> Ibid.

<sup>493</sup> B. Raman, “Musharraf: Beginning of end?” Available at [http://www.thehindubusinessline.com/businessline/2001/07/05/stories/040555\\_ju.htm](http://www.thehindubusinessline.com/businessline/2001/07/05/stories/040555_ju.htm) last accessed 01/03/2021

by the Supreme Court and it is now the Constitution.” When General Musharraf was told that under the Constitution only the parliament was empowered to amend the Constitution and SCP was not authorized to give him such powers, he replied, “Let those who disagree go to court.”<sup>494</sup> Interestingly, he was referring to the courts whose judges had already sworn allegiance to him under PCO. Under LFO, Article 270-A was incorporated in the suspended Constitution in order to validate all the acts done by the military government and the laws it had promulgated since army had taken over of the country. The LFO provided that “no suits, prosecution or other legal proceedings will stand in any court against any authority or any person for or on account of or in respect of any order made since October 12, 1999.” Under the LFO, General Musharraf also extended his term as COAS and President for another term of five years.<sup>495</sup> On 16<sup>th</sup> November 2002, about two hours prior to the opening session of the newly elected national assembly, General Musharraf took a “fresh oath” of the office as President of Pakistan, for another term of five years. This oath was administered under the combination of the LFO and 1973 Constitution.<sup>496</sup>

General Musharraf significantly changed the main features of the constitution under LFO. Under the amendments made in the suspended constitution through LFO, General Musharraf, as President of Pakistan, was empowered to dissolve the national and provincial assemblies at his discretion. Furthermore, he was to chair newly formed National Security Council (NSC), comprising of all the services chiefs along with elected representatives,<sup>497</sup> to make certain that the federal and provincial governments and assemblies do not act against “national interest.” Critics argued that

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<sup>494</sup> Ibid.

<sup>495</sup> Ibid.

<sup>496</sup> Human Rights Watch, *Word Report 2002*.

<sup>497</sup> Ibid.

such an unconstitutional body would undermine the supremacy of the Parliament.<sup>498</sup>

General Musharraf government had not fully restored the constitution even after the general elections held on October 10, 2002. Since 12 October 1999, General Musharraf regime had kept more than 70 articles of the constitution suspended, which were not completely resorted even after the civilian government had been formed in 2002.<sup>499</sup> These articles also included the one which makes government servants ineligible for the office of the President. General Musharraf was not an ordinary President, because he also had the cap of the COAS. These measures severely undermined the process of transition to democracy which was the only purpose of the general elections.<sup>500</sup> At the time of taking oath in the national assembly, the parliamentarians from the opposition parties protested on LFO and refused to swear their allegiance under it. They were, however, assured by Elahi Bukhsh Soomro, who was then presiding the house being speaker of the former assembly, that the LFO was not part of the constitution under which they were being sworn in.<sup>501</sup> As a result of “one of the most regulated” general elections, a hung parliament came into being which made formation of government a difficult task.

However, after several weeks of intrigues, king’s party was able to make a coalition government only when several members of Pakistan People’s Party (PPP) were defected through intimidation by government agencies. But sooner, the parliament came to a standstill and opposition parties staged regular protests and walks over LFO

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<sup>498</sup> Ibid.

<sup>499</sup> Tarique Niazi, “Illegitimacy, the Father of All Uncertainties,” *South Asia Tribune*, (Dec 23-29, 2002). Available at [http://www.satribune.com/archives/dec23\\_29\\_02/opinion\\_drniazi.htm](http://www.satribune.com/archives/dec23_29_02/opinion_drniazi.htm) last accessed 22/02/2021

<sup>500</sup> Ibid.

<sup>501</sup> “MNA select sworn in: speaker, deputy speaker’s elections on Tuesday,” *Daily Dawn*, No. 17, 2002. Available at <http://www.dawn.com/news/67236/324-mnas-elect-sworn-in-speaker-deputy-speaker-s-election-on-tuesday>

issue. After months of talks and deliberations, ruling Pakistan Muslim League Quad-e-Azam (PML-Q) and opposition parties allied under the Muttahida Majlis-i-Amal (MMA) reached to an agreement on LFO. They agreed on the 17 amendment in the constitution, through incorporating (and legitimizing) LFO with certain changes proposed by MMA. According to the agreement, Musharraf was to relinquish as COAS by 31 December 2004. After the agreement, Musharraf himself had promised in his broadcast address to the nation that he would relinquish his uniform by the agreed date. Musharraf was to get vote of confidence from the members of senate as well as those of national and four provincial assemblies. However, parliamentarians from MMA were not “bound” to give him a vote of confidence.<sup>502</sup> On 1 January 2004, Musharraf got the required vote of confidence from the parliament, securing 658 votes including those from some members of PPP and MMA. Only a single vote cast by Senator Sajid Mir – came against him. On the occasion, 175 parliamentarians from MMA abstained and 336 members of other parties were absent.<sup>503</sup>

Musharraf did not honor his own words and sooner reneged the promises made to MMA and the nation as a whole. According to the agreement reached on LFO between government and MMA, article 63(1) (d) of the Constitution would become effectual from December 31, 2004. The said article of the constitution provided that no person could occupy two or more public offices at the same time. But Musharraf’s thirst for absolute powers led him to renege his promise made to the nation on issue of uniform. Sooner on his will, President Secretariat sponsored a campaign in which various political and social groups with no public support demanded Musharraf to retain both the offices.. Similarly, provincial assemblies of Punjab and Sind, both

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<sup>502</sup> “Govt and MMA sign agreement on LFO,” *Daily Times*, Dec. 25, 2003. Available at <http://archives.dailytimes.com.pk/main/25-Dec-2003/govt-and-mma-sign-agreement-on-lfo>

<sup>503</sup> Musharraf wins vote of confidence,” *Daily Dawn*, Jan. 02, 2004. Available at <http://www.dawn.com/news/390619/musharraf-wins-vote-of-confidence>

dominated by king's parties, adopted resolutions requesting President to not leave the office of COAS in the "supreme national interest." Musharraf followed the suit by taking the position that national interest demanded him to remain as COAS.<sup>504</sup> Meanwhile, parliament passed a bill "allowing President General Pervez Musharraf to simultaneously hold the offices of president and chief of army staff (COAS) beyond December 31, 2004." Acting President Mohammad Mian Soomro signed the "President to Hold another Office Bill" into law, when Musharraf was abroad. It gave Musharraf an excuse to renege his promise to take off his uniform.<sup>505</sup>

## **5.6 Humiliation of Judiciary after Appeasement**

Musharraf government continued to interfere with the independence and integrity of judiciary either through intimidation or seduction. However, both these moves ultimately undermined the integrity of judges and humiliated the judiciary. For instance, the government had elevated three judges of Lahore High Court (LHC) to SCP in violation of the principle of seniority, a rule already settled by SCP in the al-Jihad Trust and Malik Asad Ali cases. These judges included: Justice Faqir Muhammad Khokhar, Justice Nawaz Abbasi and Justice Khalil-ur-Rehman Ramday. Pakistan Bar Council (PBC), the highest representative body of lawyers, in its emergency meeting on 27<sup>th</sup> January 2002, condemned the decision. Later on, it filed a petition in SCP challenging these appointments and seeking to declare them void and unconstitutional.<sup>506</sup> On January 02, 2003 the Supreme Court Bar Association (SCBA) demanded the superior courts' judges to take fresh oath under the Constitution to evade a constitutional crisis. Just two days later, the government in order to appease

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<sup>504</sup> Zaffar Abbas, "Off Centre," *Herald* (Karachi), October 2004. Available at <http://dawn.com/herald/octmain04.htm#Go>

<sup>505</sup> Human Rights Commission of Pakistan, *Current HR Information: Political Development*; and also Human Rights Watch, *World Report 2005*.

<sup>506</sup> "PBC Challenges Elevation of Judges," *Pakistan Political Perspective*, April 2002, p.11.

judiciary, gave under the LFO three years extension in upper age limit for superannuation of the judges of SCP and the High Courts. PBC refused to accept LFO as a part of the constitution and called the increase in the retirement age of judges as a “dubious gift from the military rulers to the judiciary.” The representative bodies of lawyers as well as political parties demanded judges not to accept the extension in their service and to get retirement on respective dates of their superannuation as prescribed in the 1973 Constitution. The leaders of the bar councils also demanded the parliament to reject the decrees issued by military rulers which were aimed to “undermine parliamentary form of the government, process of presidential elections and independence of judiciary.” Judges had left the decision to the government but they had to face humiliation.<sup>507</sup>

On 31 December 2003, the President approved the 17th Constitutional Amendment Bill, making it a law. Accordingly, the amendment, made through LFO in the Constitution, to increase the upper age limits of judges for retirement were undone. Resultantly, 10 judges of the superior courts stood retired in a disgraceful manner on Dec. 31, 2003, including CJP, Justice Shaikh Riaz Ahmad, who was substituted by Justice Nazim Hussain Siddiqui. The other judges included: Justice Munir A. Sheikh and Justice Qazi Mohammad Farooq of SCP; Justice Karamat Nazir Bhandari of LHC (and ad hoc judge of SCP); Justice Raja Mohammad Sabir of LHC; Justice M. Roshan Essani, Justice S. Ahmad Sarwana, Justice Mohammad Ashraf Leghari, and Justice Zahid Kurban Alavi of Sind High Court; and Justice Abdur Rauf Khan Lughmani of Peshawar High Court.<sup>508</sup>

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<sup>507</sup> Human Rights Commission of Pakistan, *Current HR Information: Judiciary*, 2004. Available at <http://www.hrcp-web.org/about.cfm>

<sup>508</sup> New Chief Justice takes oath: 10 judges retire,” *Daily Dawn*, January 01, 2004. Available at <http://www.dawn.com/news/390612/new-chief-justice-takes-oath-10-judges-retire>

## **5.7 Judiciary without Credibility**

Musharraf government made the superior judiciary completely subservient to its dictatorial rule due to which the latter lost its credibility and trust before the people of Pakistan. The SCBA in a statement expressed its lack of trust on the judiciary. It had stated that arguing a case before the superior judiciary was useless because “it had ceased to be independent.” However, SCP reacted strongly and took a serious exception to this statement. SCP reminded that it was only due to its judgment that Musharraf had to hold general elections to transfer power to civilian government. On 29 June 2003, PBC issued the “white paper” and questioned the legality of several judgments of the judiciary, given since the military coup in 1999. These developments, however, strained relations between lawyers and judges of superior courts. In order to protect the judiciary from growing criticism, the government had to issue “the draconian Contempt of Court Ordinance, 2003” which had widened the scope of contempt laws. Its provision that even a simple criticism of a judge was a punishable offence was widely criticized by the intelligentsia and human right activists.<sup>509</sup>

## **5.8 Inadequate Security Arrangements for Judges**

Musharraf government badly failed to provide security to the judges, including those of superior judiciary, improve conditions of courtrooms and introduce reforms to the judicial and prosecution system in the country. The working conditions in courtrooms as well as judge’s chambers particularly of the lower courts were quite miserable. The judges were easily approached to give biased decisions. The criminal elements repeatedly threatened them particularly in the cases of severe crimes. In some

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<sup>509</sup> Human Rights Commission of Pakistan, *Current HR Information: Judiciary*, 33.

instances, the judges were left with no option but to refuse to carry on proceedings. In some occasions, they completed the hearings in jails due to the security threats. Still some of them were killed on their way to the courts or going back to their homes.<sup>510</sup>

On 25 July 2003, a misfortunate incident took place in the premises of Sialkot jail where 03 judges were killed along with five prisoners.

The incident took place when prisoners had kidnapped a team of judges that had come on a routine inspection of the jail. All of them were killed by police in a rescue operation in which proper measures were not taken to ensure safety of the abducted judges.<sup>511</sup> Meanwhile, the living conditions of the prisoners in jails were even worst where thousands of people were closed for many years without their cases being presented before the courts. The complex judicial system in Pakistan had been a cause of delay or even denial of justice to the citizens. It included several court systems which sometimes overlapped and competed with each other over their jurisdictions, i.e. civil and criminal systems with special courts for antinarcotics, banking, and antiterrorist cases, as well as the Federal Shariah Court for Hudood cases. Furthermore, the appeal process had been lengthy which involved civil and district courts, High Court, and the Supreme Court in the civil system while the progression was made through magistrate, session court, High Court, and the Supreme Court in the criminal system.<sup>512</sup>

## **5.9 Establishment of Anti-Terrorist Courts**

Instead of introducing reforms in the judicial system or improving prosecution, Musharraf government amended the Anti- Terrorism Act in November 2002.

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<sup>510</sup> Ibid.

<sup>511</sup> "Three judges, 5 prisoners killed in Sialkot jail: Police action to free hostages ends in tragedy," *Daily Dawn*, July 26, 2003. Available at <http://www.dawn.com/news/132069/three-judges-5-prisoners-killed-in-sialkot-jail-police-action-to-free-hostages-ends-in-tragedy>

<sup>512</sup> Jurist Legal Intelligence, *Pakistan Constitution, Government & Legislation*.

Accordingly, the term of custody was increased from one month to up to twelve months devoid of any charge or trial. It also gave powers to the law enforcement agencies to investigate bank accounts and assets of the relatives of suspects.<sup>513</sup> Earlier, the military government had decided to include military officers in panels of judges hearing the cases related to “terrorist offences” to ensure speedy trial of such cases. According to critics, the move was aimed to “undermine the rule of law and judicial independence.” On 16<sup>th</sup> March 2002, the government had named 13 army officers of Lt. Colonel rank for induction in Anti-Terrorist Courts (ATCs) all over Pakistan for the purpose. However, LHC had stayed the appointment of army officers in ATCs under the amended Anti-Terrorism Ordinance 2002 promulgated on 31<sup>st</sup> January 2002.<sup>514</sup> Amnesty International had criticized this move saying that it would undermine the independence of the judiciary.<sup>515</sup>

### **5.10 Musharraf Confrontation with Chaudhry Iftikhar**

Iftikhar Chaudhry became the Chief Justice of the Supreme Court in June 2005. Earlier, in 1999 he was a PCO judge. However, over the time, he changed his stance. Courts developed doctrinal and ideological justification for constitutional deviations in order to lend national and international legitimacy to the regime. Chaudhry’s Court diverged from them while expanding judicial power.<sup>516</sup> He took *suo motu* actions, requiring the government to explain and even take back certain measures that in the

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<sup>513</sup> Human Rights Watch, World Report 2003. Available from <http://hrw.org/wr2k3/asia8.html>

<sup>514</sup> “Thirteen Lieutenant Colonels named for Special Courts,” *Pakistan Political Perspective*, April 2002, p.12.

<sup>515</sup> Amnesty International, *Report 2003*. Available at <http://web.amnesty.org/report2003/pak-summary-eng>

<sup>516</sup> Shoaib A. Ghias, “Miscarriages of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf,” *Law and Social Inquiry, Journal of the American Bar Foundation* 35, no. 4 (Fall 2010): 985-1022.

court's view affected the general public's interest.<sup>517</sup> Chaudhry took the loyalty oath and was one of the two remaining judges of the bench who granted General Musharraf the right to govern for three years.<sup>518</sup> After Musharraf appointed him, however, Chaudhry instituted changes at the Court. He began concerted efforts to improve the Court's efficiency and reduce its case backlog. From 2005 to 2007, Chaudhry greatly expanded the amount of 'public interest litigation' before the Court petitions and *suo motu* actions that the Court hears in order to check the abuse of power or misuse of authority or arbitrary or mala fide acts and decisions of the authorities including large-scale investigations in politically contentious cases.<sup>519</sup>

The government decided to privatize the Pakistan Steel Mills Corporation (PSMC) and issued a letter of acceptance to the consortium comprising Arif Habib Group of Companies, Al-Tauwaiqi Group of Companies and Magnitogorsk Iron and Steel Works, Russia. This consortium was declared successful bidder at the rate of Rs. 16.80 per share. The privatization was challenged in a number of petitions before the Supreme Court of Pakistan. After detailed hearing, a nine-member bench of the Supreme Court set aside the privatization of PSMC. It was for the first time that the judiciary set aside a major decision taken by the Musharraf government. It prevented the sale of a vital national asset for small sum.<sup>520</sup>

During 2005-6, there were certain major scandals. The sugar scandal was caused by hoarding of sugar by the owners of sugar mills, which included a chief minister and a number of federal ministers, who made billions of rupees. This scandal initially prompted National Accountability Bureau to launch an investigation, but it was soon

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<sup>517</sup> Murtaza Razvi, *Musharraf the Years in Power*, (New Delhi: Harper Collins Publisher, 2009), 94.

<sup>518</sup> Qazi Faez Isa, "The Judiciary at the Receiving End," *Dawn*, Islamabad: March 17, 2007.

<sup>519</sup> Supreme Court. "Report of Golden Jubilee Edition," Islamabad, 2006, 60.

<sup>520</sup> Supreme Court, "Watan Party Vs. The Federation of Pakistan," Islamabad: 2006. S.C. 669.

abandoned on the ground that it is likely to destabilize the industry. Similarly, when the government demanded the foreign oil companies should return excess profits running into billions of Rupees on account of failure to pass on the benefits on international oil price reduction to consumers, it fell silent after the companies threatened to withdraw from operation in the country.<sup>521</sup> The Supreme Court stepped in to scrutinize the deal thoroughly.<sup>522</sup>

The Supreme Court may also have been inspired by its Indian counterpart, which has a long-standing tradition of public interest litigation. The Pakistani petitioners were pushing the scope of jurisprudence by using Indian case law in public interest litigation. The use of Indian precedents, for example, *S. P. Gupta* in the PSM case, points towards this development. During this period, the two governments were also taking a series of confidence-building measures in an effort to resolve tensions. Exchange programs from various levels of government, including the judiciary, were under way. In 2005, delegations of high court judges from Pakistan visited India and met with Chief Justice Y. K. Sabharwal of the Indian Supreme Court. These exchange programs may have fostered an epistemic community<sup>523</sup> and provided an impetus for or affirmation of public interest litigation in Pakistan. In addition, the role of the Indian Supreme Court in urban issues was reported in the Pakistani media. On the issue of public interest litigation, a columnist stated in the cultural context of Pakistan's obsession with comparison to India, "What India can do, perhaps Pakistan now, with enlightenment and moderation to the fore, can do even better" Criticizing the Supreme Court's backlog of cases, another commentator stated, "India, with seven

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<sup>521</sup> Ibid.

<sup>522</sup> Ayaz Amir, "Comrade Stalin and the Sugar Question," *Dawn*, May 26, 2006. //Opinion <http://www.dawn.com.pk/weekly/ayaz/20060526.htm>.

<sup>523</sup> An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area. See Peter M.

times the population, no less criminal or litigious than ours, has only 26 but the cases on its roster are fewer".<sup>524</sup>

In another case, the Supreme Court of Pakistan asked the government to provide information about the missing persons who have been allegedly taken by the security agencies. Justice Javed Iqbal, heading a three-member Supreme Court Bench, asserted that "If they (security agencies) are not answerable to any ministry, they are certainly and surely answerable to this court". According to Human Rights Commission of Pakistan (HRCP), at least 400 persons have disappeared since Pakistan joined the US-led war on terrorism in 2001. Though the government officials repeatedly denied government's hand in disappearances, many 'disappeared' persons have been released from the State's custody. Majority of the victims are said to be from Baluchistan and Sindh. According to HRCP, out of 242 persons who were still missing as of December 12, 2006, 170 were from Baluchistan and 70 were from Sindh.<sup>525</sup>

The situation turned volatile when Musharraf intended to get himself re-elected as the president in uniform for the next term. On November 3, 2007 he suspended sixty judges of the higher courts in Pakistan, including Chief Justice Iftikhar Chaudhry again. The pre-November 3 judiciary had made no judgment on the dual office issue. It had rejected as non-maintainable on technical grounds the petitions challenging General Musharraf's right to contest the presidential election.<sup>526</sup> Aitzaz Ahsan, a prominent lawyer who was one of three lawyers acting as constitutional advisers to the Supreme Court, argued that "Being an army chief, General Musharraf cannot

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<sup>524</sup> Ibid.

<sup>525</sup> "Pakistan: A Land of Systematic Disappearances," *Asia Centre for Human Rights Weekly Review*, 2007, see <http://www.achrweb.org/Review/2007/160-07.htm>.

<sup>526</sup> Ibid.

contest presidential elections; he cannot file the nomination papers.”<sup>527</sup> He sought to pre-empt a negative Supreme Court verdict on petitions challenging his candidacy for another presidential term.<sup>528</sup>

## 5.11 Removal of Chief Justice

Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, was deposed by Musharraf on the charges of corruption. Justice Javed Iqbal was appointed as the acting Chief Justice. Although at that time Justice Bhagwandas was the senior-most judge, but he was out of the country. All these actions were justified under Article 209 of the Constitution.<sup>529</sup> However, opposition leaders, members of the bar, the lawyers and the public condemned this act of president Musharraf. This was similar to the Maulvi Tamizuddin Khan Case which laid the foundations for the erosion of democracy in Pakistan. Primarily, the charges against Justice Chaudhry were based on a letter by advocate Naeem Bokhari. In his letter of February 16, 2007, Bokhari accused the Chief Justice of announcing decisions in court and then giving an opposite decision in the written judgment, insulting and intimidating lawyers, insisting on ostentatious protocol and using expensive cars and airplanes. He also compelled appointing authorities to select his son in the bureaucracy without due merit.<sup>530</sup>

The Reference filed by the President against the Chief Justice mainly focused on allegations that the Chief Justice used his influence to assist the advancement of his son’s career, initially in the medical profession and then in the police service. It is also alleged that the Chief Justice had more cars than he was entitled to and that he insisted

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<sup>527</sup> Carlotta Gall and Salman Masood, “Musharraf Files Papers for Election’s in Pakistan,” *New York Times*, September 28, 2007.

