

Judicial activism in Pakistan: An assessment of the elected governments from 1993 to 1999

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Abstract:

There is a correlation between the institution of the judiciary, political executive, legislatures, a democratic system, the constitution's superiority and the state's citizens. In a democracy, the government needs to develop a harmonious and friendly relationship with the opposition and the non-political institutions so that the military does not have a chance to interfere. Different schools of thought differ over the role of the superior judiciary in maintaining checks and balances on the elected government. One school believes that non-elected judges shall not exercise the power of judicial review. However, others believe that if the elected government does not perform their duties in the required manner, the judiciary must look closely at its work. This study focuses on how apparent judicial activism, the struggle for supremacy of parliament, and apparent efforts to establish a check and balance system were misused by all the stakeholders to enhance control over political affairs rather than strengthen state institutions. It also analyses how the military in Pakistan maintained a check on the elected governments during the second term of Benazir Bhutto and Nawaz Sharif. The findings revealed that the military controlled the government through the powerful president or with the help of the judiciary.

Keywords: Democracy, Judiciary, Supreme Court, President, Prime Minister, Military, Judicial Review, Constitution, Head of state, Head of government.

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1. Introduction

A thorough study of the history of democracy shows that it has often been characterised by a blatant disregard for the rule of law, both by the political executive and the legislative chambers. These two political institutions often carry out their respective powers and functions in such a manner that they try to suggest having unlimited power or are above the law of the land, the Constitution. All the actors of the state are interrelated and intertwined with each other. History shows that only those nations could survive and develop their countries, ensuring the rule of law and their courts have functioned with more autonomy and independence. Therefore, to safeguard democracy, the judiciary must fulfil its constitutional role. The sustenance of a democratic system mainly depends on the autonomy and independence of the higher judiciary. The judiciary should interpret the constitution, settle conflicts and disputes arising in the growth of democracy and ensure the rule of law. The judiciary, irrespective of its original jurisdiction, ensures a clear separation of powers between the government and the legislature.

Judicial independence does not necessarily mean that the judges can reverse the governmental acts. The decision of a judge to reverse a governmental act can be seen in whether the judge can challenge the orders of the political executive and whether the judge wants to challenge the order of the political executive. Therefore, the reversal of a governmental order depends not only on the political constraints that the courts usually face. There is also a possibility of political repercussions of the reversal order, which means the legislature and/or the executive may reverse the court's decision. Besides, the number of judges can be increased in the court and/or a judge or some judges may be impeached. However, the intention of judicial reversal or other measures by a government also depends on the political alignment of the judge(s).

It is not illegitimate for a judiciary to act like a legislature, especially in federal systems. However, they cannot sometimes perform effectively in this regard. Nonetheless, many critics often criticise the judiciary as not being competent enough as an institution to make legislative decisions. At the same time, the power of judicial review does not need to be used to deliver judgements that do not have political consequences and should be based on the political sentiments of the people (Deutsch, 1967; Cheema, 2018). However, the ultimate options lie with the judiciary; if the parliament is unable or does not want to correct an unconstitutional status quo, the judiciary, irrespective of its institutional incapacities, should act to correct such actions (Cox, 1996; Alam et al., 2016).

Different critics believe that judicial restraint is proposed on the power of judicial review because it weakens the democratic processes. Suppose the judiciary corrects the legal and constitutional errors of the parliament and the political executive. In that case, these responsible institutions may start relying on the courts and may not fulfil their responsibilities under the Constitution. However, the judiciary has three options: declare it constitutional, unconstitutional, or somehow avoid dealing with its constitutionality. In democratic regimes, if not necessary, the judiciary should prefer upholding the law as constitutional and leave it to be repealed by a more enlightened parliament (Khalid & Munir, 2018).