<sup>528</sup> Syed Mudassir Ali Shah, “Ramifications of Emergency,” *Dawn*, November 6, 2007.

<sup>529</sup> Article 209 of the 1973 constitution says that if a judge is incapable to perform his duty of his office or has been guilty of misconduct, the president may remove him from his office. *Dawn*, March 12, 2007.

<sup>530</sup> Naeem Bokhari, “Open Letter to Chief Justice Iftikhar Muhammad Chaudhry,” *The News*, (2007).

on being provided protocol which has not previously been provided to a Chief Justice. It is also alleged that he frequently demanded the use of the aircraft of governors or chief ministers.<sup>531</sup>

## **5.12 The Lawyers Movement, Ending Musharraf's Coup**

In 2005, Chief Justice Iftikhar Chaudhry was sworn into office under the Musharraf Provisional Council Order. While in office, Chaudhry worked to expand the role of Pakistan's judiciary and addressed cases regarding public interest and cases requesting to check government power and authority. In 2006, the Chief Justice subpoenaed representatives of Inter-Services Intelligence Agency for connections to the global war on terror. Musharraf took these reforms as a challenge to his authority and therefore, suspended the Chief Justice due to his growing support for his reforms and placed the Chief Justice under house arrest as Chaudhry refused to resign. The continuing media coverage of Chief Justices dismissal and house arrest; in major cities lawyers engaged in protests while Supreme Court judges publicly supported the Chief Justice. When the media showed the Chief Justice being "dragged by his hair from a police man"<sup>532</sup>, public support came from the provinces of Punjab and Sindh as well as professionals, students, NGOs and other civil society groups turning it into a mass movement. In 2007, Musharraf announced a martial law, suspended the Constitution and parliament. The judges faced suspension as they refused to take the new oath and the media outlets were taken off air as they refused to stop the broadcasting stories of the protest. The public that engaged in protests, were beaten

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<sup>531</sup> Supreme Court. "Arshad Mehmood vs the Government of Punjab" Islamabad, 2005 SC 193.

<sup>532</sup> "The History and Continuing Influence of Pakistan's Lawyers' Movement." Retrieved from <https://muftah.org/the-history-and-continuing-influence-of-pakistans-lawyersmovement-by-ehsan-zaffar/#.WSHnv1KZOYV>.

and arrested. As the domestic and international pressure increased, Musharraf resigned in the summer of 2008.

### **5.13 Lawyers Movement and its Social Roots**

The lawyers' movement unfolded in two phases. First, the Supreme Court asserted its independence and gained credibility while lawyers began to protest in the streets. Second, a broader coalition of lawyers, political parties and other groups responded to executive over-reaching through nationwide protests. This part addresses each of these phases in turn and then discusses important role of the media in facilitating protest over the course of the movement in its entirety. The lawyers eventually began branching out and accepting the support of other civil society groups. For example, lawyers in Lahore started meeting every week at the Lahore High Court with representatives from professional trade organizations, labour unions and representatives from political parties after March 9, 2007 to plan protest.

Ghazala Minallah explained how a protest group known simply as 'Civil Society' grew out of a letter to a newspaper editor she sent shortly after the sacking of the Chief Justice.<sup>533</sup> During these early months of the lawyers' movement, then, Chaudhry convinced many Pakistanis that at least one prominent jurist was willing, if not yet able, to serve as a watchdog against governmental abuses.<sup>534</sup>

After the removal of the Chief Justice, a nationwide movement was started for judicial independence. The most important was the lawyers' movement. The Supreme Court lawyers such as Munir Malik, Tariq Mehmood, Aitzaz Ahsan and Ali Ahmed Kurd started the movement on March 9, 2007, after the removal of chief Justice Iftikhar Chaudhry from his office. They took active part in the movement and united the

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<sup>533</sup> The Pakistani Lawyers Movement and the Popular Currency of Judicial Power," *Harvard Law Review*, [www.harvardlawreview.org/.../vol123Pakistani lawyers movement.pdf](http://www.harvardlawreview.org/.../vol123Pakistani%20lawyers%20movement.pdf).

<sup>534</sup> Somini Sengupta, "Musharraf Loses Fight over Judge," *New York Times*, (2007).

lawyers.<sup>535</sup> An editorial in a newspaper argued:

The legal system has almost ground to a halt in the face of [the judge's issue], and the lawyers of the lower courts have been engaged for eighteen months concerning the matters related to people at least importance. The lawyers' street demonstration was also exploited by some Islamist political forces. They joined the lawyer's movement and struggling for acquiring popular legitimacy and thus to promote their own agenda. Different religious groups such as members of the Jamia Hafsa Madrasa and other religious groups joined the 'long march' of the lawyers from Karachi to Islamabad in June 2008. The suggestion by the All-Pakistan High Court Bar Association to lock courtrooms was not actually proposed by the bar leadership but by the rightist religious party, Jamaat-e-Islami.<sup>536</sup>

The restoration of the Chief Justice was certainly the immediate goal but not an end in itself. His restoration was sought by the lawyers, not as a personal victory for him but as a vindication of other greater objectives. These were the rule of law, independence of the judiciary, restoration of the democratic process, subordination of military to elected civilian authority, the protection of fundamental rights of the people and holding the government accountable. They succeeded on July 20, 2007 when the chief justice was restored by military government. But after July 20, 2007 demonstrations further continued for desired objectives. The restoration of the chief justice of Pakistan was not a single objective of the lawyers but it was a long struggle in which they required sacrifice, patience and persistence.<sup>537</sup> Now their main target was Musharraf's removal and the restoration of a democratic government. The lawyers wanted sacking of PCO judges and restoration of deposed judges.<sup>538</sup>

The military government passed a financial bill in June 2008, according to which the strength of the bench was increased from 18 to 29 aimed at accommodating the sitting judges as well. This decision of the government was also criticized by the lawyers. As

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<sup>535</sup> Human Rights Watch, "Pakistan Destroying Legality, Pakistan Cracks down on Lawyers and Judges." Volume 19, No. 19 (C), New York: (2007). Also see [www.hrw.org](http://www.hrw.org).

<sup>536</sup> Ibid.

<sup>537</sup> Khalid Jawed Khan, "What Lawyers Want," *Dawn*, October 11, (2007).

<sup>538</sup> Ibid.

the government restored the sacked judges gradually, even as it retained the PCO judges. The bar associations were split as several lawyers argued that removal of the PCO judges by executive order would be illegal, and that their presence on the bench would be more appropriately addressed by a restored Supreme Court. The bar associations found it difficult to retain unity and popular support, particularly since several sacked judges had rejoined the bench after accepting the government's chosen mechanism of restoration.<sup>539</sup>

The Director of Human Rights Commission of Pakistan I.A. Rehman stated that the leaders were not able to decide whether their protest was in the style of a trade union strike or a political movement for change. If the former one is the true situation, then the risk in continuing the struggle of the judges and lawyers should not been ignored. In such struggles, it is highly important to evaluate that the protest should be ended and rigidity replaced with pragmatism. If the protest was in the second category, then such plan should be adopted which is recommended for long-term political movements. There were also financial problems faced by the lawyers' movement. With the imposition of martial law, members of the movement boycotted the courts, their practice suffered, especially in small cities. However, it was not possible to sustain a complete boycott due to financial and other problems. According to an analyst, "The constant agitation in the streets along with innumerable bar meetings and occasional hunger strikes and general strikes have virtually destroyed the practices of many lawyers. The public has become so weary of litigation that it has stopped opting for lawsuits in many cases".<sup>540</sup>

Lawyers and journalists were beaten up and arrested in the clashes. The lawyers'

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<sup>539</sup> International Crisis Group, "Reforming the Judiciary in Pakistan Asia Report No. 160," (2008), 26. Also available on [www.crisisweb.org](http://www.crisisweb.org).

<sup>540</sup> Ibid.

protest paved the way for Musharraf's re-elections as president. They tried to pressurize the Elections Commission, which was scrutinizing nomination papers for the presidential election. The lawyers campaigned for months against the dismissal of the chief justice in March 2007, came out in force on the streets again. As the march started, from the Supreme Court towards the Elections Commission, police blocked their way. Lawyers began hurling stones and the officers retaliated, throwing the stones back and firing tear gas, and then charging and beating protesters. Many lawyers and journalists were injured. A number of lawyers were arrested. They argued Musharraf had no right to contest presidential elections.<sup>541</sup>

In some districts of the Punjab, courts were locked in September 2007. This spoiled the credibility and support of the movement. The movement faced controversies and disagreements. The leadership of the movement such as the SCBA (Supreme Court Bar Association) and the Pakistan Bar Council (PBC) was divided over the movement's leadership. Nevertheless, the legal community remained an important pressure group. According to a prominent lawyer, "I would like the judges to be restored but that's not my main issue at the moment. My main issue is the restoration of the 1973 constitution and the removal of all accretions made under Musharraf". Some lawyers criticized for demanding the ouster of the elected government and illegal actions such as locking down the courts and thus undermined both the rule of law and the democratic transition rather than bolster them. In November 2007, President Musharraf made a plan to squash the Supreme Court's *suo motu* powers through a constitutional amendment under the PCO. However, the Supreme Court of

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<sup>541</sup> Carlotta Gall, "Lawyers Battle Police over Elections Ruling in Pakistan," *New York Times*, (2007). <http://www.nytimes.com/2007/09/30/world/asia/30pakistan.html>.

Pakistan and the High Courts continued to exercise their power.<sup>542</sup> Former Prime ministers Benazir Bhutto and Nawaz Sharif tried to visit Chaudhry but in vain. Bhutto attempted a visit on November 11, 2007. Security forces blocked her way. Similarly, police prevented Nawaz Sharif from meeting Chaudhry on December 5, 2007. A heavy contingent of police besieged the Judges Colony and blocked all entry points with barbed wire and concrete barricades to prevent the meeting.<sup>543</sup>

The lawyers' movement was also supported by Human Rights Organizations all over the world. The pressure was increased on the military government as the leading lawyers and the Bar Associations demanded the restoration of the deposed Chief Justice. The deposed Chief Justice Chaudhry Iftikhar became the third man in history who has been awarded with the prestigious 'Medal of Freedom' at the Harvard Law School, for his efforts to maintain the basic commitment of the legal system towards freedom, justice and equality.<sup>544</sup> The New York City Bar Association granted the Justice Chaudhry, honorary membership as a symbol of the movement for the independence of judiciary in Pakistan. *The National Law Journal* in New York also awarded the Chief Justice Chaudhry with the award 'Lawyer of the Year' for the year 2007.<sup>545</sup> A number of international institutions recognized the independence of the judiciary, such as Article 10 and Article 14 of the Universal Declaration of Human Rights of the International Covenant on Civil and Political Rights (ICCPR).<sup>546</sup>

Media played a significant role in that movement and proved to be resistant to the

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<sup>542</sup> Ibid.

<sup>543</sup> *Dawn*, December 6, 2008. Also see Human Rights Watch, "Pakistan Destroying Legality: Pakistan Cracks down on Lawyers and Judges," Volume 19, No. 19 (C), (New York: 2007) and [www.hrw.org](http://www.hrw.org).

<sup>544</sup> One of the early recipients of the award is Nelson Mandela a legendary anti-apartheid leader and also the team of litigants that contested *Brown versus the Board of Education*, which results in the end of racial discrimination at educational institutions in the United States of America.

<sup>545</sup> Ibid.

<sup>546</sup> International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," London, 2009. 31. Also see <http://www.factfindingguidelines.org>.

crack downs of government. Several TV channels were banned during the emergency rule. The activists started agitation and used substitutes such as social media for presenting videos, pictures and stories of protests and police crackdowns such as YouTube, Flickr, homemade blogs, and other websites, and communicating details and descriptions via cell phone text messages.<sup>547</sup>

The civil society was also active. The reality was quite contrary as demonstrated by the protests for the anniversary of March 9, 2008 and the popular success of the 'Long March' on June 1, 2008. The basic and unrevealing demand of the civil society was the restoration of Chief Justice Chaudry Iftikhar and other deposed judges and the departure of the 'PCO judges. The independence of judiciary is indispensable because it guarantees the protection of human rights, civil and political rights as well as social and economic rights. A former president of Supreme Court Bar Council disclosed that more than 1.5 million procedures were pending before the courts in Pakistan. The lawyers engaged themselves in strikes and boycotted the 'PCO justice' which proved harmful for them on economic grounds but their courageous commitment was part of a substantive claim of a state right for Pakistan.<sup>548</sup>

#### **5.14 Comparison of Musharraf Era with Earlier Periods Military Rule in Pakistan**

Certainly! Let's compare the period of Musharraf's rule with earlier periods of military rule in Pakistan in a more differentiated way. I primarily focuses on two significant periods of military rule: the Ayub Khan era (1958-1969) and the Zia-ul-Haq era (1977-1988).

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<sup>547</sup> Human Rights Watch, *Pakistan Destroying Legality*, 2007.

<sup>548</sup> International Federation for Human Rights. "A Long March for Democracy and the Rule of Law, 2007-2008." France, 2009, also see <http://www.fidh.org>.

### 5.14.1 Mode of Governance

**Ayub Khan:** Ayub Khan's regime established a presidential system, concentrating power in the hands of the president. He implemented a highly centralized form of governance, with limited political freedoms and curtailment of civil liberties<sup>549</sup>.

**Zia-ul-Haq:** Zia-ul-Haq's rule emphasized Islamization and implemented a system of martial law. He relied on a combination of military rule and Islamic ideology to legitimize his regime.

**Musharraf:** In contrast, Musharraf's rule followed a different model. He initially came to power through a military coup but later portrayed his regime as a transition to democracy. He introduced a hybrid system with elements of military rule, constitutional changes, and limited political reforms, aiming to provide a more inclusive political environment.<sup>550</sup>

### 5.14.2 Economic Policies

**Ayub Khan:** Ayub Khan's era implemented a model of state-led economic development called the "Basic Democracy" system. It focused on industrialization, agricultural reforms, and infrastructure development.

**Zia-ul-Haq:** Zia-ul-Haq's regime adopted an "Islamization" policy, which had a limited impact on economic development. His emphasis on conservative Islamic values resulted in a more socially conservative society.

**Musharraf:** Under Musharraf's rule, economic reforms took center stage. His government pursued a market-oriented approach, implementing policies aimed at liberalizing the economy, attracting foreign investment, and privatizing state-owned

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<sup>549</sup> Imtaiz Ahmed, *Pakistan: The State in Crisis*, (Lahore: Anthem Press, 2010), 384.

<sup>550</sup> Ayesha Jalal, *The State of Martial Rule: The Organs of Pakistan's Political Economy of Defense*, (Cambridge: Cambridge University Press, 1990), 116.

enterprises. These reforms led to moderate economic growth and increased foreign reserves.<sup>551</sup>

### **5.14.3 Foreign Policy**

**Ayub Khan:** Ayub Khan pursued a policy of non-alignment, maintaining relations with both the United States and the Soviet Union. He focused on improving Pakistan's international standing and building strategic alliances.

**Zia-ul-Haq:** Zia-ul-Haq's regime aligned itself closely with the United States during the Cold War, primarily due to shared interests in countering the Soviet Union's influence in the region. Pakistan became a key player in supporting anti-Soviet forces in Afghanistan.

**Musharraf:** Musharraf's foreign policy was shaped by the aftermath of the 9/11 attacks. He aligned Pakistan closely with the United States in the global war on terror. This alliance brought both economic and military assistance but also led to domestic controversies and increased terrorism within Pakistan.

It's important to note that each period of military rule had its own distinct characteristics, influenced by the socio-political context and the objectives of the ruling military leaders. While Ayub Khan and Zia-ul-Haq's regimes were characterized by more centralized governance and specific ideological agendas, Musharraf's rule attempted a transition towards democracy with a focus on economic reforms.

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<sup>551</sup> Cheema, P. I. *The Armed Forces and Democracy in Pakistan* (Lahore: Vanguard Books, 2002).

## CONCLUSION

This research is an endeavor to study the phenomenon of military coups in Pakistan from the case study of General Musharraf's take-over. It reviews the role of political elite during the decade of 90's and how they failed not only to consolidate democracy but also led to another military coup within a decade. The consequent military regime with little technical expertise to govern, when faced with hard political questions succumbed and its efforts for self-legitimization and regime continuation were not different from the one it had displaced. It confirms that military elite when acting as political elite are no different. The research evaluates the state of civil military relations and mechanisms for exercising civilian control over the military in the theoretical context of Huntington which has been exercised in Pakistan since inception but has not been effective in rendering the military apolitical. Alternative evaluation by Stephan about military's role expansion and its impact on civil military relations points towards options available to political elite to either step up with superior governance skills and assume the responsibilities themselves or co-habit and incorporate military in the national security architecture while simultaneously building institutions and their capacities to effect smooth transition at an appropriate time. The research analyses the role of judiciary in validating coups and its inability to safeguard the basic structure of the constitution.

In its contributions the research finds that General Musharraf's coup was different from the previous coups in which the pull factors and decisions of political elite drew military towards politics and led to military interventions/ coup. In this case the push factor i.e. protecting the honor of the military as an institution was the primary reason. It also finds that the resultant military government was not able

to contribute substantially to improve strategic stability, rather the military elite like political elite were driven by personal interest rather national. It contributes a new form to Finer's four modes of intervention i.e. a quasi-military government. Towards the end, it brought the findings of qualitative thematic analysis and the results accrued from the quantitative numerical data through a survey to ascertain societal perspective and integrating the two it has proffered recommendations to stabilise the polity, consolidate democracy and strengthen civil military relations as well as democratic control of armed forces to prevent future military interventions.

Pakistan inherited the well-established tradition of supremacy of civil-political over military institution under British political theory. Within a few years of her independence, Pakistan encountered the ever-growing influence of military into politics. Ultimately, unlike India, Pakistan degenerated into a praetorian state with dreadful political, social and economic fallouts. This process of militarization of Pakistan owes its transformation to multiple variables as have been discussed. No single factor can be cited as the sole cause; rather, a cluster of causes led to the intervention of military into politics in Pakistan.

Since Pakistan's independence, 'Democracy' still has not been out of excuse from legitimacy. Pakistan has seen democracy in different terms and conditions. During Ayub Khan and Zia-ul-Haq regimes, democracy had been introduced according to requirement. In Musharraf regime, controlled democracy phenomenon had been flourished and parliament was kept under control of the military establishment. It is undemocratic tendency that Mr. Shaukat Aziz, having no political background and no political party affiliation had been nominated Prime Minister of Pakistan. Mr. Shaukat Aziz was a 'banker' and was in good

book of the military establishment. Respectively, the parliamentarian party, Muslim League (Q) did not bother to argue before the military establishment. Musharraf implemented National Security Council (NSC) to check over parliament. It had been observed that all important issues had been dominated by the military establishment. Lal Masjid (Red Mosque) and Bughti Killing were the decisions, influence by the military establishment. Pervaiz Musharraf ignored the dialogue process in both cases and the state had to face security challenges. The international media projected both cases against Pakistan. As to take perception, it will be rightly said that military establishment adopted forced methodology to attain results which were contradictory to democratic norms and values. With passage of time, the political scenario was changed and political power was transferred to new civilian government. Challenges before new parliament were tremendous and were fully exhausted. Issue of terrorism and Baluchistan crisis were at distortion level. Continuous suicide bombing and massive killing in Karachi had faded that economic prosperity of the state. It was surprised that new blend of government (PPP+ Muslim League (N) was unique political alliance in the shadow of charter of democracy and policy of 'Reconciliation'. Expectations from this unique political alliance were high but complications were still present. On issue of restoration of Judiciary, the alliance was expired and Muslim League (N) followed the option of Long-March to restore judiciary, resulted positive. Now PPP government had to face judiciary tussle and political separation from Muslim League (N) PPP formed political alliance with ANP, Muslim League (Q), Jamiat-e- Ulma Islam (F) Fazul-ur-Rehman group and Muthadia-Qaumi Movement (MQM- Altaf Group).

With this new political set up, the civilian government introduced political agenda.

One change was staged, caused restoration of 1973 constitution. PPP government introduced 18<sup>th</sup> Amendment which changed the identical features of the system of government. Prime Minister Office was empowered as compared to president office. The 18<sup>th</sup> Amendment redesigned the functions of the federal government and provincial governments. Since independence, the civilian governments were fighting for democracy and institutionalization process. 2008 elections had revamped Musharraf legacy and new government with unique political alliance had taken up the political matters. 'Charter of Democracy' was a positive development which ensured principal of co-operation and co-ordination among the political forces. It was expected that lesson from history will bring responsibility to hold high offices. It was hoped that the coalition government will readdress the central-province relationship.