When the court avoids judgment on the constitutional merits of a statute, the judiciary gives a chance to the legislature to correct its own constitutional mistakes. Otherwise, it may be a serious matter for the people to keep relying on the judiciary as a significant force for change in the constitutional issues. If the people and the parliament expected the judiciary to do their

work for them, the tradition and the practice would be worse (Bickel, 1961). No doubt, the legal experts know well that from a theoretical aspect, the findings of the judiciary on a statute imply nothing about its wisdom. Until the higher judiciary grants it validity, the arguments of the opposition that the statute is unconstitutional or simply unnecessary may compel the people to take a second look at it. However, when the constitutional court of a state declares the statute valid, the criticism of opposition is undercut (Black, 1960; Gazdar, 2009).

To some critics, the power of judicial review enjoyed by the superior courts in a democratic government is often considered an undemocratic, inherently oligarchic and deviant institution. This is mainly because, in a democracy, public policies and laws are framed based on a majority vote in the legislature, which is carried out based on the principle of political equality and with the intention of political freedom (Mayo, 1996; Giunchi, 2013). However, the superior court judges are given appointments and promotions through a process usually carried out by the political executive, who is elected directly or indirectly. Moreover, suppose the judges are not aware of the political reality in the country. In that case, the parliament and the political executive may null and void their judgements through constitutional amendments and thus refuse to execute their decisions (Bickel, 1961). Furthermore, the legitimacy factor of a state institution depends not on its representational structure but rather on its institutional authorisation and acceptance by people. Therefore, the judicial review power of the courts is an integral part of the Constitution, especially in federal structures (Rostow, 1957).

According to this school of thought, the higher judiciary is not a democratic state institution because it consists of personnel having a lifetime appointment and can be removed only through an intricate impeachment process. However, this definition also suggests that the lawmaking process must be through a majority will. Therefore, the upper chamber of the parliament in a federal system also does not qualify for policymaking. Moreover, once elected, the internal rules and regulations of the parliament make the popular and the majority will and control even less likely to be ensured. The enormous power enjoyed by the committee system and its chairperson is based on the seniority rule, which often does not ensure the suggestions and recommendations of the opposition parties, thus decreasing the chances of majority vote and popularity.

2. Benazir Bhutto's second term in government and the judiciary

The Pakistan Peoples Party (PPP) had developed a soft corner for and respected Justice Sajjad Ali Shah when President Ghulam Ishaq Khan, using his powers of 58(2)(b) under the Eighth Constitutional Amendment, dismissed the first elected government of Benazir Bhutto in 1990. The order of the president to dismiss the elected government, as well as the dissolution of National and four provincial assemblies, was challenged in all four High Courts, including the Sindh High Court. A five-member bench, headed by Chief Justice Sajjad Ali Shah, was formed to hear the petitions. However, the Governor of Sindh took off to Saudi Arabia to perform Umrah (a religious pilgrimage). Therefore, the Chief Justice was accordingly assigned the responsibilities of acting Governor of Sindh. These arrangements were carried out to keep the Chief Justice out of the bench, which was formed to hear the petition challenging the dismissal order of the President. The initially planned visit of the Governor of Sindh was for three days only. However, the tour was given an extension, claiming the reasons for his illness. As a result, the Governor stayed abroad and did not return until the petitions were disposed of (Shah, 2001; Gul, 2016).

Another opportunity which enhanced the respect of the PPP for Justice Sajjad Ali Shah was when Ghulam Ishaq Khan issued an order to dismiss Nawaz Sharif's first government in 1993. Justice Sajjad Ali has been elevated from Sindh High Court to the Supreme Court of Pakistan as a judge. The full bench of the Court, giving almost a unanimous verdict (10:1), held that the President's order to dismiss the government of Nawaz Sharif and dissolve the National Assembly was unlawful and declared it as 'illegal' and 'unconstitutional' (Aziz, 2009). The only dissenting judge of the Supreme Court was Justice Sajjad Ali Shah (from Sindh), who, contrary to other panel members, gave a dissenting verdict. His remarks were more critical, declaring that before this case, two prime ministers from Sindh had been dismissed under the same Article of the 1973 Constitution. However, the Court had declared the decision of the President to be valid and/or did not restore the dismissed government and the dissolved assemblies. However, this time, the tables of the Court had been turned for a Punjabi Prime Minister (PLD 1993, SC. 473) and the government, along with the National Assembly, has been restored. Justice Sajjad Ali Shah added that the Court had indicated that the decision would please the nation, which, per the law, should be based on legality only.