It is further concluded that the judiciary was under the control of dictators most of the time in the history of Pakistan. For the very first time, Chaudhry Iftikhar stood against the forces of status quo and struggled for judicial independence. The struggle for the independence of judiciary and the restoration of Chief Justice Iftikhar Chaudhry was a turning point in the judicial history of Pakistan. There were a number of challenges on the road ahead but two years struggle of the legal community, human rights activists, the media and the civil society played a key role for a vibrant and impartial judiciary. The lawyers' movement in 2007 and 2008 were socially transformative for strengthening the judicial machinery. In the end, it gifted legal developments and widespread legitimacy of judicial institutions. The reinstatement of the Chief Justice Chaudhry in March 2009 presents an important opportunity for Pakistan's judiciary marks a new journey towards judicial independence.

It is observed that Musharraf had come into power by overthrowing a constitutional

and democratically elected government. He suspended the constitution, imposed PCO and forced judges of superior judiciary to take oath under it. He unconstitutionally dissolved the senate of Pakistan and illegally ousted President from his office. Musharraf unlawfully elevated himself to the position of President and held ploy of referendum to legitimize and prolong his unconstitutional rule. Musharraf severely undermined the independence of judiciary either through intimidation or inducement. Resultantly, judges of the superior courts lost their integrity and they had to face humiliation. In its bid to serve the military government, the judiciary had given Musharraf the powers to amend the constitution. He took its full advantage and inserted several unconstitutional amendments in the constitution and significantly changed its salient features. The people of Pakistan generally ceased to exercise their civil and political rights including the right to change the government, peacefully and democratically. Judiciary became complete subservient to the military rule and lost confidence of the people particularly the lawyer community of Pakistan.

It found itself increasingly unable and incapable of safeguarding the citizens' "civil and political rights" and upholding the constitution in the wake of onslaught by the despotic government. This research is an endeavor to study the phenomenon of military coups in Pakistan form the case study of General Musharraf's take-over. It reviews the role of political elite during the decade of 90's and how they failed not only to consolidate democracy but also led to another military coup within a decade.

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research evaluates the state of civil military relations and mechanisms for exercising civilian control over the military in the theoretical context of Huntington which has been exercised in Pakistan since inception but has not been effective in rendering the military apolitical. Alternative evaluation by Stephan about military's role expansion and its impact on civil military relations points towards options available to political elite to either step up with superior governance skills and assume the responsibilities themselves or co-habit and incorporate military in the national security architecture while simultaneously building institutions and their capacities to effect smooth transition at an appropriate time. The research analyses the role of judiciary in validating coups and its inability to safeguard the basic structure of the constitution.

It also finds that the resultant military government was not able to contribute substantially to improve strategic stability, rather the military elite like political elite were driven by personal interest rather national. It contributes a new form to Finer's four modes of intervention i.e. a quasi-military government. Towards the end, it brought the findings of qualitative thematic analysis and the results accrued from the quantitative numerical data through a survey to ascertain societal perspective and integrating the two it has proffered recommendations to stabilise the polity, consolidate democracy and strengthen civil military relations as well as democratic control of armed forces to prevent future military interventions.

Prior to Musharraf's takeover, Pakistan experienced a period of political instability, marked by frequent changes in government and allegations of corruption. This instability created a perceived need for a strong and stable leadership, which the military aimed to provide. Pakistan faced significant economic challenges during that time, including a high level of external debt, fiscal deficits, and slow economic

growth. The military portrayed itself as a capable and efficient institution that could effectively address these economic issues and bring stability to the country. The Musharraf era saw Pakistan grappling with internal security threats, particularly from militant groups operating within its borders. The military positioned itself as the guardian of national security and portrayed its rule as necessary to combat extremism and maintain law and order.

Musharraf's government received substantial support from the international community, especially in the aftermath of the 9/11 attacks. The United States, in particular, considered Musharraf a crucial ally in the fight against terrorism, which bolstered his position and provided legitimacy to military rule. Widespread corruption, weak governance, and a lack of effective leadership in previous civilian governments had eroded public trust in the political system. The military capitalized on this disillusionment, presenting itself as a viable alternative that could deliver stability, development, and good governance.

Musharraf utilized legal and constitutional measures to legitimize his rule. He suspended the constitution, dissolved the parliament, and declared a state of emergency. These actions allowed the military to assume control of key institutions and consolidate power. Musharraf garnered support from certain segments of society, including the middle class, urban elites, and business community. These groups believed that military rule would bring about economic reforms, improve governance, and restore stability. It's important to note that while these factors influenced military rule under Musharraf, there were also criticisms and controversies surrounding his regime, particularly regarding human rights violations, media censorship, and curtailment of civil liberties.

In addition to the factors mentioned earlier, the geopolitical environment and the existential competition with India have been influential factors in military interventions in Pakistan. These factors have shaped Pakistan's security concerns and influenced the military's role in the country's political affairs. Pakistan's geopolitical location, situated in a volatile region with complex regional dynamics, has played a significant role in military interventions. Its proximity to Afghanistan, the Middle East, and Central Asia has made it vulnerable to external influences and security challenges. The military often positions itself as the guardian of Pakistan's territorial integrity and national interests, asserting its role in safeguarding the country's borders and countering external threats.

The long-standing rivalry and historical conflicts with India have deeply influenced Pakistan's military interventions. The unresolved disputes, such as the Kashmir issue, have kept tensions high between the two countries. The military, perceiving itself as the protector of Pakistan's national interests, has often intervened in political affairs to ensure a strong defense against India and maintain a favorable balance of power in the region.

From very early years of independence, Pakistan faced enormous setbacks in political system which also became a reason of weakness of all other institutions except the military. Pakistan military inherited strong institutional traits from ex-colonial masters. This landmark difference with other institutions slowly and gradually drew military to civil affairs and after a short period of eleven years. Military derailed the already trembling political setup and controlled the political powers. It was the first experience of Pakistan military to taste the political power and then for several times intervened in politics derailing the existing political setup. In contemporary era of the democratic setup, it is necessary that political

power should be under the control of people's representatives to encourage and strengthen this trend in Pakistan.

The researcher suggests the following recommendations for the promotion of democratic system.

1. There should be strong political institutions in Pakistan to prevent the country from further destabilization. It is necessary to make our institutions strong and stable. Political institutions should show maturity in their spheres to discourage further military intervention in Pakistan. Only strong participant political culture in the country can do it. The strong political governments in the world are the best examples where military cannot intervene in politics so far. It is necessary to make Pakistan strong on political basis through co-operation of all the political parties, constructive opposition, dispassionate political leaders, good and speedy delivery to people demands, these are the main requisites on political institutional level to make it bold against any malpractices.
2. Media is considered as the fourth pillar of the government. For the successful democratic system, it is very important that media should play its due role. Media is that agent which creates awareness among the people and provides knowledge about their rights and duties. Media has a strong check on government activities and suggests feedback of these policies. It is an important tool of the information of public opinion. Media should play its constructive role in propagating its political culture so that non-democratic forces must be discouraged. In current Pakistani volatile political culture, it is the need of the hour that media must be unbiased and neutral so that democratic system can flourish and military may not get a

chance to intercept once again.

3. In Pakistan, since its independence, foreign elements always remained active, & Pakistan remained host in the international issues which attracted big powers especially US to have its stay in the state affairs of Pakistan. Pakistan being on strategic position created many enemies; to overcome enemies, it involves with superpower military camps. This encourages them to have stay in Pakistan politics. Under this shadow military always justified its takeovers that there was an external danger to the state sovereignty. Traditional and old time enmities must be changed into friendship for better future of the poor masses of this state.
4. Organized political parties are the spirit of pure democracy; political parties can play an important role in the democratic setup of the state. Political parties aggregate the interests of the peoples and act according to the wishes of the people. For the successful democratic setup of the state it is very important that the political parties must be well organized and strong enough to act according to the wishes of the people. Unfortunately, Pakistan's political system lacked gross root level political parties are personality based groups that control political power for a short period; they lacked clear cut character and agendas to attract masses and bring massive change into the existing traditional political culture. Enormous corruption, nepotism and inter party revelries have created an atmosphere of hatred among the people. This instability and absence of political morality provide a chance to military to intervene in politics. Therefore, it is necessary that Pakistani political parties must be organized and shall made people oriented. When political parties are strong and people have trust on

them then non-democratic forces would be not in position to get away democratic process.

5. Pakistan since the demise of Quaid-e-Azam Mohammad Ali Jinnah and Liaqat Ali Khan, faced severe dearth of political leadership. The echelon of power has been mostly remained in the hand of the corrupt and incapable political leaders. This has been the main problem which always attracted the military to intervene in politics. To bring the talented and able political leadership to the national scene is the urgency of the time. Therefore, it is necessary to educate the masses and make them aware on all respects to choose the rights. To choose the patriotic leaders who cope with the situation. If there were strong and patriotic leadership in the country, the political system would never fall into the debris of the military coups. Only a strong and well educated leader can manage the situation and can put the state on right direction, both eternally and externally. Graduation condition for parliament candidates must be reinstalled.
6. Strong and independent judiciary is compulsory for the survival of the state. Judiciary is the main organ of the government. It is the judiciary which can play the main role to declare any unconstitutional move illegal and to save the constitution. But unfortunately, the weak judiciary from beginning molded the way and legalized every military coup. All these favors of judiciary to the military role make debris of the laws. If there were strong, free and independent judiciary, there had been no such menace of military adventurism and democratic setup would flourish well in the country. It is the need of the hour to make the judiciary strong, impartial, free and fair independent judiciary to resist strongly any

unconstitutional move by the army in the country.

7. Party elections must be according to the procedure. A psychological test of the politicians must be for their recruitment like public employees. Military officers must come in politics after retirement or resignation.
8. Government must develop open forum in which the military issues may be brought to light. Oath script must be revised for civil and political leaders only for the safety and service of Islamic Republic of Pakistan.
9. Government should not call the military to perform internal security and avoid using military as a domestic political instrument. Only professional officers must be promoted in civil and military departments. Civil bureaucracy must never bear the military pressure. Pay package of Pak military must be like the Indian army. Military must be answerable to the civil government like other developed states.
10. National Security Council may not be more than advisory council like the patterns set by India and Turkey. The main duty of parliament is legislation. Parliament can improve its functioning by making new laws according to the situation. For this, it can make an advisory body which can consist of literate youths for innovations of ideas. Encourage the multi-partisan collaboration for defense and prosperity of this state. National security should have an exclusive session weekly about the problems of the country. All parliamentary sessions should be live on television for further suggestions and implementations. There must be a proper supervision of government agendas, bills and budget sections for economic wellbeing of society.
11. After studying the structure of the civilian governments during the military

regimes it has become clear that political leaders were not able to handle the situation, military came to fill this gap. When military came to power, it always made its mind to remain in power for longer times. For gaining this objective, it pressurized the judiciary to legitimate it, amended the constitution. In short, not a sincere effort has been made to strengthen and cultivate the pure democratic culture of Pakistan from both the groups (military & politicians).

## BIBLIOGRAPHY

### ARTICLES:

Adams, John, and Sabiha Iqbal. "Exports, Politics, and Economic Development: Pakistan 1970-1982." *Boulder, CO: Westview Press*, 1983.

Ahmad, Bilal. "Pakistan: Daily: Pakistani Budget Neglects Education." *The News (Islamabad)*. 29 June 1998. *World News Connection*. 1 Apr. 2010.

Ahmed, Syed Imtiaz. "Civilian Supremacy in Democracies with 'Fault Lines': The Role of the Parliamentary Standing Committee on Defence in Bangladesh." *Democratization* 13.2 (2006): 283-302.

Alagappa, Muthiah. "Investigating and Explaining Change: An Analytical Framework." In *Coercion and Governance: The Declining Political Role of the Military in Asia*, edited by Muthiah Alagappa, 1-24. *Stanford, CA: Stanford University Press*, 2001.

Amin, Tahir. "Pakistan in 1993: Some Dramatic Changes." *Asian Survey* 34.2 (1994): 191-199.

Amin, Tahir. "Pakistan in 1994: The Politics of Confrontation." *Asian Survey* 35.2 (1994): 140-146.

Amin, Tahir. "Pakistan in 1993: Some Dramatic Changes." *Asian Survey* 34.2 (1994): 191-199.

Amin, Tahir. "Pakistan in 1994: The Politics of Confrontation." *Asian Survey* 35.2 (1994): 140-146.

Al-Hamdi, D. M. "Military in-and-out of Politics: A Theoretical Approach to Military Disengagement." *International Journal of Humanities and Social Science*, 193-201, 2014.

Ahmed, Syed Imtiaz. "Civilian Supremacy in Democracies with 'Fault Lines': The Role of the Parliamentary Standing Committee on Defence in Bangladesh." *Democratization* 13.2 (2006): 283-302.

Baloch, AJ, Gaho GM. "Military Interventions in Pakistan and its implications." *The Government-Annual Research Journal of Political Science*, 2013.

Behuria, Ashok K. "How Military Dominates the Political Space in Pakistan: a Study of Musharraf's Rule 1999-2008." *Journal of Peace Studies*, Vol. 16, Issue 1-2, January-June, 2009.

Danopoulos, C. P. "From Military to Civilian Rule in Contemporary Greece." *Armed Forces & Society* 10(2), 229-250, 1984.

El-Khawas, M. A. "Musharraf and Pakistan: Democracy Postponed." *Mediterranean Quarterly*, Volume 20, Number 1, 94-118, 2009.

Haleem, Irm. "Ethnic and Sectarian Violence and the Propensity towards Praetorianism in Pakistan." *Third World Quarterly* 24.3 (2003): 463-477.

Haqqani, Husain. *Pakistan: Between Mosque and Military*. Washington, DC: Carnegie Endowment for International Peace, 2005.

Heeger, Gerald A. "Politics in the Post-Military State: Some Reflections on the Pakistani Experience." *World Politics*, 1977.

Khan, Rais Ahmad. "Pakistan in 1991: Light and Shadows." *Asian Survey*, 32.2 (1992).

Khan, Rais Ahmad. "Pakistan in 1992: Waiting for Change." *Asian Survey*, 33.2 (1993).

Kuehn, A. C. "Guest Editors' Introduction: Civil-military Relations in Democratizing Asia-Structure, Agency and the Struggle for Civilian Control." *Asian Journal of Political Science*, 213-221, 2011.

Mansfield, Edward D., and Jack Snyder. "Incomplete Democratization and the Outbreak of Military Disputes." *International Studies Quarterly*, 2002.

Rizvi, Hasan-Askari. "Civil-Military Relations under General Beg." *Defence Journal* 17.6-7 (1991): 17-21.

Rizvi, Hasan-Askari. "Pakistan in 1998: The Polity under Pressure." *Asian Survey* 39.1 (1999): 177-184.

Rizvi, Hasan-Askari. "Pakistan in 1999: Back to Square One." *Asian Survey* 40.1 (2000): 208-218.

Rizvi, Hasan-Askari. "The Paradox of Military Rule in Pakistan." *Asian Survey* 24.5 (1984): 534-555.

Rahman, Z. S. "Rethinking Civil-Military Relations in Pakistan: Some Lessons from." *Journal of Socialomics*, 1-5, 2017.

Waseem, M. "Pakistan: Beyond Elections." *South Asian Journal*, 2004.

Yasmeen, Samina. *Democracy in Pakistan: The Third Dismissal*. *Asian Survey* 34.6 (1994): 572-588.

Ziring, Lawrence. *Pakistan in 1990: The Fall of Benazir Bhutto*. *Asian Survey* 31.2 (1991): 113-124.

## Books

Ahmad, I. *Pakistan the Garrison State: Origins, Evolution, Consequences 1947-2011*. Karachi: Oxford University Press, 2013.

Ahmad Manzoor. *Contemporary Pakistan: Politics, Economy, and Society*. Durham: Caroline Academic Press, 1980.

Agurro, Felipe. *Soldiers, Civilians and Democracy: Post-Franco Spain in Comparative Perspective*. Baltimore: The John Hopkins University Press, 1997.

Alagappa, M. *Coercion and Governance: The Declining Political Role of the Military in Asia*. Stanford: Stanford University Press, 2001.

Alagappa, Muthiah, ed. *Political Legitimacy in Southeast Asia: The Quest for Moral Authority*. California: Stanford University Press, 1995.

Arif, Khalid Mahmud. *Khaki Shadows: Pakistan 1947-1997*. New York: Oxford University Press, 2001.

Ahmad, Manzoor, and Khalida Ghaus. *Pakistan Prospects and Perspectives*. Karachi: Laureate Packages, 1999.

Ahmed, Khaled. *The Musharraf Years, Vol. 1: Political Developments in Pakistan 1999-2008*. Lahore: Maktaba Jadeed Press, Vanguard Books (Pvt.) Ltd, 2010.

Azam, K. M. *Pakistan Economy, Politics, Philosophy & Religion*. Karachi: Royal Book Company, 2002.

Aziz, Sartaj. *Between Dreams and Realities: Some Milestones in Pakistan's History*. Karachi: Oxford University Press, 2009.

Adams, John, and Sabiha Iqbal. *Exports, Politics, and Economic Development: Pakistan 1970-1982*. Boulder, CO: Westview Press, 1983.

Alagappa, Muthiah. *Investigating and Explaining Change: An Analytical Framework. In Coercion and Governance: The Declining Political Role of the Military in Asia*, edited by Muthiah Alagappa, 1-24. Stanford, CA: Stanford University Press, 2001.

Croissant, Aurel, and D. K. *Beyond the Fallacy of Coup-ism: Conceptualizing Civilian Control of the Military in Emerging Democracies*. *Democratization* 17(5): 950-975, 2010.

Aziz, M. *Military Control in Pakistan: The Parallel State*. London and New York: Routledge, 2007.

Baxter, Craig. *Pakistan on the Brink: Politics, Economics, and Society*. Karachi: Oxford University Press, 2004.

Bhutto, Benazir. *Whither Pakistan: Dictatorship or Democracy?* Lahore: Al-Hamd Publications, 2007.

Bennett-Jones, Owen. *Pakistan: Eye of the Storm*. New Haven, CT: Yale University Press, 2002.

Chishti, Faiz Ali. *Betrayals of another Kind: Islam, Democracy, and the Army in Pakistan*. Cincinnati: Asia Pub. House, 1990.

Cohen, Stephen P., et al. *Pakistan: Arrival and Departure*. In *The Future of Pakistan*, edited by Stephen P. Cohen, 1-24. Lahore: Maktaba Jadeed Press, Vanguard Books (Pvt.) Ltd, 2012.

Cohen, Stephen P. *The Pakistan Army*. Berkeley: University of California Press, 1984.

Dahl, R. A. *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press, 1984.

Finer, S. *The Man on Horseback: The Role of the Military in Politics*. New Jersey: Transaction Publishers, 2002.

Haqqani, H. *Pakistan: Between Mosque and Military*. Washington DC: Carnegie Endowment for International Peace, 2005.

Huntington, S. P. *The Soldier and the State: The Theory and Politics of Civil-Military Relations*. Cambridge, MA: Harvard University Press, 1957.

Hague, Rod, and Harrop, Martin. *Comparative Govt. and Politics: An Introduction*. New York: Palgrave Macmillan, Basingstoke, Hampshire, 2001.

Huntington, Samuel P. *The Soldier and the State: The Theory and Politics of Civil-Military Relations*. Cambridge, MA: Harvard University Press, 1957.

Jones, Owen Bennett. *Pakistan: Eye of the Storm*. Lahore: Vanguard Books, Banquet Printing Press, 2002.

Khan, H. *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press, 2009.

Kronstadt, K. A. *Pakistan's Domestic Political Development*. Washington DC: Library of Congress Washington DC Congressional Research Service, 2004.

Khan, Hamid. *Constitutional and Political History of Pakistan*. Karachi: Mas Printers, 2003.

Khan, Gul Hassan. *Memoirs of Lt. Gen. Gul Hassan Khan (The Last Commander-in-Chief of the Pakistan Army)*. Karachi: Oxford University Press, 1993.

- Khan, M. Asghar. *We've Learnt Nothing from History: Pakistan: Politics and Military Power*. Oxford: Oxford University Press, 2005.
- Kux, Dennis. *The United States and Pakistan, 1947-2000: Disenchanted Allies*. Washington, 2003.
- Mahmud, Prof. Khalid. *Pakistan's Political Scene (1984-1990) Reflections of a Journalist*. Lahore: Rhots Books, 1990.
- Malik, Anas. *Political Survival in Pakistan: Beyond Ideology*. New York: Routledge, 2011.
- Maniruzzaman, T. *Military Withdrawal from Politics: A Comparative Study*. Florida: Ballinger Publishing Company, 1987.
- Moskalenko, V. B., & Nikolaevich, V. A. *Political History of Pakistan, 1947-2007*. Karachi: Oxford University Press, 2013.
- Niaz, I. *The Culture of Power and Governance of Pakistan, 1947-2008*. Karachi: Oxford University Press, 2010.
- Nawaz, Shuja. *Crossed Swords: Pakistan, Its Army, and the Wars Within*. Oxford: Oxford University Press, 2008.
- Parry, Graint, and Mora, Michael. *Democracy and Democratization*. New York: Routledge Publisher, 1994.
- Perlmutter, Amos. *The Praetorian State and the Praetorian Army: Toward a Taxonomy of Civil-Military Relations in Developing Polities*. Comparative Politics, 1969.
- Onder, M. *What Accounts for Military Interventions in Politics: A Cross-National Comparison*. E-Akademi, Hukuk, Ekonomi ve Siyasal Bilimler Dergisi, 2010.
- Qadeer, Mohammad A. *Pakistan: Social and Cultural Transformations in a Muslim Nation*. Lahore: Banquet Printing Press, Vanguard Books (Pvt.) Ltd, 2011.
- Qureshi, Colonel (R) H. U. *The Future Savior of Pakistan?* Lahore: Ferozsons (Pvt.) Ltd, 2001.
- Rahman, H. *Introduction to Pakistan Constitution*. East Pakistan: Narayan Machine Press, 1958.
- Roberts, Geoffrey K. *A Dictionary of Political Analysis*. London: Hazell Watson & Viney Ltd, 1971.
- Shafqat, S. *New Perspectives on Pakistan: Visions for the Future*. Karachi: Oxford University Press, 2008.

Siaroff, A. *Comparing Political Regimes: A Thematic Introduction to Comparative Politics, Second Edition*. University of Toronto Press, 2008.

Shafqat, Saeed. *Civil-Military Relations in Pakistan: From Zulfikar Ali Bhutto to Benazir Bhutto*. Boulder, CO: Westview Press, 1997.

Siddiqa, Ayesha. *Military Inc.: Inside Pakistan's Military Economy*. Ann Arbor, MI: Pluto Press, 2007.

Sayed, Khalid B. *Politics in Pakistan*. New York: Praeger Publishers, 1980.

Shafqat, Saeed. *New Perspectives on Pakistan: Visions for the Future*. Karachi: Oxford University Press, 2007.

Syed, Anwar. *Issues and Realities of Pakistani Politics*. Lahore: Izharsons Printers, 2007.

Siddiqa, A. *Military Inc: Inside Pakistan's Military Economy*. Karachi: Oxford University Press, 2007.

Syed Zafer Ali Shah v. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869 (Supreme Court of Pakistan, April 27, 2002).

Talbot, I. *Pakistan: A New History*. Karachi: Oxford University Press, 2012.

Wilkinson, Isambard, and Dean Nelson. "Zardari in power struggle with army over India détente." *The Daily Telegraph*, June 26, 2009, 20.

Wilkinson, P. *Terrorism versus Democracy: The Liberal State Response*, 2nd edition. London: Routledge: Taylor and Francis Group, 2006.

## INTERNET SOURCES

Columbia University, School of International and Public Affairs. "Politics and Civil Service Reform in Pakistan." Accessed at <http://jia.sipa.columbia.edu/politics-civil-service-reform-pakistan>.

The Researchers. Accessed at <http://www.theresearchers.org>.

Federation of American Scientists. Accessed at <http://www.fas.org>.

Harvard Kennedy School. Accessed at <http://ksghome.harvard.edu>.

School of Public Policy, Lahore University of Management Sciences. Accessed at <http://www.sappk.org>.

Columbia University, School of International and Public Affairs. "Politics and Civil Service Reform." Accessed at <http://jia.sipa.columbia.edu/politics-civil-service-reform>.

Amnesty International. "Pakistan: Summary of Amnesty International's Report 2003." Accessed at <http://web.amnesty.org/report2003/pak-summary-eng>.

Human Rights Watch. "World Report 2003: Asia." Accessed at <http://hrw.org/wr2k3/asia8.html>.

Dawn. "Three Judges, 5 Prisoners Killed in Sialkot Jail; Police Action to Free Hostages Ends in Tragedy." Accessed at <http://www.dawn.com/news/132069/three-judges-5-prisoners-killed-in-sialkot-jail-police-action-to-free-hostages-ends-in-tragedy>.

Dawn. "New Chief Justice Takes Oath; 10 Judges Retire." Accessed at <http://www.dawn.com/news/390612/new-chief-justice-takes-oath-10-judges-retire>.

Human Rights Commission of Pakistan. "About HRCP." Accessed at <http://www.hrcp-web.org/about.cfm>.

The Commonwealth. Accessed at <http://www.thecommonwealth.org/publications>.

#### **NEWSPAPER ARTICLES**

Ahmad, Bilal. "Pakistan: Daily: Pakistani Budget Neglects Education." *The News* (Islamabad), June 29, 1998. World News Connection. April 1, 2010.

Khan, Kamran. "Pakistan: Report Notes Reasons for Karamat's Resignation." *The News* (Islamabad), October 9, 1998. World News Connection. April 1, 2010.

Khan, Kamran. "Pakistan: Sharif's Surprise Tactics Worries Army." *The News* (Islamabad), October 1998. World News Connection. April 1, 2010.

Khan, Kamran. "Report Details Sharif-Military Differences." *The News* (Islamabad), October 13, 1999. World News Connection. April 1, 2010.

Mir, Hamid. "Gilani, Mukhtar to mediate between Zardari, Kayani." *The News* (Islamabad), January 2, 2010.

Perlez, Jane. "Pakistan's Political Rift May Pose Test for Obama." *The New York Times*, 2009.

Rizvi, Dr. Hasan Askari. "Judicial Appointments and Constitutional Amendments." *Daily Times*, (Lahore), May 16, 2010.

Rashid, Ahmed. "VIEW: President Zardari's loss of control." *Daily Times* (Lahore), December 3, 2009.

Wilkinson, Isambard. "Clashes in the streets as Pakistan descends into chaos." *The Daily Telegraph*, March 16, 2009: 17.

Zaidi, Nayyar. "Pakistan: Pakistani Army Hit by Lack of Foreign Exchange for Spares." *The News (Islamabad)*, October 27, 1998. World News Connection. April 1, 2010.

## REPORTS

CRS Report for Congress. Pakistan Political Crises. Order Code RL 34246. Updated January 3, 2008.

Commonwealth, T. Pakistan Local Bodies Elections. London. Commonwealth Secretariat, 2005.

Group, C. O. Pakistan National and Provincial Assembly Elections. 10 October 2002. London: 2002.

Khan Asfandyar Wali and others Petitioners versus Federation of Pakistan. PLD 2001 Supreme Court 607 (Supreme Court, April 24, 2001).

Mezerra, M. a. Devolution row: An assessment of Pakistan's 2001 local governance ordinance. The Netherlands Institute for International Relations, Hague, 1-54, 2010.

Rashid, Ahmed. Political 'Battle' Seen Leading to 'Anarchy'. *Far Eastern Economic Review (Hong Kong)*, October 6, 1994. Foreign Broadcast Information Service. April 1, 2010.

Richter, William L. Persistent Praetorianism: Pakistan's Third Military Regime. *Pacific Affairs* 51.3 (1978): 406-426.

Rizvi, Hasan-Askari Rizvi. Civil-Military Relations in Contemporary Pakistan. *Survival* 40.2 (1998): 96-113.

Syed, Anwar H. "Pakistan in 1997: Nawaz Sharif's Second Chance to Govern. *Asian Survey* 38.2 (1998): 116-125.

Sayeed, Khalid B. *The Political System of Pakistan*. Lahore: National Book Service, 1983.

## APPENDIX- A

### **General Pervez Musharraf's address to the nation**

**October 13, 1999**

**2:45 am, Pakistan Standard Time**

Source: Dawn - The Internet Edition - <http://dawn.com> - October 13, 1999 [with minor corrections]

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My dear countrymen, Assalam Alaikum

You are all aware of the kind of turmoil and uncertainty that our country has gone through in recent times. Not only have all the institutions been played around with, and systematically destroyed, the economy too is in a state of collapse. We are also aware of the self-serving policies being followed, which have rocked the very foundation of the Federation of Pakistan.

The armed forces have been facing incessant public clamour to remedy the fast declining situation from all sides of the political divide. These concerns were always conveyed to the Prime Minister in all sincerity, keeping the interest of the country foremost. It is apparent that they were never taken in the correct spirit. My singular concern has been the well-being of our country alone. This has been the sole reason that the army willingly offered its services for nation-building tasks, the results of which have already been judged by all of you.

All my efforts and counsel to the Government, it seems, were to no avail. Instead they now turned their attention on the army itself. Despite all my advices, they tried to interfere with the armed forces, the last remaining viable institution in which all of you take so much pride and look up to, at all times, for the stability, unity and integrity of our beloved country. Our concerns again were conveyed in no uncertain terms, but the Government of Mr Nawaz Sharif chose to ignore all these, and tried to politicize the army, destabilize it and tried to create dissension within its ranks.

I was in Sri Lanka on an official visit. On my way back, the PIA commercial flight was not allowed to land at Karachi, but was ordered to be diverted to anywhere outside Pakistan, despite acute shortage of fuel, imperilling the life of all the passengers. Thanks be to Allah, this evil design was thwarted through speedy army action.

My dear countrymen, having briefly explained the background, I wish to inform you that the armed forces have moved in as a last resort, to prevent any further destabilization. I have done so with all sincerity, loyalty and selfless devotion to the country with the armed forces firmly behind me. I do not wish to make a lengthy policy statement at this moment. I shall, however, do that very soon. For the moment, I only wish to assure you that the situation in the country is perfectly calm, stable and under control. Let no outside forces think that they can take advantage of the prevailing situation.

Dear brothers and sisters, your armed forces have never and shall never let you down, Inshallah. We shall preserve the integrity and sovereignty of our country to the last drop of our blood. I request you all, to remain calm and support your armed forces in the re-establishment of order to pave the way for a prosperous future for Pakistan.

May Allah guide us on the path of truth and honour.

Allah Hafiz. Pakistan Paaindabad.

## APPENDIX- B

### Address by H.E. General Pervez Musharraf President of Pakistan at the 58th Session of the UN General Assembly, New York

Mr. President,

It is with great pleasure that I extend to you our warmest felicitations on your election. I also congratulate your predecessor, H.E. Mr. Jan Kavan, for his effective leadership during the last Session of the General Assembly.

2. We support Secretary-General Kofi Annan's efforts to infuse a new sense of mission in the United Nations and maintain the centrality of its role in the promotion of global peace and security. We pay tribute to the memory of Mr. Sergio de Mello and the other UN officials who sacrificed their lives in the service of peace. Mr. President,

3. When the Berlin Wall collapsed, hopes revived for a new age of cooperation and peace, free of ideological confrontations. Sadly, these hopes were dashed:

- by the ethnic cleansing in Bosnia, and then in Kosovo;
- by the failure to end the occupation of Palestine, leading to the revived Intifada against Israeli occupation;
- by the brutal suppression of the Kashmiris demand for self-determination and freedom from Indian occupation;
- by the unending war in Afghanistan and the international neglect which created a climate in which extremism and terrorism could breed;
- by the series of international financial crises and the rise of poverty as a consequence of unequal economic globalization.

4. The terrible terrorist atrocity of 9/11 jolted the foundations of the international system. The response has weakened Al-Qaeda. But, it has not eliminated its associates. Terrorists have struck repeatedly around the world – in Indonesia, Tunisia, Morocco, Saudi Arabia, Russia, Kenya – and in Pakistan.

5. The tragedy of 9/11 transformed security policies and changed geopolitical calculations. Pakistan took a strategic decision, based on the principles of humanity and our national interest, to support the war on terrorism. Our intentions should be in no doubt. Our actions speak louder than words. Our capabilities were limited but have been progressively improved. We are acting against Al-Qaeda and its associates effectively. We have also acted against other organizations or groups involved in any form of terrorism. Pakistan will remain in the forefront of the war on terrorism.

6. The war against terrorism must be fought comprehensively, on a global front, with vision and understanding. It should not erode the moral values of our societies. It must not be hijacked by those who seek to use it as an excuse to suppress other peoples. It must not be allowed to engender a clash of civilizations – a clash between Islam and the West.

7. It is unfortunate that great religions – which should be a source of hope, tolerance and peace – are seen as being pitted against each other. Many Muslims believe their eternal Faith is being demonized. They see Muslim peoples being cruelly suppressed for demanding freedom and equality or targeted for discrimination and worse.

8. On the other hand, the West perceives the Islamic world as volatile and hostile, bent upon striking at Western values. Muslims are often seen as fanatics, extremists and terrorists.

9. In this volatile milieu, the recent war in Iraq has evoked negative reactions in most Arab and Islamic countries.

10. This moment in history calls for reflection, introspection and action. The thesis of a clash of civilizations is a travesty. We must bridge the gulf of misunderstanding between Islam and the West. We must be the catalysts of change, not the prophets of doom.

11. Islam is a faith of peace, harmony and justice. Islam is democracy in action. It upholds human rights, social equality, non-discrimination, freedom of speech. The protection of minorities is an article of faith in Islam. It does not discriminate on the basis of color, caste, creed or religion. Our Faith is dynamic, promoting constant renewal and adaptation, through the process of Ijtehad (or interpretation through consultations), Islam's vision is not trapped in any one period of history; it is modern and futuristic. Islam must not be confused with the narrow vision of a few extremists.

**Mr. President,**

12. I believe the way forward is to adopt a two-pronged strategy – a double pincer – to build harmony, promote moderation, oppose extremism, and ensure justice. I call this strategy: “**Enlightened Moderation**”.

13. On the one hand, Muslim nations must assume their responsibility for internal reform and renewal. They are at the cross roads. They must eschew extremism and confrontation. They must embrace the march of human civilization. They must address the deficits in their social and economic development. They must seek science and technology, higher education and human resource development.

14. The international community, specially the advanced countries of the West, must deliver the other pincer in the strategy of “**Enlightened Moderation**”. They can do so:

- by helping to resolve the political disputes and situations where Muslim peoples are being suppressed, such as in Palestine and Kashmir;
- by rejecting attempts to equate terrorism with Islam; and
- by assisting the Muslim World in poverty alleviation and socio-economic development.

15. The United Nations has a crucial role to play in the conception and execution of the strategy of “**Enlightened Moderation**”.

**Mr. President,**

16. In this context, it is clear that a consensus must be quickly evolved at the United Nations on ways to restore Iraq's stability, security and sovereignty. Iraq cannot be allowed to remain an open wound. This will impact on the region and could inject a new dimension to the campaign against terrorism and extremism. The consensus evolved must enable the Iraqi people, through an inclusive political process, to determine the sequence of steps leading to a fully representative Iraqi government and an end to occupation. The Iraqi people should assume control of their resources and political destiny as soon as possible. They must receive the full support of the international community, including Iraq's neighbours and the Arab and Islamic countries, in building security and reconstructing their country. Pakistan would be prepared to help in a collective UN-sanctioned Arab and Islamic effort to help the Iraqi people, if they wish us to do so.

17. Endeavours to stabilize Iraq will be enhanced by progress in promoting peace with justice in the Middle East. Hopes for a just and comprehensive peace were aroused earlier this year by the "Quartet's Road-Map". These hopes have been progressively dimmed. But, failure is not an option. The fate of the Palestinian people is the principal factor in determining public and political perceptions in the entire Islamic world. It is only progress towards a just peace that can marginalize the extremists. Therefore, we must revive faithful implementation of the Road-Map and realize the vision of two States, Palestine and Israel, living side by side in peace within recognized boundaries.

**Mr. President,**

18. We must ensure the successful implementation of the Bonn process in Afghanistan. The international stabilization force (ISAF) should be expanded and enlarged to ensure security and control over all parts of Afghanistan by President Karzai's government. Pakistan will continue to contribute to interdicting and arresting Al-Qaeda and associated terrorists. We will further intensify our economic cooperation with Afghanistan. It is essential that Afghanistan's territory is not used by third countries for interference or terrorism against Afghanistan's neighbours.

**Mr. President,**

19. Jammu and Kashmir has been rightly described as the most dangerous dispute in the world. A just solution of this dispute holds the key to peace and security in South Asia.

20. I am glad that India has stepped back from its dangerous and failed experiment in "coercive diplomacy" last year. Despite some improvement in atmospherics, India continues to suppress the legitimate struggle of the Kashmiri people to exercise their right to selfdetermination in accordance with the UN Security Council resolutions. It refuses Pakistan's offers of dialogue to address and resolve the Kashmir dispute.

21. India cites "cross-border" terrorism to refuse a dialogue. It knows fully well that the Kashmiri struggle is indigenous. India seeks to exploit the international anti-terrorist sentiment after 9/11, to delegitimize the Kashmiri freedom struggle. On the contrary, it is India which violates international law by refusing to implement Security Council resolutions and perpetrating gross and consistent violations of human rights in Kashmir.

**Mr. President,**

22. Once again, from this august rostrum, I invite India to join Pakistan in a sustained dialogue to resolve the Kashmir dispute. I am convinced that, with goodwill, we can find a just solution which is acceptable to India, to Pakistan and, above all, to the Kashmiri people.

23. I also invite India, jointly with Pakistan, to observe a complete ceasefire along the Line of Control in Kashmir.

24. Pakistan would also be prepared to encourage a general cessation of violence within Kashmir, involving reciprocal obligations and restraints on Indian forces and the Kashmir freedom movement.

25. And, if India is genuinely concerned about cross-LOC infiltration, we ask that it agree to a viable mechanism to monitor this on both sides. The UNMOGIP could be enlarged for this purpose.

**Mr. President,**

26. Apart from addressing Kashmir, sustainable security in South Asia requires India and Pakistan to institute measures to ensure mutual nuclear restraint and a conventional arms balance. Unfortunately, India is embarked on a massive build-up of its conventional and nonconventional military capabilities – advanced offensive aircraft, ballistic and cruise missiles, ABM systems, nuclear submarines and an aircraft carrier. This will destabilize South Asia and erode strategic deterrence. Those powers which desire peace, stability and security in South Asia – and oppose the proliferation of Weapons of Mass Destruction – must review their decisions to offer such major strategic weapons systems to India. They must contribute to maintaining arms restraint and a military balance in South Asia.

**Mr. President,**

27. The crises and conflicts of the last decade have enhanced, not diminished, the relevance of the United Nations. The United Nations remains the central forum for dialogue and diplomacy. It must be strengthened. The Security Council must be made more representative by increasing the number of non-permanent members. New permanent members will only expand inequality. States which occupy and suppress other peoples, and defy the resolutions of the Security Council, have no credentials to aspire for permanent membership.

**Mr. President,**

28. We are on the cusp of a new Millennium. It is a decisive moment in history. We must decide whether to flow with the currents that threaten confrontation and the collapse of our civilization, or muster the collective will to chart the course of history towards a peaceful and cooperative global society. The leaders assembled here bear an enormous responsibility:

- To rescue our world from war and violence, poverty and pestilence;
- To redress inequity and impoverishment which breeds despair and destruction;
- To collectively construct a new global architecture of peace and prosperity for all peoples and nations.

I thank you,

**Mr. President.**

## Appendix- C

### NATIONAL ACCOUNTABILITY BUREAU ORDINANCE

No. XVIII of 1999

*November 16, 1999*

**Amended by: ORDINANCE NO XIX OF 1999,  
ORDINANCE NO IV OF 2000**

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**AN ORDINANCE to provide for the setting up of a National Accountability Bureau so as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters ancillary thereto;**

WHEREAS it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse/abuse of power, misappropriation of property, kickbacks, commissions and for matters connected and ancillary or incidental thereto;

AND WHEREAS there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, government and other agencies;

AND WHEREAS there is a grave and urgent need for the recovery of state money and other assets from those persons who have misappropriated or removed such assets through corruption, corrupt practices and misuse of power and/or authority;

AND WHEREAS it is necessary that a National Accountability Bureau be set up so as to achieve the above aims;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the Fourteenth day of October 1999 and the Provisional Constitution Order No. 1 of 1999, as amended;

AND WHEREAS the President is satisfied that circumstances exist which renders it necessary to take immediate action;

NOW THEREFORE, in pursuance of the aforesaid Proclamation and Provisional Constitutional Order as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

---

**1 Title**

This Ordinance may be called the National Accountability Bureau Ordinance,

1999 (No XVIII of 1999).

**2 Commencement**

This Ordinance shall come into force at once and shall be deemed to have come into force from the 1st day of January 1985.

**3 Ordinance to override other laws**

The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

**4 Application**

It extends to the whole of Pakistan and shall apply to all persons in Pakistan, and persons who are or have been in the service of Pakistan wherever they may be, including areas which are part of Federally and Provincially Administered Tribal Areas.

**5 Definitions**

- a "Accused" shall include a person in respect of whom there are reasonable grounds to believe, is or has been involved in the commission of any offence triable under this Ordinance and/or is subject of an investigation/inquiry by the National Accountability Bureau, or concerned Agency.
- b "Appropriate Government" means in relation to any person serving in connection with the affairs of the Federation, including any person employed by a corporation, body, financial institution, bank, authority undertaking or any other organization set up, controlled or administered by or under the authority of the Federal Government or the Provincial Government concerned.
- c "Assets" means any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan, for which they cannot reasonably account, or for which they cannot prove payment of full and lawful consideration.
- d. "Associates" means:-
  - i. any individual who is or has been managing the affairs for or keeping accounts of the accused or who enjoys or has enjoyed any benefit from the assets referred to above.
  - ii. any association of persons, body of individuals, partnership firms or private limited companies within the meaning of Companies Ordinance 1984, of which such a person is or has been a member, partner or director or which have been promoted, floated, established or run by the same group of persons.
  - iii. any trustee of a Private Trust.