During the second term of the Benazir Bhutto government, Justice Sajjad Ali Shah was appointed Chief Justice of Pakistan in 1994. However, the elected government had superseded three senior judges for this appointment (Khan, 2009; Hussain, 2018). It seems that Benazir Bhutto made this decision due to his dissent in two previously discussed cases before the Supreme Court, which the PPP took for support. Hamid Khan quotes an un-named influential PPP member that he saw Justice Sajjad Ali Shah sitting with Asif Ali Zardari in the Supreme Court Rest House Lahore, assuring Asif Ali Zardari that he would do what the PPP government desired him to do (Khan, 2009; Kennedy, 2012). However, the later developments proved that Sajjad Ali Shah, as Chief Justice, sought independence from the judiciary and challenged the irregularities done by the Benazir Bhutto government on several occasions.

According to the critics, the authoritarian style of Benazir Bhutto's government led her to develop differences with the superior judiciary. Moreover, Benazir Bhutto started a confrontation with the Chief Justice, who stood for the independence of the judiciary. This tussle was coupled with a confrontation with President Farooq Ahmad Khan Leghari on several issues, like weak economic and political performance, corruption and unnecessary confrontation with the judiciary (Talbot, 2003; Niaz, 2020). To save her government from the adverse judgements of the judiciary, Benazir Bhutto started appointing pro-PPP lawyers and judges in the High Courts and Supreme Court of Pakistan (Aziz, 2009; Khan, 2014). Benazir Bhutto's government was not the only one that appointed or transferred judges without consideration of merit. However, the undue interference and practice of appointment of inexperienced judges at a larger scale undermined the judiciary's integrity with negative implications. Moreover, political appointments and transfers were blamed for increasing over the past few years, compelling the judiciary to take necessary measures.

The PPP government removed the sitting Chief Justices of Lahore and Sindh High Courts by transferring them to the Federal Shariat Court. It was because they were considered anti-PPP and pro-PML(N) judges. Although humiliating, the Chief Justice of the Sindh High Court agreed with this transfer; however, the Lahore High Court preferred an early retirement. Both were replaced by two judges of the Supreme Court who were posted there as Acting Chief Justices. The appointment of Justice Abdul Hafiz Memon bypassed all the merits. He was first transferred as a judge of the Sindh High Court and subsequently appointed as an Acting Chief

Justice. However, the notification was immediately rescinded when the government learned that his appointment as High Court judge had made him the junior-most judge, and thus, he could not be appointed as the Acting Chief Justice. Therefore, another notification was issued, notifying him as Supreme Court judge, followed by a third notification appointing him to the Sindh High Court as an Acting Chief Justice. Similarly, in the case of the Lahore High Court, the government considered Justice Muhammad Ilyas, a retired judge of the Lahore High Court who then served as a judge of the Federal Shariat Court. Nawaz Sharif's government deeply aggrieved him because he had been denied appointment as Chief Justice of the Lahore High Court. Appointing him as a Supreme Court judge, he was transferred to the Lahore High Court to be appointed as an Acting Chief Justice. The Peshawar High Court was already headed by an Acting Chief Justice (Khan, 2009).

The Benazir Bhutto government has initiated another phase of appointments to fill the four High Courts with like-minded judges. Only nine judges were appointed in the Sindh High Court. Most of them were appointed either on a political basis or were favourites of the PPP leaders. Most of the appointees did not fulfil the required qualifications or were not fit to be appointed as High Court judges because they lacked experience at the Bar of the High Court (Khan, 2009; Oldenburg, 2016). Moreover, ignoring the sanctity of the higher judiciary, twenty judges were appointed to the Lahore High Court in August 1994, which created further problems for the Benazir Bhutto government. Only two were session judges, and the remaining eighteen were selected from among the bar members. Thirteen of the twenty judges were PPP activists and lacked the required professional experience. Only seven judges were eligible for their appointment as High Court judges on merit (Amin, 1995; Siddique, 2015).