- iv. any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused.
- e. "Chairman National Accountability Bureau" means a person who is appointed as such by the President of the Islamic Republic of Pakistan as mentioned in Section 6 (b) hereafter.
- f. "Code" means the Code of Criminal Procedure, 1898.
- fa. "Conciliation Committee" means the Conciliation Committee constituted under section 25A;
- g. "Court" means an Accountability Court which shall consist of a Judge who shall be appointed by the President of Pakistan after consultation with the Chief Justice of Pakistan through notification in the official Gazette.
- h. "Judge" means a person who has been a Judge of the High Court, is, or has been a District & Sessions Judge qualified to be a Judge of the High Court or any lawyer who is qualified to be a Judge of the High Court.
- j. "Deputy Chairman" means the person appointed as Deputy Chairman of the National Accountability Bureau by the Chief Executive of the Islamic Republic of Pakistan.
- k. "National Accountability Bureau" means the Bureau set up and notified under this Ordinance, (hereinafter known as NAB).
- l. "Freezing" includes attachment, sealing, prohibition, holding, controlling and/or managing any property either through a Receiver or otherwise as may be directed by the Court or Chairman NAB, and in case it is deemed necessary the disposal thereof, by sale through auction or negotiation subject to confirmation by the Court or by Chairman National Accountability Bureau as the case may be after public notice.
- m. "Holder of Public Office" means a person who :-
  - i. has been the President of Pakistan or the Governor of a Province.
  - ii. is, or has been the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney General and other Law Officer appointed under the Central Law Officers Ordinance, 1970 (VII of 1970), Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Auditor General, Political Secretary, Advisor or Consultant to the Prime

Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State;

iii. is, or has been, the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate General including Additional Advocate General and Assistant Advocate General, Political Secretary, Advisor or Consultant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister;

iv. is holding, or has held, an office or post in the service of Pakistan, or any service in connection with the affairs of the Federation, or of a Province, or of a local council constituted under any Federal or Provincial law relating to the constitution of local councils, or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government, other than a person who is a member of any of the armed forces of Pakistan, or for the time being is subject to any law relating to any of the said forces, except a person who is, or has been a member of the said forces and is holding, or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organization established, controlled or administered by or under the Federal Government or a Provincial Government;

v. is, or has been, the Chairman or Vice Chairman of a zila council, a municipal committee, a municipal corporation or a metropolitan corporation constituted under any Federal or Provincial law relating to local councils.

For the purpose of this sub-clause the expressions "Chairman" and "Vice Chairman" shall include "Mayor" and "Deputy Mayor" as the case may be, and the respective councilors therein.

vi. has served in and retired or resigned from or has been discharged or dismissed from the Armed Forces of Pakistan.

n. "Offence" means the offences of corruption and corrupt practices as defined in this Ordinance and includes those offences as specified in the Schedule to this Ordinance.

o. "PERSON" includes in the case of a corporate body, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or any one exercising direction or control of the affairs of such corporate body, but will not include employees appointed and designated as Director or Chief Executive; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having interest in the said firm, partnership or

proprietorship concern or direction or control thereof.

- p. "Property" includes any or all movable and immovable properties situated within or outside Pakistan.
- q. "Government Property" means both moveable & immovable properties belonging to the Government and includes gifts, donations, financial assistance, grants, aid received or collected in whatever name or for whatever purpose during the tenure of office.
- r. "Wilful Default": a person is said to commit an offence of wilful default under this Ordinance if he does not pay or return or repay the amount to any bank, financial institution, cooperative society, or a Government department or a statutory body or an authority established or controlled by a Government on the date that it became due according to the laws, rules, regulations, instructions, issued or notified by a bank, including the State Bank of Pakistan, financial institution, cooperative society, Government Department, statutory body or an authority established or controlled by a Government, as the case may be, and a period of thirty days has expired thereafter:  
**Provided** that it is not wilful default under this Ordinance if the accused was unable to pay, return or repay the amount as aforesaid on account of any wilful breach of agreement or obligation or failure to perform statutory duty on the part of any bank, financial institution, cooperative society or a Government department or a statutory body or an authority established or controlled by Government.

## **6. National Accountability Bureau**

- a. There shall be constituted a National Accountability Bureau for the whole of Pakistan.
- b. Chairman National Accountability Bureau**
  - i. There shall be a Chairman NAB to be appointed by the President.
  - ii. The Chairman NAB shall be appointed on such terms and conditions and shall have the status and privileges as may be determined by the President.
  - iii. The Chairman NAB may resign his office by writing under his hand addressed to the President.
- c. Acting Chairman, National Accountability Bureau**

As and when the Chairman NAB is absent or unable to perform the functions of his office due to any reason whatsoever, the Deputy Chairman will act as the Chairman NAB, and in case the Deputy Chairman is absent or unable to perform the functions of the office, any other person duly authorized by the Chairman NAB, to act as Chairman NAB.

**7. Deputy Chairman, National Accountability Bureau**

- a. There shall be a Deputy Chairman NAB appointed by the President in consultation with the Chairman NAB. The Deputy Chairman shall assist the Chairman in the performance of his duties and carry out such functions as may be directed by the Chairman.
- b. The Deputy Chairman shall serve at the pleasure of the President.

**8. Prosecutor General Accountability.**

- a. The Chairman NAB may appoint any person to act as the Prosecutor General Accountability, notwithstanding any other appointment or office the latter may concurrently hold, upon such terms and conditions as may be determined by the Chairman.
- b. The Prosecutor General shall give advice to the Chairman NAB upon such legal matters and perform such other duties of a legal character as may be referred or assigned to him by the Chairman NAB and in the performance of his duties, he shall have the right of audience in all Courts established under this Ordinance and all other Courts and Tribunals in Pakistan.
- c. The Prosecutor General Accountability Bureau, in consultation with the Attorney General of Pakistan, may, with prior approval of the Chairman NAB, appoint Special Prosecutors to conduct prosecution of specific cases under this Ordinance, before any Accountability Court or any other Court or Tribunal.

**9. Corruption and Corrupt Practices**

- a. A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:-
  - i. If he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person; or
  - ii. If he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or
  - iii. If he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or willfully allows any other

person so to do; or

- iii. If he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse and/or dependents or any other person, any property, valuable thing, or pecuniary advantage; or
  - v. If he or any of his dependents or benamidars owns, possesses, or has any right or title in any movable or immovable property or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for; or
  - vi. Misuses his authority so as to gain any benefit or favour for himself or any other person, or to render or attempt to do so;
  - vii. If he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or enables any concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar; or
  - vii. if he commits an offence of willful default.
- b. All offences under this Order shall be non-bailable and, notwithstanding anything contained in sections 426, 491, 497, 498 and 561A or any other provision of the Code, or any other law for the time being in force no Court including the High Court shall have jurisdiction to grant bail to any person accused of any offence under this Order.
- c. Where the Chairman NAB decides to release from custody or detention a holder of a public office or any other person accused of an offence under this Ordinance, he shall do so after considering the gravity of the charge against such person and where the accusation specifies any amount in respect of which the offence is alleged to have been committed, he shall not be released unless such amount is deposited with the NAB;  
**Provided** that the Chairman NAB may impose other conditions for release from custody or detention.
- d. The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution , etc, within one month of the date of such deposit.

## **10. Punishment for Corruption and Corrupt Practices**

- a. A person who commits the offence of corruption and corrupt practices shall be punishable with imprisonment for a term which may extend to 14 years, or with fine, or with both, and such of the assets and property of such person which is found to be disproportionate to the known sources of his income or which is acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be liable to be forfeited to the appropriate Government.
- b. Any person giving illegal gratification, or abetting, assisting or aiding a

holder of a public office, or receiving or holding any property obtained or acquired by a holder of public office, through corruption or corrupt practices, or being a beneficiary of any asset, property or gain obtained through corruption or corrupt practices shall fall within the scope of this section and shall be liable to the same or a lesser punishment that may be awarded to a holder of a public office as may be deemed fit by the Court.

**11. Imposition of Fine**

Where a person found guilty of an offence is sentenced to pay a fine, irrespective of whether or not a sentence of imprisonment is imposed, the amount of the fine shall in no case be less than the gain derived by the accused or any relative or associate which may be set off against the forfeited or frozen assets and property.

**12. Power to freeze property**

- a. The Chairman NAB or the Court trying a person for any offence as specified under this Ordinance, may, at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, movable or immovable, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf;
- b. If the property ordered to be frozen under sub-section (a) is a debt or other movable property, the freezing may be made:-
  - i. by seizure; or
  - ii. by appointment of receiver; or
  - iii. by prohibiting the delivery of such property to the accused or to anyone on his behalf; or
  - iv. by all or any of such or other methods as the Court or the Chairman NAB as the case may be, deem fit;
- c. If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases:-
  - i. by taking possession; or
  - ii. by appointment of receiver; or
  - iii. by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or
  - iv. by all or any of such methods as the Chairman NAB or the Court may deem fit.

**Provided** that any Order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding 30 days unless confirmed by the Accountability Court, where the Reference under this Order shall be sent by NAB.

**Provided** further that notwithstanding that the Order of NAB or the Court shall be effective from the time of passing thereof or proclamation thereof in a Newspaper, widely circulated and dispatch at the last known address of the accused.

- d. If the property ordered to be frozen consists of livestock or is of a perishable nature, the Chairman NAB, OR the Court may, if it deems proper and expedient, order the immediate sale thereof and the proceeds of the sale may be deposited with the Chairman NAB or the Court, or as either may direct as appropriate.
- e. The powers, duties, and liabilities of a Receiver, if any, appointed under this section shall be the same as those of a Receiver appointed under Order-XL of the Code of Civil Procedure, 1908 (Act V of 1908).
- f. That the Order of freezing etc. mentioned above in Section 12(a to e) shall, as the case may be, remain operative until final disposal by the Accountability Court or the Appellate Forum, notwithstanding filing of or pendency of an Appeal under this Order.

**13. Claim or objection against freezing**

- a. Notwithstanding the provisions of any law for the time being in force, the Accountability Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under section 12 above. Such claims or objections shall be made before the Accountability Court within 14 days from the date of the order freezing such property.
- b. The Court may for sufficient cause extend the time for filing such claims or objections for a period not exceeding additional 14 days.
- c. No appeal shall lie against an Order made under Section 12 of this Ordinance.

**14. Presumption against accused accepting illegal gratification**

- a. Where in any trial of a scheduled offence punishable under this Order, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person any gratification, other than legal remuneration, or any valuable thing, or any pecuniary advantage from a person or any agent of a person, for any favour shown or promised to be shown by the accused, it shall be presumed, unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing or pecuniary advantage for himself or some other person, as the case may be, as a motive or a reward such as is specified in section 161 to 163 of the Pakistan Penal

Code (Act XLV of 1860), or, as the case may be, without consideration, or for a consideration which he believed to be inadequate;

- b. Wherein any trial of an offence punishable under section 165A of the Pakistan Penal Code (Act XLV of 1860) it is proved that any gratification other than legal remuneration or any valuable thing has been given, or offered to be given, or attempted to be given, by any accused person, it shall be presumed, unless the contrary is proved, that he gave, or offered to give, or attempted to give, that gratification, or that valuable thing, as the case may be, as a motive or a reward such as is specified in section 161 to 163 of the said Code, or, as the case may be, without consideration or for a consideration which he believed to be inadequate.
- c. In any trial of an offence punishable under this Order, the fact that the accused person or any other person on his behalf, is in possession, for which the accused person cannot satisfactorily account, of property or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and/or corrupt practices and his conviction therefore shall not be invalid by reason only that it is based solely on such a presumption.
- d. Where a person is accused of an offence under section 9(a) (vi) and (vii), the burden of proof that he used his authority, or issued any directive, or authorised the issuance of any policy or statutory rule or order (SRO), or made any grant or allowed any concession, in the public interest, fairly, justly, and for the advancement of the purpose of the enactment under which the authority was used, directive or policy or rule or order was issued or grant was made or concession was allowed shall lie on him, and in the absence of such proof the accused shall be guilty of the offence, and his conviction shall not be invalid by the reason that it is based solely on such presumption.

**15. Disqualification to contest elections or to hold public office**

- a. Where an accused person is convicted for the offence of corruption or corrupt practices as specified in the Schedule to this Ordinance, he shall stand disqualified for 21 years for seeking, or from being elected chosen appointed or nominated as a member or representative of any public office, or any statutory or local authority of the Government of Pakistan.  
**Provided** that any accused person who has availed the benefit of sections 25 of this Ordinance shall also be deemed to have been convicted for an offence under this Ordinance, and shall stand disqualified for 21 years as above.
- b. Any person convicted of an offence of corruption and/or corrupt practices as

described at serial No. 1 of the Schedule shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances from any Bank or Financial Institution in the public sector, for a period of 10 years from the date of conviction.

#### **16. Trial of Offences**

- a. Notwithstanding anything contained in any other law for the time being in force, all persons accused of a scheduled offence, shall be prosecuted for such offence by Court established pursuant to this Ordinance exclusively as constituted under section 5 (g) and the case shall be heard from day to day and disposed of within 30 days.
- b. The court shall sit at such place or places as the Government may, by order, specify in this behalf.
- c. Where more courts than one have been established for an area , the Chief Justice of the High Court of the Province concerned shall, keeping in view the seniority and status of the Judges of various Courts, designate a Judge of any such Court to be an Administrative Judge.
- d. Notwithstanding anything contained in this section, if in respect of any case relating to an offence triable under this Ordinance, the Chairman NAB, having regard to the facts and circumstances of the case may file a reference before any Accountability Court established anywhere in Pakistan, and such Court shall have the jurisdiction to try the same.

#### **16A. Transfer of Cases**

- a. Notwithstanding anything contained in any other law for the time being in force, the Chairman NAB may apply to any court of law or tribunal that any case involving a scheduled offence under this Ordinance pending before such court or tribunal shall be transferred to a Court established under this Ordinance, then such other Court or Tribunal shall transfer the said case to any Court established under this Ordinance and it shall not be necessary for the Court to recall any witness or again to record any evidence that may have been recorded.
- b. In respect of any case pending before a Court established under this Ordinance, the Chairman NAB having regard to the facts and circumstances of the case and in the interest of justice and for the protection and safety of witnesses it is necessary that such case is transferred for trial may direct the Prosecutor General Accountability to apply for the transfer of the case from any such Court in one province to a court in another province or from one Court to a Court in another Province from one Court in a Province to another Court in the same Province, provided that:-
  - i. in case the transfer is intended from a Court in a Province to a court in another Province to the Chief Justice of Pakistan; and

ii. in case the transfer is intended from one Court in a Province to another Court in the same Province to the Chief Justice of the High Court; and if the Chief Justice of Pakistan or, as the case may be, the Chief Justice of High Court considers it expedient in the interest of justice so to do, he may transfer the case from one Court to another Court and case so transferred shall be tried under this Ordinance without recalling any witness whose evidence may have been recorded.

**17. Provision of the Code to apply**

- a. Notwithstanding anything contained in any other law for the time being in force, unless there is anything inconsistent with the provisions of this Ordinance, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1989), shall mutatis mutandis, apply to the proceedings under this Order.
- b. Subject to sub section (a), the provisions of Chapter XXIIA of the Code shall apply to trials under this Ordinance.
- c. Notwithstanding anything contained in sub-section (a) or sub- section (b) or in any law for the time being in force, the Accountability Court may, for reasons to be recorded, dispense with any provision of the Code and follow such procedure as it may deem fit in the circumstances of the case.

**18. Cognizance of Offences**

- a. The Accountability Court shall not take cognizance of any offence under this Ordinance except on a reference made by or on behalf of the Chairman National Accountability Bureau.
- b. A reference under this Order shall be initiated by the Chairman National Accountability Bureau on
  - i. a reference received from the appropriate government; or
  - ii. receipt of a complaint; or
  - iii. his own accord.
- c. Where the Chairman National Accountability Bureau is of the opinion that it is or may be necessary and appropriate to initiate proceedings against any person on receipt of a reference or complaint or on his own accord, as the case may be, he shall refer the matter to the Deputy Chairman National Accountability Bureau or to any other officer for inquiry and investigation.
- d. The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman or/and Deputy Chairman NAB.
- e. The Chairman NAB and such members, officers and/or servants of the NAB

shall have and exercise, for the purposes of an inquiry and/or investigation the power to arrest any person, and all the powers of an officer-in-charge of a Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the NAB such official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman or any officer duly authorized by the Chairman NAB.

- f. Any Inquiry and Investigation under this Order shall be completed expeditiously but not exceeding a period of 75 days, or earlier as soon as may be practical and feasible.
- g. The Chairman NAB, shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further, he shall refer the matter to an Accountability Court.
- h. If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person, the Chairman or Deputy Chairman NAB or the prescribed law officer, may refer the matter to the Court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

**19. Power to call for information**

The Chairman NAB or any authorized officer may, during the course of an inquiry or investigation in connection with contravention of any provision of this Ordinance:-

- a. Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made thereunder;
- b. Require any person to produce or deliver any document or thing useful or relevant to the inquiry or investigation;
- c. Examine any person acquainted with the facts and circumstances of the case; and
- d. Require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whatsoever.

**20. Reporting of suspicious financial transactions**

- a. Notwithstanding anything contained in any law for the time being in force, it shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual or large transactions with context to the account, which have no apparently genuine economic or lawful purpose and upon bonafide professional judgement of the Bank suspicion that such transactions could constitute or be related to illegal or illicit activities, corruption or corrupt practices, the manager or director of such financial institution shall report all such transactions to the Chairman NAB forthwith by the quickest possible mode of communication to be confirmed in writing.
- b. Whoever fails to supply the information in accordance with subsection (a) shall be punishable with rigorous imprisonment which may extend to 5 years, or with fine, or with both.
- c. Where there are reasonable grounds to believe that the assets of a person or any part thereof were acquired through corruption or corrupt practices, and there was no other likely source of acquiring such assets or part thereof, it shall be presumed, unless proved to the contrary by the accused person, that such assets or part thereof were acquired, generated or obtained through corruption and corrupt practices.

**21. International Cooperation - Request for mutual legal assistance**

The Chairman NAB or any officer authorized by the Federal Government may request a Foreign State to do the following acts in accordance with the law of such State:-

- a. have evidence taken, or documents or other articles produced;
- b. obtain and execute search warrants or other lawful instruments authorizing search for things relevant to investigation or proceedings in Pakistan believed to be located in that State, and if found, seize them;
- c. freeze assets, by whatever processes are lawfully available in that State, to the extent to which the assets are believed on reasonable grounds to be situated in that State;
- d. confiscate articles and forfeit assets to the extent to which the articles or assets, as the case may be, are believed to be located in that State;
- e. transfer to Pakistan any such evidence, documents, things, articles, assets or proceeds realized from the disposal of such articles or assets; and
- f. transfer in custody to Pakistan a person detained in the foreign State who consents to assist Pakistan in the relevant investigation or proceedings.

**22. Jurisdiction**

- a. The Chairman NAB may inquire into and investigate any suspected offence which appears to him on reasonable grounds to involve serious offences as given in the Schedule to this Ordinance, and has been referred to him, or of his own accord.
- b. The Chairman NAB may, if he thinks fit, conduct any such investigation in conjunction with any other agency or any other person which/who is, in the opinion of the Chairman NAB, a proper Agency or person to be concerned in it.

**23. Transfer of property void**

- (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated investigation into the offences under this Ordinance, alleged to have been committed by an accused person, such person or any relative or associate of such person or any other person on his behalf, shall not transfer by any means whatsoever, create a charge on any movable or immovable property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Accountability Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void.
- (b) Any person who transfers, or creates a charge on property in contravention of subsection (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved.

- 24.**
- a. The Chairman NAB shall have the power, at any stage of the investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested.
  - b. If the Chairman, NAB decides to refer the case to a Court, such reference shall contain the substance of the offence/offences alleged to have been committed by the accused and a copy of such reference shall be forwarded to the Registrar of the Court to which the case has been sent to try the accused, and another copy shall be delivered to the accused.
  - c. The provisions of sub-section (a) shall also apply to cases, which have already been referred to the Court.
  - d. Notwithstanding anything contained in the code, where the holder of the public office or any other person accused of an offence is arrested by NAB under this Ordinance, NAB shall, as soon as may be, inform him of the grounds and substance on the basis of which he has been arrested and produce him before the court established under this Ordinance within a

period of twenty four hours of arrest excluding the time necessary for the journey from the place of arrest to the court and such person shall, having regard to the facts and circumstances of the case, be liable to be detained in the custody of NAB for the purpose of inquiry and investigation for a period not exceeding ninety days provided that no accused arrested under this Ordinance shall be released without the written order of the Chairman NAB or the order of the Court.

- e. All persons presently in custody shall immediately upon coming into force of this sub-section, unless previously produced before an Accountability Court, be produced before such court as provided in sub-section (d) and the Order authorizing retention of custody by NAB shall be deemed to relate to the date of arrest.
- f. The Chairman, NAB may declare and notify any place as a police station or a sub-jail at his discretion.