The legal basis of the appointments of these twenty judges to the Lahore High Court was challenged in the case titled *Al-Jehad Trust vs Federation of Pakistan* in the Supreme Court (PLD 1996, SC. 32). However, Benazir Bhutto pressurised Chief Justice Sajjad Ali Shah not to entertain any appeal filed against the legality of these appointments. However, the terms dictated by the prime minister were turned down by the Chief Justice, mainly because they were against the independence of the judiciary. The judgment declared by the Supreme Court came as a check on the civilian government, thus curtailing the arbitrary use of its powers to appoint judges to the superior judiciary. The detailed judgement of the Supreme Court reduced the power of the elected government in the unilateral appointment or transfer of higher court judges, thus binding it to consult the Chief Justice of Pakistan and Chief Justices of High Courts, as the case may be. Moreover, the Supreme Court ruled that the Chief Justice of Pakistan and the Chief Justices of the High Courts would be appointed based on seniority to record a strong justification for the contrary. The Court also declared in its verdict that the recommendation of the Chief Justice of Pakistan and Chief Justices of High Courts, as constitutional consultees, was binding on the executive to appoint judges to the superior judiciary, respectively. Moreover, it held that if the government disagreed with their views, it should record strong and cogent reasons to be valid and justiciable.

The landmark judgement also required that all the appointments done without the consent of the Chief Justices be reviewed (Aziz, 2009). The confrontation between the prime minister and Chief Justice Sajjad Ali Shah increased when the Chief Justices of the High Courts refused to confirm the government's recommendations in 1994 regarding the appointments of the judges to the High Courts. Chief Justice Sajjad Ali Shah and the four Chief Justices of the High Courts gave the order to remove twenty-four (24) judges whom the Benazir Bhutto government-

appointed. Benazir Bhutto refused to comply with the judgment, which caused a constitutional crisis to emerge. Therefore, the Chief Justice was forced to approach President Farooq Ahmad Khan Leghari to resolve the deadlock, who had already suggested that Benazir Bhutto accept the judgment of the Supreme Court. Farooq Ahmad Khan Leghari referred to the Court to obtain its opinion on whether the president had discretionary powers to appoint judges to the higher judiciary or whether the prime minister's opinion was binding on him (Aziz, 2009).

The judicial activism continued throughout the year; the court's decisions embarrassed the elected government. Benazir Bhutto accused the opposition parties of their alleged efforts to use the judiciary to topple her government. She targeted the Jamat-i-Islami, which had demanded the resignation and replacement of Benazir Bhutto with a caretaker government headed by the judiciary. In response, Chief Justice Sajjad Ali Shah issued a public statement that indirectly accused the Benazir Bhutto government of its efforts to ridicule the judiciary, defy its judgments, and unjustly accuse the judges of aligning itself with opposition political parties. To him, irresponsible statements have been issued for giving a bad name to the superior judiciary, which only fulfils its duties as enjoined in the 1973 Constitution. The judiciary does not want to have any confrontation with the Benazir Bhutto government.

Besides these significant differences, the Supreme Court released Sheikh Rasheed, an opposition leader, in March 1996. He was sentenced by a lower court on the charges of illegal possession of an AK-47 gun (Kalashnikov), thus remaining behind bars for more than one and a half years. In June 1996, the Supreme Court of Pakistan restored the local governments in the Punjab. The verdict of the Supreme Court was invalidated by the Punjab Assembly when it repealed the Local Government Ordinance 1979. Imposing the Governor Rule in Punjab, the provincial assembly was called a week later, and Chief Minister Manzoor Watto was asked to seek a vote of confidence. As he could not secure the required mandate, Sardar Arif Nakai was elected Chief Minister of Punjab the next day. Mian Manzoor Watto filed a reference in the Lahore High Court, which reinstated his government in the Punjab (Shah, 1998). The presidential proclamation, the advice of the governor and the appointment of Sardar Arif Nakai were declared without lawful authority, thus causing considerable embarrassment for the Benazir Bhutto government (Aziz, 2009). However, by resigning, Mian Manzoor Watto dissolved the Punjab Provincial Assembly due to the confrontational politics between the centre and Punjab. The situation contributed to the confrontation between the prime minister and the Chief Justice of Pakistan, which was further coupled with the tensions between the prime minister and the president.

3. Nawaz Sharif's second term in government and the judiciary

Due to the deteriorating law and order situation, Nawaz Sharif's government passed the Anti-Terrorism Act (ATA) on August 13, 1997, establishing special courts (Aziz, 2009). It empowered law enforcement agencies to search the houses and arrest the suspects without a warrant. Chaudhry Shujaat Hussain (the then Federal Minister for Interior) promised that the military would exercise no power in civilian affairs beyond the military courts. The Army Chief had already announced that the Army would not involve itself in political affairs and that none of the political parties would be targeted. Though special military courts were established under the ATA, the cases decided by these courts revealed that they took more time than specified in the ATA. Different public circles severely criticised this limitation of the military courts. Hearing petitions against the judgement of ATA, the Supreme Court declared that the 1973

Constitution allows no parallel judicial system. The Court also declared that twelve of the provisions of ATA are controversial and invalid. Those sections of ATA that empowered the law-enforcing agencies to enter any place for search and operations were declared unconstitutional. Earlier in August 1997, when the ATA was challenged in the Lahore High Court, it gave two months to the elected government to bring the ATA in conformity with the 1973 Constitution.

Nawaz Sharif was apprehensive about Chief Justice Sajjad Ali Shah because of the judgement given in favour of the dismissal of his first term by President Ghulam Ishaq Khan. Having forestalled the perceived threats of dismissal of his government and losing the majority in the parliament through constitutional amendments, the prime minister turned towards the third pillar of the state, namely the judiciary. Nawaz Sharif tried to override the superior judiciary by appointing Supreme Court judges. The Chief Justice recommended filling all five vacant posts of the Supreme Court with an elevation of three of the Chief Justices of High Courts and two senior judges of the Punjab High Court. However, Nawaz Sharif disagreed with the promotion of two judges Justice Sajjad Ali Shah proposed. The main reason was that they had also passed a judgment against Prime Minister Nawaz Sharif's government during his first term. To counter the Chief Justice, Nawaz Sharif tried to indirectly reduce the powers of the former when a presidential order was issued, thus reducing Supreme Court judges from seventeen (17) to twelve (12) members.

A petition challenging the Presidential Order was filed in the Supreme Court, because of which Chief Justice Sajjad Ali Shah issued a stay order (Aziz, 2009). The court and the Bar Associations also protested the order throughout the country. Nawaz Sharif was forced to reconsider his actions and reverse the presidential order. However, Prime Minister Nawaz Sharif continuously exerted pressure, so the differences between the elected government and the higher judiciary increased manifold. However, the arbitration between President Farooq Khan Leghari and Army Chief Jahangir Karamat worked, and Nawaz Sharif agreed to the appointment of the judges recommended by Sajjad Ali Shah. This arbitration had been, in fact, a coercive force that the military has been able to use for decades. The role of mediator at the top level of the state institutions revealed the kind of influence the Army Chief had been enjoying in the decision-making process of Pakistan.

The opposition parties, especially the PPP, realised that it was the right time to take advantage of the situation and filed several petitions in the Supreme Court against the constitutional amendments and legal acts initiated by Nawaz Sharif's government, thus seeking disqualification of his government. Meanwhile, the government of Nawaz Sharif successfully created rifts within the Supreme Court judges. The judges sent a letter to President Farooq Khan Leghari, which was signed by 9 out of 12 Supreme Court judges, declaring that the original appointment order of Justice Sajjad Ali Shah, elevating him as Chief Justice of Pakistan, was not based on the principle of seniority (Aziz, 2009). The Benazir Bhutto government appointed Justice Sajjad Ali Shah as Chief Justice of Pakistan by superseding three senior judges, i.e., Justice Saad Saud Jan, Justice Ajmal Mian and Justice Abdul Qadeer Chaudhry (Khan, 2009; Waseem, 2012).