#### **25. Voluntary Return (Plea Bargaining)**

- (1) Where at any time whether before or after the commencement of trial the holder of a public office or any other person accused of any offence under this Ordinance, returns to the NAB the assets or gains acquired through corruption or corrupt practices;
  - (i) if the trial has not commenced, the Chairman NAB may release the accused; and
  - (ii) if the trial has commenced, the Court may, with the consent of the Chairman, release the accused.
- (2) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, etc., within one month from the date of such deposit.

#### **25A. Payment of Loans, etc**

- a. Where a person has been arrested or is in the custody of NAB on the charge that he is guilty of committing the offence of wilful default on account of non-payment of dues to a bank or financial institution or cooperative society, he may apply to the Chairman NAB for the reconciliation of his liability through Conciliation Committee and the Chairman NAB may refer the matter to a Conciliation Committee.
- b. The Conciliation Committee shall consist of a nominee of NAB, who shall be the Chairman of the Commission, a nominee of the Prosecutor General NAB, an officer of the Banking Cell of NAB nominated by the Chairman NAB, a nominee of the Governor of the State Bank of Pakistan being a senior officer of the State Bank well qualified in the profession of banking, a

Chartered Accountant appointed by the State Bank of Pakistan, a Chartered Accountant appointed by the accused who will represent him and a Chartered Accountant appointed by the lender.

**Explanation:** Where the lender is a consortium or group of banks or financial institutions, the lender means the lead bank or financial institution.

- c. The Conciliation Committee after examining the record and accounts of the bank and the written evidence produced by the accused through his Chartered Accountant, if any, shall determine the amount outstanding against the accused calculated in accordance with law, circulars, rules and regulations of the State Bank of Pakistan and the manner and schedule of repayment. The accused, if he so desires, shall be heard at the commencement and before the conclusion of proceedings provided that the Chartered Accountant representing the accused shall have access to him for obtaining instructions during the proceedings of the Conciliation Committee.
- d. The Conciliation Committee shall conclude the reference within thirty days and its recommendations shall be recorded by its Chairman and shall contain the views of all members of the Committee. The recommendations of the Conciliation Committee shall be submitted to the Chairman NAB.
- e. The Chairman NAB shall consider the recommendations submitted to him under sub-section (d). The Chairman NAB may accept the recommendations or may, for reasons to be recorded, pass such appropriate order including rejecting or modifying the same as he may deem fit.
- f. Where the accused undertakes to repay the amount as determined by the Conciliation Committee or the Chairman NAB, as the case may be, the Chairman NAB may release the accused for the purpose of this Ordinance.
- g. Notwithstanding anything contained in this Ordinance or any other law for the time being in force, if the Chairman NAB is satisfied that any agreement entered into between a bank or a financial institution, a cooperative society and a lender is vitiated by the provisions of section 23 or any other provision of the Contract Act, 1872 (IX of 1872), or any other law or the same is collusive or is against public interest, he may refuse to take such agreement into consideration for the purposes of Conciliation Committee or the conclusion drawn by them.
- h. In the event of failure either of the Conciliation Committee to conclude the reference within thirty days of the commencement of the conciliation proceedings or the failure of the accused to accept and implement the decision of the Chairman NAB regarding the payment and matters relating thereto, the case shall be proceeded with and referred to the Accountability Court.

**26. Tender of pardon to accomplice/plea-bargaining**

- a. Notwithstanding anything contained in the Code, at any stage of investigation or inquiry, the Chairman may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence, tender a full or conditional pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the said offence including the names of the persons involved therein whether as principals or abettors or otherwise.
- b. Every person accepting a tender of pardon under sub-section (a) shall be examined as a witness in the subsequent trial.
- c. Subject to sub-section (d), the person to whom pardon has been granted under this section shall not -
  - i. in the case of a full pardon be tried for the offence in respect of which the pardon was granted; and
  - ii. in the case of a conditional pardon be awarded a punishment or penalty higher or other than that specified in the grant of pardon notwithstanding the punishment or penalty authorized by law.
- d. Where the Chairman NAB certifies that in his opinion, any person who has accepted such tender has, either by willfully concealing anything essential or by giving false evidence through willful or reckless mis-statement, not complied with the condition on which the tender was made, such a person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the said matter including the offence of giving false evidence, which he knows or ought to know is false.
- e. Any statement made before the Chairman NAB or the Court by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

**27. Power to seek Assistance**

The Chairman NAB shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or proceeding pending before the NAB, from any Department of the Federal Government, Provincial Government, Local Authority, Bank, Financial Institution, person or any authority and institution or department in the public sector or the private sector, as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the Chairman's decision shall be final.

**28. Appointment of officers and staff in the National Accountability Bureau**

- a. The NAB may appoint such officers and staff as it may consider necessary for efficient performance of its functions and exercise of its powers under this Ordinance.
- b. The officers and members of staff shall be appointed by the Chairman NAB or by a person authorized by the Chairman NAB.
- c. The officers and members of staff shall be entitled to such salary, allowances and other terms and conditions of services as the Chairman NAB may, with the approval of the Chief Executive, determine.
- d. Subject to sub-section (e), the provisions of the Civil Servants Act, 1973(LXXI of 1973) shall not apply to the persons appointed in NAB.
- e. Nothing contained in sub-section (d) shall apply to a person who is a civil servant within the meaning of the law relating to appointments as civil servant of the Federation or a Province and is deputed to or posted in NAB.

**29. Accused to be competent witness**

Any person charged with an offence punishable under this Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him.

**Provided** that the accused shall not be compelled to be a witness against himself:

**Provided** further that, where an accused person appears as a witness of his own choice and refuses to answer any question, the Court may draw such adverse inference from such refusal as it may think proper.

**30. False evidence etc.**

- a. Notwithstanding anything contained in the preceding provisions or any other law already in force, on pronouncement of judgement, the Accountability Court shall have the jurisdiction and power to take cognizance of an offence committed in the course of the investigation or trial of a case by any officer, any witness, including an expert, who has tendered false evidence in the case, whether he deposed in court or not, or any other person, under sections 176 to 182 of Chapter X, or sections 191 to 204, or 211 to 223, or 225 -A of Chapter XI, of the Pakistan Penal Code (Act XLV of 1860), or under any other law relating to false evidence and offences against public justice, and to summarily try him and award punishment provided for the offence under the law.
- b. For the purpose of trial under sub-section (a), the Court may, as nearly as may be, follow the procedure specified in Chapter XXII of the Code.
- c. The proceeding under sub-section (a) may be initiated by the Court on its own accord at any time after the decision of the case or, in the event that there is an appeal, after the decision thereof, or on an application made by

the Prosecutor or the person accused of an offence tried by the Court, within thirty days.

**31. Prohibition to hamper investigation**

a. Notwithstanding anything contained in any other law for the time being in force, if any person concerned with the inquiry and investigation and prosecution of a case consciously and deliberately and with malice aforethought compromises, hampers, misleads, jeopardizes or defeats an investigation of a case under process before NAB or any concerned agency or authority or any Court or an Accountability Court, he shall be deemed to have committed the scheduled offence of corrupt practice and/or corruption.

b. No person will be proceeded with under this section except with the sanction of a Committee composing the Chairman NAB, Deputy Chairman NAB and the Prosecutor General Accountability.

**31A. Absconding to avoid service of warrants**

Whoever absconds in order to avoid being served with any process issued by any Court or any other authority or officer under this Ordinance or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the proceedings or punishment under this Ordinance shall be guilty of an offence punishable with imprisonment which may extend to three years notwithstanding the provisions of section 87 and 88 of Code of Criminal Procedure, 1898, or any other law for the time being in force.

**31B. Withdrawal from prosecution**

Where at any stage of the proceedings, the Chairman NAB is of the opinion that ends of justice so require he may direct the Prosecutor General Accountability to withdraw from prosecution of any person under this Ordinance and upon such withdrawal the accused shall be released if not required in any other case under this Ordinance.

**31C.** No Court established under this Ordinance shall take cognizance of an offence against an officer or an employee of a bank or financial institution for writing off, waving, restructuring or refinancing any financial facility, interest or markup without prior approval of the State Bank of Pakistan.

**32. Appeal**

a. Any person convicted or the Prosecutor General Accountability, if so directed by NAB aggrieved by the Final Judgement and Order of the Court under this Ordinance may, within ten days of the final Judgement and Order of the Accountability Court prefer an Appeal to the High Court of the Province where the Court is situated.

b. All Appeals against the final Judgement filed before the High Court will be heard by a Bench of not less than two judges constituted by the Chief Justice

of the High Court and shall be finally disposed off within thirty days of the filing of the Appeal.

- c. Notwithstanding any other law for the time being in force or this Ordinance, no appeal against any interlocutory order of the Court during the proceedings pending before it under this Order, shall lie and an appeal shall lie only against the Final Judgement of the Court.
- d. No stay of proceedings before the Court shall be granted by any Court on any ground whatsoever, nor proceedings thereof be suspended or stayed by any Court on any ground whatsoever.

**33. Transfer of pending proceedings**

Any and all proceedings pending before a court under the Ehtesab Act, 1997 (IX of 1997), shall stand transferred to an Accountability Court as soon as it is constituted under this Ordinance within the same Province, and it shall not be necessary to recall any witness or again to record any evidence that may have been recorded.

- 34.** The President of the Islamic Republic of Pakistan in consultation with the Chief Justice of Pakistan may make Rules for carrying out the purposes of this Ordinance and the said Rules, shall on promulgation be a part of this Ordinance.

**35. Repeal**

- a. The Ehtesab Act 1997 (Act IX of 1997) shall stand repealed from the date of promulgation of this Ordinance, provided that notwithstanding the Repeal of the said Act, any proceedings pending under Ordinance CXI of 1996, Ordinance No. XX of 1997 and the Ehtesab Act, 1997 before any Court established under the said Act of 1997 and/or any of the aforesaid Ordinances amending the same, shall, continue under this Ordinance as transferred under sub-section (b) of section 33 to an Accountability Court.
- b. Any case or proceeding pending under the aforesaid Act of 1997 immediately before the commencement of this Ordinance and transferred to any court established under this Ordinance shall be proceeded with and all subsequent proceedings shall be completed in accordance with, and under the provisions of, this Ordinance.

**36. Indemnity**

No suit, prosecution, or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman NAB, or any other member of the NAB or any person exercising any power or performing any function under this Ordinance or the Rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Ordinance or the Rules thereof.

**37. Removal of Difficulties Order.**

The President may for the purpose of removing any difficulties in the enforcement of this Ordinance may make modifications, additions or omissions as may be deemed necessary or expedient for the interest of the State.

**SCHEDULE OF OFFENCES**

S.No.	Offences	Punishment	Remarks
1	Corruption and Corrupt Practices.	14 years or less along with fine	
a.	Wilful default in repayment of outstanding dues to a Bank or a Financial Institution a cooperative society, a Government department or an authority established or controlled by the Government shall be an offence or deemed to be an offence of corruption and / or corrupt practices.	14 years or less plus fine	
	Any person who aids, abets or through any willful act or omission is instrumental in the commission of the offence specified at Serial 1(a) above of this Schedule or with intent for illegal gratification by misuse of power, authority, influence, nepotism, favoritism writes off, waives, restructures or refinances illegally, improperly or without sufficient justification the principal amount of loan on any financial facility, interest or mark-up on any loan or financial facility provided to any person by any bank or financial institution, a cooperative society, a Government department or an authority established or controlled by the Government shall have committed or be deemed to have committed the offence of corruption and/or corrupt practices.	14 years or less plus fine amounting to the loss incurred	
2.	Criminal conspiracy/attempt to commit any scheduled offence.	10 years or less	
3.	Knowingly furnishes false information to any member of the National Accountability Bureau or to any agency investigating any alleged offence.	10 years or less	To be read with Sections 175-177 PPC
4.	Refuses to answer questions, or to provide information to the National Accountability Bureau or any other agency when required to do so.	5 years or less	To be read with Sections 180-182 PPC
5.	Giving or fabricating false evidence during inquiry, investigation of an offence by the National Accountability Bureau or any agency:		To be read with following sections of
?	When given by	a 5 years or less	PPC:- 193,

	complainant/witness/accused.		195, 197, 198,
	? When given by any inquiry officer, investigator of the National Accountability Bureau or concerned agency.		199, 200, 201, 202, 203, 204, 211
6.	Offence under section 409 PPC	14 years or less	
7.	Misuse of authority / power in committing any offence above, by any person holding a public office including any offence under sections 161 to 165A of the Pakistan Penal Code.	14 years or less	
8.	Fraud	14 years or less	
9.	Acquisition, retention and possession of assets derived from corrupt practices by corrupt or/and illegal means in abuse of power and/or authority.	14 years or less along with fine and confiscation of property	
10.	Section 31A of this Ordinance	3 years	

**MUHAMMAD RAFIQ TARAR**  
President of the Islamic Republic of Pakistan

## **APPENDIX- D**

### **Legal Framework Order, 2002 Chief Executive's Order No. 24 of 2002**

(Gazette of Pakistan, Extraordinary, August, 2002)

WHEREAS general elections to the National Assembly and the Provincial Assemblies are scheduled to be held on October 10, 2002, and to the Senate on November 12, 2002;

AND WHEREAS it is necessary to provide for a smooth and orderly transition;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, read with the Provisional Constitution Order No. 1 of 1999, and in pursuance of the powers vested in him by and under the judgement of the Supreme Court of Pakistan, dated the 12th May, 2000, and in exercise of all the powers enabling him in that behalf; to revive the Constitution with the amendments made herein, the Chief Executive of the Islamic Republic of Pakistan is pleased to make the following Order:-

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#### **1. Short title and commencement.**

- (1) This Order may be called the Legal Framework Order, 2002.
- (2) It shall come into force at once.

#### **2. First meetings of National Assembly, Senate and Provincial Assemblies.**

- (1) The first meeting of the National Assembly shall be held on a day to be specified by the President for the election of the Speaker and Deputy Speaker, the members of the Senate from the Federal Capital, and for the transaction of such other business as the President may specify.
- (2) The National Assembly shall meet on a day to be specified by the President to ascertain which one of the members of the Assembly commands the confidence of the majority of the members for the purposes of clause (2A) of Article 91 of the Constitution and the President shall invite such member to be the Prime Minister.
- (3) The first meeting of a Provincial Assembly shall be held on a day to be specified by the President for the election of the Speaker and Deputy Speaker, the members of the Senate and for the transaction of such other business as the President specify.
- (4) Every Provincial Assembly shall meet on a day to be specified by the President

to ascertain which one of the members of the Assembly commands the confidence of the majority of the members for the purposes of clause (2A) of Article 130 of the Constitution and the Governor shall invite such member to be the Chief Minister.

- (5) The first meeting of the Senate shall be held on a day to be specified by the President for the election of the Chairman and Deputy Chairman and for the transaction of such other business as the President may specify.

**3. Amendment of the Constitution and removal of difficulties.**

- (1) The Constitution of the Islamic Republic of Pakistan, 1973, referred to in this Order as the Constitution, is hereby amended to the extent and in the manner specified in column (3) of the Schedule.
- (2) If there is any necessity for any further amendment of the Constitution or any difficulty arises in giving effect to any of the provisions of this Order, the Chief Executive may make such provisions and pass or promulgate such orders for amending the Constitution or for removing any difficulty as he may deem fit.
- (3) The validity of any provision made, or orders passed, under clauses (1) and (2) shall not be called in question in any court on any ground whatsoever.

**4. Revival of Constitution of 1973:-**

The provisions of the Constitution, as amended by this Order and by such other Orders as may be promulgated hereinafter, shall stand revived on such day as the Chief Executive may, by notification in the official Gazette, appoint; and different days may be so appointed in respect of different provisions.

**5. Order to override other laws:-**

The provisions of this Order shall have effect notwithstanding anything contained in the Constitution or any other Order or law for the time being in force.

**THE SCHEDULE**  
(See Article 3)

Serial No. (1)	Article / Chapter (2)	Amendments made (3)
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1.	17.	<p>(1) In clause (2)-</p> <p>(a) after the words "integrity of Pakistan", occurring twice, the words "or public order" shall be inserted; and</p> <p>(b) for the full stop at the end a colon shall be substituted and there after the following proviso shall be added, namely:-</p> <p style="background-color: #cccccc; padding: 2px;"><b>Provided that no political party shall promote sectarian, ethnic, regional hatred or animosity, or be titled or considered as a militant group or section.</b></p> <p>And</p> <p>(2) after clause (3), the following new clause shall be added, namely:-</p> <p>(4) Every political party shall, subject to law, hold intra-party elections to elect its office-bearers and party leaders.</p>																												
2.	41.	<p>For clause (7) the following shall be substituted, namely:-</p> <p>(7) The Chief Executive of the Islamic Republic of Pakistan-</p> <p>(a) shall relinquish the office of Chief Executive on such day as he may determine in accordance with the judgement of the Supreme Court of Pakistan of the 12th May, 2000; and</p> <p>(b) having received the democratic mandate to serve the nation as President of Pakistan for a period of five years shall, on relinquishing the office of the Chief Executive, Notwithstanding anything contained in this Article or Article 43 or any other provision of the Constitution or any other law for the time being in force, assume the office of President of Pakistan forthwith and shall hold office for a term of five years under the Constitution, and Article 44 and other provisions of the Constitution shall apply accordingly."</p>																												
3.	51.	<p>(1) For clause (1) the following shall be substituted, namely:-</p> <p>(1) There shall be three hundred and forty-two seats of the members in the National Assembly, including seats reserved for women and non-Muslims.</p> <p>(1A) The seats in the National Assembly referred to in clause (1), except as provided in clause (2A), are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under-</p> <table border="1" data-bbox="586 1665 1070 1942"> <thead> <tr> <th></th> <th colspan="3">General Women Total</th> </tr> </thead> <tbody> <tr> <td>Balochistan</td> <td>14</td> <td>3</td> <td>17</td> </tr> <tr> <td>NWFP</td> <td>35</td> <td>8</td> <td>43</td> </tr> <tr> <td>The Punjab</td> <td>148</td> <td>35</td> <td>183</td> </tr> <tr> <td>Sind</td> <td>61</td> <td>14</td> <td>75</td> </tr> <tr> <td>FATA</td> <td>12</td> <td>-</td> <td>12</td> </tr> <tr> <td>Federal Capital</td> <td>2</td> <td>-</td> <td>2</td> </tr> </tbody> </table>		General Women Total			Balochistan	14	3	17	NWFP	35	8	43	The Punjab	148	35	183	Sind	61	14	75	FATA	12	-	12	Federal Capital	2	-	2
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Federal Capital	2	-	2																											

Total	272	60	332
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(2) in clause (2), in paragraph (b), for the word "twenty-one " the word "eighteen" shall be substituted;

(3) for clause (2A) the following clause shall be substituted. namely:-

(2A) In addition to the number of seats referred to in clause (1A), there shall be, in the National Assembly, ten seats reserved for non-Muslims.

(4) for clause (4) the following shall be substituted, namely:-

(4) For the purpose of election to the National Assembly,-

(a) the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote in accordance with law;

(b) each Province shall be a single constituency for all;

(c) the constituency for all seats reserved for non-Muslims shall be the whole country;

(d) members to the seats reserved for women which are allocated to a Province under clause (1A) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly [Click here for amendment](#);

**Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.**

(e) members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties lists of candidates on the basis of total number of general seats won by each political party in the National

Assembly [Click here for amendment](#);

**Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official**

		<p style="text-align: center;"><b>Gazette of the names of the returned candidates.</b></p> <p>Provided that a political party securing less than five per centum of the total number of seats in the National Assembly shall not be entitled to any seat reserved for women or non-Muslims.</p> <p>;and</p> <p>(5) Clauses(4) to (6) shall be omitted.</p>
4.	58.	<p>In clause (2), after paragraph (a), the following new paragraph shall be added, namely:-</p> <p>(b) a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."</p>
5.	59.	<p>(1) For clause (1) the following shall be substituted, namely:-</p> <p>(1) The Senate shall consist of one-hundred members, of whom, -</p> <p>(a) fourteen shall be elected by the members of each Provincial Assembly;</p> <p>(b) eight shall be elected <del>by direct and free vote</del> <b>Click here for amendment by direct and free vote</b> from the Federally Administered Tribal Areas, in such manner as the President may, by Order, prescribe;</p> <p>(c) two on general seats, and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe;</p> <p>(d) four women shall be elected by the members of each Provincial Assembly;</p> <p>(e) four technocrats including ulema shall be elected by the members of each Provincial Assembly."</p> <p>; and</p> <p>(2) In clause(3),-</p> <p>(a) for paragraph (c) the following shall be substituted, namely:-</p> <p>"(c) of the members referred to in paragraph (c) of the aforesaid clause,-</p> <p>(i) one elected on general seat shall retire after the expiration of the first three years and the other one shall retire after the expiration of the next three years, and</p> <p>(ii) one elected on the seat reserved for technocrat shall retire after first three years and the one</p>

		<p>elected on the seat reserved for woman shall retire after the expiration of the next three years;"</p> <p>; and</p> <p>(b) for paragraph (d) the following shall be substituted, namely:-</p> <p>"(d) of the members referred to in paragraph (d) of the aforesaid clause, two shall retire after the expiration of the three years and two shall retire after the expiration of the next three years; and</p> <p>(e) of the members referred to in paragraph (e) of the aforesaid clause, two shall retire after the expiration of the first three years and two shall retire after the expiration of the next three years:".</p>
6.	62.	<p>For clause (b) the following shall be substituted, namely:-</p> <p>"(b) he is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in-</p> <p>(i) any part of Pakistan, for election to a general seat or a seat reserved for non-Muslims; and</p> <p>(ii) any area in a Province from which he seeks membership for election to a seat reserved for women."</p>
7.	63.	<p>(1) In clause (1):-</p> <p>(a) for paragraphs (h), (i) and (j) the following shall be substituted, namely:-</p> <p>"(h) he has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force; or</p> <p>(i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct or moral turpitude; or</p> <p>(j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct or moral turpitude; or"</p> <p>; and</p> <p>(b) for paragraph (p) the following shall be substituted,</p>

		<p>namely:-</p> <p>"(p) he has been convicted and sentenced to imprisonment for having absconded by a competent court under any law for the time being in force; or</p> <p>(q) he has obtained a loan for a an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or</p> <p>(r) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers <a href="#">Click here for amendment</a>;</p> <p><a href="#">Click here for amendment</a></p> <p>(s) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.";</p> <p>(2) for clause (2) the following shall be substituted, namely:-</p> <p>"(2) If any question arises whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, within thirty days from raising of such question refer the question to the Chief Election Commissioner."</p> <p>; and</p> <p>(3) after clause (2), substituted as aforesaid, the following new clause shall be added, namely:-</p> <p>"(3) Where a question is referred to the Chief Election Commissioner under clause (2), he shall lay such question before the Election Commission which shall give its decision thereon not later than three months from its receipt by he Chief Election Commissioner."</p>
8.	63A.	<p>For Article 63A the following shall be substituted, namely:-</p> <p><b>"63A. Disqualification on grounds of defection, etc.</b></p> <p>(1) If a member of a Parliamentary Party composed of a single political party in a House-</p>

- (a) resigns from membership of his political party or joins another Parliamentary Party; or
- (b) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relations to-
  - (i) election of the Prime Minister or the Chief Minister; or
  - (ii) a vote of confidence or a vote of no-confidence; or
  - (iii) a Money Bill;

he may be declared in writing by the Head of the Parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:

**Provided** that before making the declaration, the Head of the Parliamentary Party shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

- (2) A member of a House shall be deemed to be a member of a Parliamentary Party if he having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.
- (3) Upon receipt of the declaration under clause (1), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.
- (4) Where the Election Commission confirms the declaration, the member referred to in clause (1) shall cease to be a member of the House and his seat shall become vacant.
- (5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to

		<p>the Supreme Court which shall decide the matter within three months from the date of the filing of the appeal.</p> <p>(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.</p> <p>(7) For the purpose of this Article -</p> <p>(a) "House" means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.</p> <p>(b) "Presiding Officer" means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.</p>
9.	70.	<p>(1) In clause (2) for the words "considered in a joint sitting" the words and figure "referred to a Mediation Committee constituted under Article 71 for consideration and resolution thereon" shall be substituted; and</p> <p>(2) for clause (3) the following shall be substituted, namely:-</p> <p>(3) Where a Bill is referred to the Mediation Committee under clause (2), the Mediation Committee shall, within ninety days, formulate an agreed Bill which is likely to be passed by both Houses of the Majlis-e-Shoora (Parliament) and place the agreed Bill separately before each House and if both the Houses pass the Bill, it shall be presented to the President for assent.</p>
10.	Part III. Chapter 2.	<p>After Article 70, amended as aforesaid the following new Article shall be added namely:</p> <p><b>71. Mediation Committee.</b></p> <p>(1) Both Houses of Majlis-e-Shoora (Parliament) shall, within fifteen days from the date of referral of the Bill by the House in which it was originated for consideration and resolution by the Mediation Committee under clause (2) of Article 70 nominate eight members each as members of a Mediation Committee.</p> <p>(2) The House in which the Bill was originated shall nominate a member of the Mediation Committee as Chairman of the Committee and the other House shall nominate a member as the Vice-Chairman thereof.</p> <p>(3) All decisions of the Mediation Committee shall be made by</p>

		<p>a majority of the total number of members of each House in the Committee.</p> <p>(4) The President may, in consultation with the Speaker of the National Assembly and Chairman of the Senate, make rules for conduct of business of the Mediation Committee.</p>																									
11.	73.	<p>For clause (1) the following shall be substituted, namely:-</p> <p>(1) Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly. <b>Provided</b> that simultaneously when a Money Bill, including the Finance Bill containing the Annual Budget Statement, is presented in the National Assembly, a copy thereof shall be transmitted to the Senate which may, within seven days, make recommendations thereon to the National Assembly.</p> <p>(1A) The National Assembly shall, consider the recommendations of the Senate and after the Bill has been passed by the Assembly with or without incorporating the recommendations of the Senate, it shall be presented to the President for assent.</p>																									
12.	75.	<p>In clause (2) -</p> <p>(a) the words "in joint sitting" shall be omitted; and</p> <p>(b) for the words and comma "by the votes of the majority of the members of the both Houses present and voting," the words, figure and comma "in accordance with Article 70," shall be substituted.</p>																									
13.	101	<p>In clause (1), for the words "on the advice of" the words "after consultation with" shall be substituted.</p>																									
14.	106.	<p>(1) For clause (1) the following shall be substituted:-</p> <p>"(1) Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as specified herein below.</p> <table border="1" data-bbox="571 1433 1307 1707"> <thead> <tr> <th></th> <th>General seats</th> <th>Women</th> <th>Non-Muslims</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Baluchistan</td> <td>51</td> <td>11</td> <td>3</td> <td>65</td> </tr> <tr> <td>The North-West Frontier Province</td> <td>99</td> <td>22</td> <td>3</td> <td>124</td> </tr> <tr> <td>The Punjab</td> <td>297</td> <td>66</td> <td>8</td> <td>371</td> </tr> <tr> <td>Sind</td> <td>130</td> <td>29</td> <td>9</td> <td>168</td> </tr> </tbody> </table> <p>(2) in clause (2), in paragraph (b), for the word "twenty-one" the word "eighteen" shall be substituted;</p> <p>(3) for clause (3) the following shall be substituted, namely:-</p>		General seats	Women	Non-Muslims	Total	Baluchistan	51	11	3	65	The North-West Frontier Province	99	22	3	124	The Punjab	297	66	8	371	Sind	130	29	9	168
	General seats	Women	Non-Muslims	Total																							
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The Punjab	297	66	8	371																							
Sind	130	29	9	168																							

		<p>(3) For the purpose of election to a Provincial Assembly -</p> <p>(a) the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote.</p> <p>(b) each Province shall be a single constituency for all seats reserved for women and non-Muslims allocated to the respective Provinces under clause (1);</p> <p>(c) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly: <a href="#">Click here for amendment</a></p> <p><del>Provided that a political party securing less than five per centum of the total number of seats in the Provincial Assembly shall not be entitled to any seat reserved for women and non-Muslims.</del></p> <p><del>Provided that for the purpose of this sub-clause, the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.</del></p> <p>; and</p> <p>(4) Clauses (4), (5) and (6) shall be omitted.</p>
15.	112.	<p>(1) In clause (2), after paragraph (a), the following new paragraph shall be added, namely:-</p> <p>"(b) a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."</p>
16.	Part IV, Chapter 3	<p>After Article 140, the following new Article shall be inserted, namely :-</p> <p><b>"140A. Local government.</b> Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments."</p>
17.	Part V, Chapter 3	<p>In Part V, in Chapter 3, before Article 153, the following new Article shall be inserted, namely:-</p> <p><b>"152A. National Security Council.</b> (1) There shall be a National Security Council to serve as a forum for consultation on strategic matters pertaining</p>

		<p>to the sovereignty, integrity and security of the State; and the matters relating to democracy, governance and inter-provincial harmony.</p> <p>(2) The President shall be the Chairman of the National Security Council and its other members shall be the Prime Minister, the Chairman of the Senate, the Speaker of the National Assembly, the Leader of the Opposition in the National Assembly, the Chief Ministers of the Provinces, the Chairman Joint Chiefs of Staff Committee, and the Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force.</p> <p>(3) Meetings of the National Security Council may be convened by the President either in his discretion, or on the advice of the Prime Minister, or when requested by any other of its members, <b>Check here for amendment within the time frame indicated by him regularly ."</b></p>
17A	179	In clause (1), for the words "sixty-five years" the words "sixty-eight years" shall be substituted.
17B	193	In clause (2), for the words "forty years" the words "forty-five years" shall be substituted.
17C	195	In clause (1), for the words "sixty-two years" the words "sixty-five years" shall be substituted.
18.	199	<p>(1) In clause (4A) for the words and commas "unless the case is finally decided, or the interim order is withdrawn, by the Court earlier" the comma and words "provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made" shall be substituted: and</p> <p>(2) clause (4B) shall be omitted.</p>
19.	203C.	<p>In clause (9),-</p> <p>(a) for the word, "salary", occurring twice, the word "remuneration" shall be substituted: and</p> <p>(b) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-</p> <p><b>Provided that where a Judge is already drawing a pension for any other post in the service of Pakistan, the amount of such pension shall be deducted from the pension admissible under this clause."</b></p>
20.	209.	<p>In clause (5) -</p> <p>(i) for the words and comma "received from the Council or from any other source," the words and comma "from any source, the</p>

		<p>Council or" shall be substituted: and</p> <p>(ii) after the words "Council to", the commas and words " ,or the Council may, on its own motion," shall be inserted.</p>
21.	218.	<p>(1) For clause (1) the following shall be substituted, namely:-</p> <p>"(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election of such other public offices as may be specified by law or until such law is made by the Majlis-e-Shoora (Parliament) by Order of the President, a permanent Election Commission shall be constituted in accordance with this Article."</p> <p>(2) in clause (2), in paragraph (b),-</p> <p>(i) for the word "two" the word "four" shall be substituted; and</p> <p>(ii) after the words "High Court", occurring for the first time, the words "from each Province" shall be inserted.</p>
22.	224.	<p>In Article 224,-</p> <p>(a) in clause (1),-</p> <p>(i) for the word "preceding" the word "following" shall be substituted; and</p> <p>(ii) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-</p> <p><b>"Provided that on dissolution of an Assembly on completion of its term, the President, in his discretion, or, as the case may be, the Governor, in his discretion but with the previous approval of the President, shall appoint a care-taker Cabinet."</b></p> <p>(b) in clause (4), after the words and comma "Provincial Assembly, a", the word "general" shall be inserted;</p> <p>(c) after clause (5), the following new clauses shall be added, namely:-</p> <p>"(6) When a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, for death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates submitted to the Election Commission for the last general election by the political party whose member has vacated such seat.</p> <p>(7) When a care-taker Cabinet is appointed, on dissolution of the National Assembly under Article 58 or a Provincial Assembly under Article 112, or on dissolution of any such Assembly on completion of its term, the Prime Minister or, as the case may be, the Chief Minister of the care-taker</p>

		Cabinet shall not be eligible to contest the immediately following election of such Assembly."
23.	243.	<p>(1) In clause (2),-</p> <p>(a) in paragraph (a), after the semi-colon at the end. the word "and" shall be added;</p> <p>(b) in paragraph (b), for the word and semi-colon "and;" a full stop shall be substituted; and</p> <p>(c) clause (c) shall be omitted; and</p> <p>(2) After clause (2), amended as aforesaid, the following new clause shall be added, namely:-</p> <p>"(3) The President shall, in his discretion, appoint-</p> <p>(a) the Chairman, Joint Chiefs of Staff Committee;</p> <p>(b) the Chief of the Army Staff;</p> <p>(c) the Chief of the Naval Staff; and</p> <p>(d) the Chief of the Air Staff,</p> <p>and shall also determine their salaries and allowances."</p>
24.	260.	<p>In clause (1), after the expression "clause", the following new expression shall be inserted, namely:-</p> <p><b>"consultation" shall, save in respect of appointments of Judges of the Supreme Court and High Courts, mean discussion and deliberation which shall not be binding on the President."</b></p>
25.	268.	<p>In clause (2),-</p> <p>(a) after the word "amended", the commas and words ", expressly or impliedly," shall be inserted; and</p> <p>(b) after the word "President", the words "accorded after consultation with the Prime Minister" shall be added.</p>
26.	Part XII, Chapter 7	<p>After Article 270A. the following new Articles shall be inserted, namely:-</p> <p><b>"270AA. Validation of laws.-</b></p> <p>(1) The Proclamation of Emergency of the fourteenth day of October, 1999, all President's Orders, Ordinances, Chief Executive's Orders, including the Provisional Constitution Order No.1 of 1999, the Oath of Office (Judges) Order, 2000 (No.1 of 2000), the Referendum Order, 2002 (Chief Executive's Order No. 12 of 2002) and all other laws made between the twelfth day of October, one thousand nine hundred and ninety-nine and the date on which this Article comes into force, are hereby affirmed, adopted and declared notwithstanding any judgment of any court, to have been validly made by competent authority and notwithstanding anything contained in</p>

the constitution shall not be called in question in any court on any ground whatsoever.

- (2) All orders made, proceedings taken, appointments made, including secondments and deputations, and acts done by any authority, or by any person, which were made, taken or done, or purported to have been made, taken or done, between the twelfth day of October, one thousand nine hundred and ninety-nine, and the date on which this Article comes into force (both days inclusive), in exercise of the powers derived from any proclamation, President's Orders, Ordinances, Chief Executive's Orders, enactments, notifications, rules, orders, bye-laws, or in execution of or in compliance with any orders made or sentences passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court on any ground whatsoever.
- (3) All Proclamations, President's Orders, Ordinances, Chief Executive's Orders, laws, regulations, enactments, notifications, rules, orders or bye-laws in force immediately before the date on which this Article comes into force shall continue in force until altered, repealed or amended by competent authority. Explanation.- In this clause, "competent authority" means,
- (a) in respect of President's Orders, Ordinances, Chief Executive's Orders and enactments, the appropriate Legislature: and
  - (b) in respect of notifications, rules, orders and bye-laws, the authority in which the power to make, alter, repeal or amend the same vests under the law.
- (4) No suit, prosecution or other legal proceedings shall lie in any court against any authority or any person, for or on account of or in respect of any order made, proceedings taken or act done whether in the exercise or purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers.

		(5) For the purposes of clauses (1), (2) and (4), all orders made, proceedings taken, appointments made, including secondments and deputations, acts done or purporting to be made, taken or done by any authority or person shall be deemed to have been made, taken or done in good faith and for the purpose intended to be served thereby.
27.	270B	In Article 270B, after the figure and comma "1977," the words commas, the figures, brackets and letters "and the Conduct of General Elections Order, 2002 (Chief Executive's Order No.7 of 2002)," shall be inserted.
28.	Part XII, Chapter 7	After Article 270B, amended as aforesaid, the following new Article shall be inserted, namely:-  <b>"270C. Oath of office of Judges, etc.-</b> Notwithstanding anything contained in the Constitution, all persons appointed as Judges of the Supreme Court, High Courts and Federal Shariat Court who have taken oath under the Oath of Office (Judges) Order, 2000 (1 of 2002), or not having been given or taken oath under that Order have ceased to continue to hold the office of a Judge shall be deemed to have been appointed or ceased to continue to hold such office, as the case may be, under the Constitution and such appointment or cession of office shall have effect accordingly."
29.	Sixth Schedule	After entry 24, the following new entries shall be added, namely:- 25. The State Bank of Pakistan Act, 1956 (XXXIII of 1956).  26. The National Accountability Bureau Ordinance, 1999 (XVIII of 1999).  27. The Balochistan Local Government Ordinance, 2001 (XVIII of 2001).  28. The North-West Frontier Province, Local Government Ordinance, 2001 (XIV of 2001).  29. The Punjab Local Government Ordinance, 2001 (XIII of 2001).  30. The Sindh Local Government Ordinance, 2001 (XXVII of 2001).  31. The Election Commission Order, 2002 (Chief Executive's Order No.1 of 2002).

	<p>32. The Conduct of General Elections Order, 2002 (Chief Executive's Order No.7 of 2002).</p> <p>33. The Political Parties Order, 2002 (Chief Executive's Order No.18 of 2002).</p> <p>34. The Qualification to Hold Public Offices Order, 2002 (Chief Executive's Order No. 19 of 2002).</p> <p>35. The Police Order, 2002 (Chief Executive's Order No.22 of 2002).".</p>
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**GENERAL PERVEZ MUSHARRAF.**

Chief Executive of the Islamic Republic of Pakistan, and Chief of Army Staff.

**The Constitution of Pakistan** on [pakistani.org](http://pakistani.org)  
(Gazette of Pakistan, Extraordinary, August, 2002)

## **Appendix- E**

### **Protection of Women (Criminal Laws Amendment) Act, 2006 *December 1, 2006***

On December 22, 2010, the Federal Shariat Court declared sections 11, 25, 28 and 29 of this Act in violation of Article 203DD of the Constitution. The Federal Government was given until June 22, 2011 to bring the law into conformance as interpreted by the Court. See the declaration issued by the court and Dawn's report on this judgement (the text of which erroneously states that three sections were struck down as opposed to the correct number which is four).

#### **A BILL further to amend the Pakistan Penal Code, the Code of Criminal Procedure and other laws**

WHEREAS it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation;

AND WHEREAS Article 14 of the Constitution ensures that dignity of man and, subject to law, the privacy of home, shall be inviolable;

AND WHEREAS Article 25 of the Constitution guarantees that there shall be no discrimination on the basis of sex alone and that the State shall make provisions for the protection of women;

AND WHEREAS Article 37 of the Constitution encourages promotion of social justice and eradication of social evils;

AND WHEREAS the objective of this Bill is to bring in particular the laws relating to zina and qazf in conformity with the stated objectives of the Constitution and the injunctions of Islam,

AND WHEREAS it is expedient for the aforesaid objectives further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898, the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), and the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) and for the purposes hereinafter appearing,

It is hereby enacted as follows:

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#### **1. Short title and commencement**

(1) This Act may be called the Protection of Women (Criminal Laws

Amendment) Act, 2006.

(2) It shall come into force at once.

**2. Insertion of new section, Act XLV of 1860**

In the Pakistan Penal Code (Act XLV or 1860), hereinafter referred to as the said "Code", after section 365A, the following new section shall be inserted, namely:-

**365B. Kidnapping, abducting or inducing woman to compel for marriage etc.-**

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

**3. Insertion of new section, Act XLV of 1860:**

In the said Code, after section 367, the following new section shall be inserted, namely:

**"367A. Kidnapping or abducting in order to subject person to unnatural lust:**

Whoever kidnaps, or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine."

**4. Insertion of new sections, Act XLV of 1860**

In the said Code, after section 371, the following new sections shall be inserted, namely:

**"371A. Selling person for purposes of prostitution, etc.**

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations:- (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she

shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 371B, "illicit intercourse" means sexual intercourse between persons not united by marriage.

**371B. Buying person for purposes of prostitution, etc**

Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

**Explanation:** Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution."

**5. Insertion of new sections, Act XLV of 1860:**

In the said Code, after section 374, the following new sections 375 and 376 under sub-heading "Rape", shall be inserted, namely:

**"375. Rape:-**

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

(i) against her will.

(ii) without her consent

(iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt,

(iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

(v) With or without her consent when she is under sixteen years of age.

**Explanation:** Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

**376. Punishment for rape**

(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more, than twenty-five years and shall also be liable to fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life."

**6. Insertion of new section, Act XLV of 1860.**

In the said Code, in Chapter XX, the following new section shall be inserted, namely:-

**"493A. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage**

Every man who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine."

**7. Insertion of new sections, Act XLV of 1860.**

In the said Code, after section 496, the following new sections shall be inserted, namely:

**"496A. Enticing or taking away or detaining with criminal intent a woman.**

Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**496B. Fornication:**

- (1) A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.
- (2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.

**496C. Punishment for false accusation of fornication.**

Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.

**Provided** that a Presiding Officer of a Court dismissing a complaint under section 203C of the Code of Criminal Procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence."

**8. Insertion of new sections, Act V of 1898.-**

In the Code of Criminal Procedure, 1898 (Act V of 1898), after section 203, the following new sections shall be inserted, namely:

**"203A. Complaint in case of Zina.-**

- (1) No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), except on a complaint lodged in a Court of competent jurisdiction.
- (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine, on oath, the complainant and at least four Muslim, adult male eye-witnesses, about whom the Court is satisfied having regard to the requirement of tazkiyah-al-shahood, that, they are truthful persons and abstain from major sins (kabair), of the act of penetration necessary to the offence  
**Provided** that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.  
**Explanation:** In this section "tazkiyah-al-shahood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.
- (3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding, the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

**203B. Complaint in case of Qazf.-**

- (1) Subject to sub-section (2) of section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.
- (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) of the act

of Qazf necessary to the offence.

- (3) The substance of the examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

**203C. Complaint in case of fornication**

- (1) No court shall take cognizance of an offence under section 496A of the Pakistan Penal Code, except on a complaint lodged in a Court of competent Jurisdiction.
- (2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
- (3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:  
**Provided** that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

(6) Notwithstanding the foregoing provisions, or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint under section 203A of this Code is pending or has been dismissed or who has been acquitted or against any person who is a complainant or a victim in a case of rape, under any circumstances whatsoever."

**9. Amendment of Schedule II, Act V of 1898.-**

In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II,

(i) after section 365A in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:

1	2	3	4	5	6	7	8
365B	Kidnapping, abducting or inducing woman to compel for marriage etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment for life and fine.	Ditto;

(ii) after section 367 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:

1	2	3	4	5	6	7	8
367A	Kidnapping or abducting in order to subject person to unnatural list.	Ditto	Ditto	Ditto	Ditto	Death or rigorous imprisonment which may extend to twenty-five years and fine.	Ditto;

(iii) after section 371 In column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
371A	Selling person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto;
371B	Buying person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto;

(iv) after section 374 the sub-heading "of Rape" shall be inserted;

(v) for the existing entries relating to section 376 in columns 1 to 8, the following shall be substituted, namely :-

1	2	3	4	5	6	7	8
376	Rape	May arrest without warrant	Warrant	Not bailable	Not compoundable	Death or imprisonment not less than ten years or more than twenty-five years and fine	Court of Sessions
						Death or imprisonment for life, if the offence committed by two or more persons in furtherance of common intention.	

(vi) after section 493 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
493	Cohabitation caused by a man a man deceitfully inducing a belief of lawful marriage.	May arrest without warrant	Warrant	Not bailable	Not compoundable	Rigorous imprisonment which may extend to twenty-five years and fine.	Ditto ;

(vii) in section 494 in column 1, in column 3, for the word "Ditto", the words "Shall not arrest without warrant" shall be substituted;

(viii) after section 496 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely :-

1	2	3	4	5	6	7	8
496	Enticing or taking away or detaining with criminal intent a woman	May arrest without warrant	Ditto	Not bailable	Ditto	Imprisonment of either description which may extend to seven years and fine	Court of Sessions or Magistrate of the first class.

496 B	Fornication	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees	Magistrate of the first class;
496 C	False accusation of Fornication	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees	Magistrate of the first class;

under the heading, "OFFENCES AGAINST OTHER LAWS" after the last entry in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:

(ix)

1	2	3	4	5	6	7	8
Section 5 of Ordinance VII of 1979	Zina	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Stoning in case of Muhsan and if not Muhsan whipping not exceeding one hundred stripes	Court of Sessions
Section 7 of Ordinance VIII of 1979	Qazi	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Whipping not exceeding eighty stripes	Court of Sessions

**10. Amendment of section 2, Ordinance VII of 1979.-**

In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 2:

- (i) after clause (a), the following new clause (aa) shall be inserted, namely:  
"(aa) "confession" means, notwithstanding any judgement of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter or on receipt of a summons under section 203A of the Code of Criminal Procedure, 1898 (Act V of 1898)."; and
- (ii) clauses (c) and (e) shall be omitted.

**11. Omission of section 3, Ordinance VII of 1979**

In the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979), section 3 shall be omitted.

**12. Amendment of section 4, Ordinance VII of 1979**

In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No VII of 1979), in section 4, the word "validly" and the explanation at the end of the section shall be omitted.

**12A Insertion of new, section, Ordinance VII of 1979:**

- In the Offence of Zina (Enforcement of Hudood Ordinance, 1979 (Ordinance No. VII of 1979), after section 5, the following new section shall be inserted, namely:-

**"5A. No case to be converted, lodged or registered under certain provisions:-**

No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1989 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496A of the Pakistan Penal Code (Act XLV of 1860) and no complaint of fornication shall at any stage be converted into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force."

**13. Omission of sections 6 and 7, Ordinance VII of 1979:**

In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 6 and 7 shall be omitted.

**14. Amendment of section 8, Ordinance VII of 1979:**

In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 8,

- (i) the words and comma "or zina-bil-jabr" shall be omitted; and

- (ii) in the marginal note, the words "or zina-bil-jabr" shall be omitted.

- 15. Amendment of section 9, Ordinance VII of 1979:**  
In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 9,
- (i) the words "or zina-bil-jabr" shall be omitted;
  - (ii) in sub-section (2) the words "or zina-bil-jabr" shall be omitted; and
  - (iii) sub-sections (3) and (4) shall be omitted.
- 16. Omission of sections 10 to 16, 18 and 19, Ordinance VII of 1979:**  
In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 10 to 16 and 18 and 19 shall be omitted.
- 17. Amendment of section 17, Ordinance VII of 1979:-**  
In the Offence of Zina (Enforcement of Hooded) Ordinance, 1979 (Ordinance No. VII of 1979), in section 17, the words and figure "or section 6" shall be omitted.
- 18. Amendment of section 20, Ordinance VII of 1979.-**  
In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 20,-
- (i) in sub-section (1), the first proviso shall be omitted and in the second proviso, the word "further" shall be omitted;
  - (ii) sub-section (3) shall be omitted; and
  - (iii) sub-section (5) shall be omitted.
- 19. Amendment of section 2, Ordinance VIII of 1979.-**  
In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), for clause (a) the following shall be substituted, namely:-  
"(a) "adult", "hadd" and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and".
- 20. Amendment of section 4, Ordinance VIII of 1979:-**  
In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 4 shall be omitted.
- 21. Amendment of section 6, Ordinance VIII of 1979:-**  
In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), section 6, shall be renumbered as sub-section (1) thereof and after sub-section (1) renumbered as aforesaid, the following new sub-section (2) shall be added, namely:  
"(2) The Presiding Officer of a Court dismissing a complaint under section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under section 5 of the Offense of Zina (Enforcement of Hudood)

Ordinance, 1979 (Ordinance VII of 1979), If satisfied that the offence of qazf liable to hadd has been committed, shall not require any proof of qazf and shall proceed to pass sentence under section 7."

**22. Amendment of section 8, Ordinance VIII of 1979.-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 8, the words, "a report made to the police or" shall be omitted.

**23. Amendment of section 9, Ordinance VIII of 1979:-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 9, for sub-section (2), the following shall be substituted, namely:

"(2) In a case which, before the execution of hadd, the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely, hadd shall not be enforced."

**24. Amendment of sections 10 to 13 and 15, Ordinance VIII of 1979:-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), sections 10 to 13 and 15 shall be omitted.

**25. Amendment of section 14, Ordinance VIII of 1979.-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 14, subsections (3) and (4) shall be omitted.

**26. Omission of section 16, Ordinance VIII of 1979:**

In the Offence of Qazf (Enforcement of Hand) Ordinance, 1979 (Ordinance No. VIII of 1979), section 16 shall be omitted.

**27. Amendment of section 17, Ordinance VIII of 1979.-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 17,

(i) the first proviso shall be omitted;

(ii) for the second proviso, the following shall be substituted, namely:

**"Provided that the offence punishable under section 7 shall be triable by a Court of Sessions and not by or before a Magistrate authorized under section 40 of the said Code and an appeal from an order of the Court of Sessions shall lie to the Federal Shariat Court."**

**28. Omission of section 19, Ordinance VIII of 1979:-**

In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 19 shall be omitted.

**29. Insertion of new section, Dissolution of Muslim Marriages Act, 1939 (VIII of 1939):-**

In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2, after clause (vii), the following new clause shall be inserted, namely:-

(viiia) Lian

**Explanation:** Lian means where the husband has accused his wife of zina and the wife does not accept the accusation as true".

**STATEMENT OF OBJECTS AND REASONS**

One of the avowed constitutional objectives of the Islamic Republic of Pakistan is to enable Muslims to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as laid down in the Holy Qur'an and Sunnah.

The Constitution, accordingly, mandates that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

The object of this Bill is to bring the laws relating to zina and qazf, in particular, in conformity with the stated objectives of The Islamic Republic of Pakistan and the constitutional mandate and in particular to provide relief and protection to women against misuse and abuse of law.

The offences of zina and qazf are mentioned in the Qur'an. The two ordinances relating to zina and qazf, however, make a number of other acts punishable in spite of the fact that the Qur'an and Sunnah neither define these offences nor has any punishment for them been prescribed. On no principle of qiyas can the punishments for zina and qazf or the procedure identified for their proof be extended to these offences.

Any offence not mentioned in the Qur'an and Sunnah or for which punishment is not stated therein is Ta'zir which is a subject of State legislation. It is for the State both to define such offences and to fix punishments for these. The exercise of such authority by the State is in consonance with Islamic norms which the State is authorized to both define and punish. Accordingly, all these offences have been removed from the two Hudood Ordinances and inserted in their proper places in the Pakistan Penal Code, 1860 (Act XLV of 1860) hereinafter "PPC".

The offences listed in sections 11 to 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979) hereinafter "Zina Ordinance" are Ta'zir offences. All these are being inserted as sections 365B, 367A, 371A, 371B, 493A and 496A of the Pakistan Penal Code, 1860 (Act XLV of 1860). Sections 12 and 13 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 hereinafter 'Qazf Ordinance' are being omitted. This is being done as the definition of qazf in section 3 of that Ordinance is wide enough to cover the qazf committed by printing or engraving or sale of printed and engraved material.

No change is being made in the language of the statutory definition of any of these Ta'zir offences or the punishment provided for these, save one. The punishment of whipping is being deleted (or these Ta'zir offences. As the Qur'an and Sunnah do not provide for any punishment with regard to these offences the State is authorized to make this change in conformity with the Islamic concept of justice. This is in accordance with the scheme of the PPC and the evolving standards of decency which mark the progress of a maturing society.

The Zina and Qazf Ordinances have been a subject of trenchant criticism by citizens in general and scholars of Islam and women in particular. The criticisms are many. These include the lumping of the offence of zina with zina-bil-jabr (rape) and subjecting both to the same kind of proof and punishment. This has facilitated abuse. A woman who fails to prove rape is often prosecuted for zina. The requirement of proof for the maximum punishment of zina-bil-jabr (rape) being the same as that for zina, it has made absolutely impossible to prove the former.

Where a prosecution for rape against a man fails but sexual activity is confirmed by medical examination or on account of pregnancy or otherwise the woman is punished for zina not as Hadd - four eye witnesses not being available - but as Ta'zir. Her complaint is, at times, deemed a confession.

A penal statute must be clear and unambiguous. It must mark the boundaries between the permitted and the prohibited with clarity. The citizens are, thus, put to notice. They can order their life and conduct by following these bright guidelines and steer clear of trouble. The vague definitions in thane and related laws are, therefore, either being clarified and wherever that is not possible, omitted. The object is to protect the unwary and unsuspecting citizens from unwittingly falling foul of penal laws.

The Zina Ordinance also defines "marriage" as a valid marriage. In rural areas, in particular, nikahs generally and divorces particularly are not registered. It becomes difficult for a person charged with zina to establish "valid marriage" as a defence. Non-registration has its civil consequences. These are sufficient. Failure to register a nikah or have a divorce confirmed should not entail penal consequences. This is in consonance with the Islamic norm that Hadd should not be imposed whenever there is any doubt about the commission of the offence. The misuse of the law in such cases has made it an instrument of oppression in the hands of vengeful former husbands and other members of society.

A triple talaq is pronounced. The woman returns to her parental home. She goes through her period of iddat. After a while the family arranges another match and she gets married. The husband then claims that sans the confirmation of divorce by the local authorities the marriage is not over and launches a zina prosecution. It is necessary to delete this definition to shut this door.

There is no hadd for the offence of zina-bil-jabr (rape). It is a Ta'zir offence. The definition and punishment of rape is, therefore, being incorporated in the PPC in sections 375 and 376 respectively. The gender neutral definition is being amended to clearly provide that rape IS an offence committed by a man against a woman. As consent of the woman is a defence to the charge of rape it is being provided that such

consent would not be a defence if the woman is less than 16 years of age. This accords both with the need to protect the weak, which the Qur'an repeatedly emphasizes, and the norms of international legal obligations.

The punishment for gang rape is death. No lesser punishment is provided. The courts hearing such cases have observed that in many situations they are of the opinion that a person cannot be acquitted while at the same time imposing the death penalty is not warranted in the facts and circumstances of the case. The result is that they feel obliged to acquit the accused in such cases. To address this concern, the lesser sentence of life imprisonment is being added as an alternative to the death penalty.

The procedure for the prosecution of Ta'zir offences of zina-bil-jabr (rape) and gang rape, like that for all other Ta'zir offences under the PPC, is to be regulated by the Code of Criminal Procedure, 1898 (Act V of 1898) hereinafter "Cr. P.C."

Lian is a form of dissolution of marriage. A woman who is accused of adultery by her husband and denies the charge can seek dissolution of her marriage. Section 14 of the Qazf Ordinance refers to lian and also provides a procedure for it. A form of dissolution of marriage has no place in a penal statute. Accordingly, lian has been introduced as a ground for divorce under the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939).

The definition of zina and qazf remain the same as in the Zina and Qazf Ordinances. For both zina and qazf the same punishments have been retained, as well.

Zina is a heinous crime that corrupts public morals and destroys the sense of modesty. The Qur'an regards zina an offence against public morality. The requirement of four eyewitnesses is not solely an evidentiary burden of extra-ordinary weight. It is also an assertion that if contrary to the hadith, "Allah loves those who hide their sins", one commits an act in so blatant a fashion that four people see it, the harm to society must be serious indeed. At the same time, the Qur'an protects privacy, prohibits baseless assumptions and inquisition and forbids interference in the life of others. It is for this reason that a failure to prove zina entails punishment for qazf (false accusation of zina). The Qur'an requires the complainant to bring four eye-witnesses to prove the accusation of zina. The complainant and the witnesses must be conscious of the seriousness of this offence and must know that if they make a false accusation or cannot prove the charge beyond doubt they will be punished for qazf. The conviction will follow the failure of the zina prosecution and will not be contingent on the initiation of fresh legal proceedings.

The Zina Ordinance has been abused to persecute women, to settle vendettas and to deny basic human rights and fundamental freedoms. To check such abuse both in the case of zina and qazf the Cr. P.C. is being amended to provide that only the Court of Sessions, on a complaint, may take cognizance of such cases. The offence has been made bailable so that the accused do not languish in jail during trial. The police will have no authority to arrest any one in such cases unless so directed by the Court of Sessions and such directions cannot be issued except either to compel attendance in court or in the event of a conviction.

The primary object of all these amendments is to make zina and qazf punishable only in accordance with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah, to prevent exploitation, curb abuse of police powers and create a just and egalitarian society.

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**Appendix-F**  
**President to Hold Another Office Act, 2004**  
***President's Assent Received: November 30, 2004***  
**Act No. VII of 2004**  
***Gazette of Pakistan, Extraordinary, Part I, Islamabad, 30th November***  
***2004, p177-178***

**An Act to enable the President of Pakistan to hold another office**

WHEREAS paragraph (d) of clause (1) of Article 63 of the Constitution of the Islamic Republic of Pakistan provides for holding another office of profit in the service of Pakistan if declared by law as such;

AND WHEREAS it is expedient to make declaratory provision enabling the President to hold another office of profit in the service of Pakistan;

It is hereby enacted as follows:-

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**1. Short title, extent and commencement**

- (1) This Act may be called the President to Hold Another Office Act, 2004
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force on the 31st December, 2004.

**2 Holder of another office**

The holder of the office of the President of Pakistan may, in addition to his office, hold the office of the Chief of the Army Staff which is hereby declared not to disqualify its holder as provided under paragraph (d) of clause (1) of Article 63 read with proviso to paragraph (b) of clause (7) of Article 41 of the Constitution of the Islamic Republic of Pakistan or any other law for the time being in force or any judgement of any court or tribunal:

**Provided** that this provision shall be valid only for the present holder of the office of the President.

**Appendix-G**  
**NATIONAL RECONCILIATION ORDINANCE**  
*October 5, 2007*

**AN ORDINANCE to promote national reconciliation**

WHEREAS it is expedient to promote national reconciliation, foster mutual trust and confidence amongst holders of public office and remove the vestiges of political vendetta and victimization, to make the election process more transparent and to amend certain laws for that purpose and for matters connected therewith and ancillary thereto;-

AND WHEREAS the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance;-

**1. Short title and commencement.**

- a) This Ordinance may be called the National Reconciliation Ordinance, 2007.
- b) It shall come into force at once.

**2. Amendment of section 494, Act V of 1898.**

In the Code of Criminal Procedure, 1898 (Act V of 1898), section 494 shall be renumbered as sub-section (1) thereof and after sub-section (1) renumbered as aforesaid, the following sub-section (2) and (3) shall be added, namely:-

- (2) Notwithstanding anything to the contrary in sub-section(1), the Federal Government or a Provincial Government may, before the judgment is pronounced by a trial court, withdraw from the prosecution of any person including an absconding accused who is found to be falsely involved for political reasons or through political victimization in any case initiated between 1st day of January, 1986 to 12th day of October, 1999 and upon such withdrawal clause (a) and clause (b) of sub-section (1) shall apply.
- (3) For the purposes of exercise of powers under sub-section (2) the Federal Government and the Provincial Government may each constitute a Review Board to review the entire record of the case and furnish recommendations as to their withdrawal or otherwise.
- (4) The Review Board in case of Federal Government shall be headed by a retired judge of the Supreme Court with Attorney-General and Federal Law Secretary as its members and in case of Provincial Government it shall be headed by a retired judge of the High Court with Advocate-General and/or Prosecutor-General and Provincial Law Secretary as its members.
- (5) A review Board undertaking review of a case may direct the Public Prosecutor or any other concerned authority to furnish to it the record of the case.

**3. Amendment of section 39, Act LXXXV of 1976.**

(1) In the Representation of the People Act, 1976 (LXXXV of 1976), in section 39, after sub-section (6), the following new sub-section (7) shall be added, namely:-

(7) After consolidation of results the Returning Officer shall give to such contesting candidates and their election agents as are present during the consolidation proceedings, a copy of the result of the count notified to the Commission immediately against proper receipt and shall also post a copy thereof to the other candidates and election agents.

**4. Amendment of section 18, Ordinance XVIII of 1999.**

In the National Accountability Ordinance, 1999 (XVIII of 1999), hereinafter referred to as the said Ordinance, in section 18, in clause (e), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

**Provided that no sitting member of Parliament or a Provincial Assembly shall be arrested without taking into consideration the recommendations of the Special Parliamentary Committee on Ethics referred to in clause (aa) or Special Committee of the Provincial Assembly on Ethics referred to in clause (aaa) of section 24, respectively.**

**5. Amendment of section 24, Ordinance XVIII of 1999.**

In the said ordinance, in section 24,-

(i) in clause (a) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

**Provided that no sitting member of Parliament or a Provincial Assembly shall be arrested without taking into consideration the recommendations of Special Parliamentary Committee on Ethics or Special Committee of the Provincial Assembly on Ethics referred to in clause (aa) and (aaa), respectively, before which the entire material and evidence shall be placed by the chairman, NAB;** and

(ii) after clause (a), amended as aforesaid, the following new clauses (aa) and (aaa) shall be inserted, namely:-

(aa) The Special Parliamentary Committee on Ethics referred to in the proviso to clause (a) above shall consist of a chairman who shall be a member of either House of Parliament and eight members each from the National Assembly and Senate to be selected by the Speaker, National Assembly and Chairman Senate, respectively, on the recommendations of Leader of the House and Leader of the Opposition of their respective Houses, with equal representation from both sides.

(aaa) The Special Committee of the provincial Assembly on Ethics shall consist of a Chairman and eight members to be selected by the Speaker of the Provincial Assembly on the recommendation of Leader of the House and Leader of the Opposition, with equal representation from both sides.

**6. Amendment of section 31A, Ordinance XVIII of 1999.**

In the said Ordinance, in section 31A, in clause (a), for the full stop at the end a colon shall be substituted and thereafter the following new clause (aa) shall be inserted, namely:-

(aa) An order or judgment passed by the Court in absentia against an accused is void ab initio and shall not be acted upon.

**7. Insertion of new section, Ordinance, XVIII of 1999.**

In the said Ordinance, after section 33, the following new section shall be inserted, namely:-

**33A. Withdrawal and termination of prolonged pending proceedings initiated prior to 12th October, 1999.**

(1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, proceedings under investigation or pending in any court including a High Court and the Supreme Court of Pakistan initiated by or on a reference by the National Accountability Bureau inside or outside Pakistan including proceedings continued under section 33, requests for mutual assistance and civil party to proceedings initiated by the Federal Government before the 12th day of October, 1999 against holders of public office stand withdrawn and terminated with immediate effect and such holders of public office shall also not be liable to any action in future as well under this Ordinance for acts having been done in good faith before the said date;

**Provided** that those proceedings shall not be withdrawn and terminated which relate to cases registered in connection with the cooperative societies and other financial and investment companies or in which no appeal, revision or constitutional petition has been filed against final judgment and order of the Court or in which an appellate or revisional order or an order in constitutional petition has become final or in which voluntary return or plea bargain has been accepted by the Chairman, National Accountability Bureau under section 25 or recommendations of the Conciliation Committee have been accepted by the Governor, State bank of Pakistan under section 25A.

(2) No action or claim by way of suit, prosecution, complaint or other civil or criminal proceeding shall lie against the Federal, Provincial or Local Government, the National Accountability Bureau or any of their officers and functionaries for any act or thing done or intended to be done in good faith pursuant to the withdrawal and termination of cases under sub-section (1) unless they have deliberately misused authority in violation of law.

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