The Supreme Court Bench, presided over by Sajjad Ali Shah and two ad-hoc judges, nullified and declared the Fourteenth Amendment unconstitutional. This amendment consisted of anti-defection laws, especially for curtailment of the independence of elected representatives during

voting in Parliament against the party's interests. The tussle continued as the prime minister publicly criticised the decision of the Court in the Parliament, which prompted the Supreme Court to take serious notice. A contempt of court petition was filed against the prime minister in the Supreme Court, and another petition was filed for the annulment of the thirteenth amendment (Aziz, 2009). A three-member bench comprising Chief Justice Sajjad Ali Shah, Justice Bashir Jahangiri and Justice Chaudhry Mohammad Arif summoned Nawaz Sharif and eleven others to appear before the Court for defence in the contempt of court case. Nawaz Sharif sought a one-month relief from the Court for a written response. However, the Supreme Court refused and ordered him to appear in person before the Supreme Court on November 17, 1997. Nawaz Sharif also requested the Court for mercy, but Chief Justice Sajjad Ali Shah responded that they were not supposed to provide mercy but justice (Nawaz, 2008).

Instead of complying with the Court orders, Prime Minister Nawaz Sharif attempted to persuade President Farooq Khan Leghari to replace the Chief Justice. President Farooq Khan Leghari refused in the same way as he had done during the Benazir Bhutto government. However, unlike Benazir Bhutto's period, the Supreme Court judges were now divided and could be quickly dealt with. President Farooq Khan Leghari warned Nawaz Sharif about the consequences of such manoeuvres, but Nawaz Sharif did not abandon his efforts. Meanwhile, the government of Nawaz Sharif passed an amendment to the Contempt of Court Act from the National Assembly and the next day from the Senate. The amendment gave the affected person the right to file an inter-court appeal for a hearing of his case by judges other than those who admitted or heard the contempt petition. However, the Supreme Court bench headed by Sajjad Ali Shah ordered the President not to sign the bill (Aziz, 2009).

The President could retain a bill for 30 days to sign, which he did and later returned it to the parliament for review. However, the Constitution did not allow parliamentary review in such cases until the Court permitted it. The government of Nawaz Sharif decided to impeach President Farooq Khan Leghari through parliament along with the removal of Justice Sajjad Ali Shah, alleging that the former had also abused his powers by retaining the bill pending for 30 days. As usual, Army Chief General Jahangir Karamat and DG ISI General Nasim Rana intervened in the crisis as arbitrators. A meeting was arranged between the Chief Justice of Pakistan, the President of Pakistan, and the Prime Minister, and Justice Sajjad Ali Shah was asked to withdraw the contempt for the court case. Considering it insulted his office, the Chief Justice refused to continue discussing the matter. President Farooq Ahmad Leghari made efforts to normalise the crisis concerning the prevailing critical conditions of the country, which demanded political stability. Upon request, Justice Sajjad Ali Shah agreed to at least two weeks' delay in the proceedings of the contempt of court case (Nawaz, 2008).

It was a typical personal war in which 'individual characters' played a key role. The heads of the state institutions strived for superiority over one another, and no one was interested in safeguarding the state institutions. Nawaz Sharif took advantage of the two weeks' relief to make a counterattack against Chief Justice Sajjad Ali Shah. PML-N government filed a writ petition against the original appointment of Chief Justice Sajjad Ali Shah in Quetta Circuit Bench and a week later in Peshawar Circuit Bench of the Supreme Court of Pakistan. The Quetta Circuit Bench suspended the notification of his original appointment as Chief Justice of Pakistan. The government of Nawaz Sharif sent a summary to President Farooq Ahmad Khan Leghari for signing the removal orders, thus recommending Justice Ajmal Mian, the next senior judge, as acting Chief Justice of Pakistan. This decision of the Quetta Circuit Bench was

suspended by a larger bench of the Supreme Court with a 4 to 1 decision headed by Justice Sajjad Ali Shah (Aziz, 2009).

The larger bench gave technical grounds that the Quetta Circuit Bench cannot suspend a permanent judge of the Supreme Court. However, such cases could be referred to the Supreme Judicial Council for consideration if necessary. It further held that a Circuit Bench is not empowered to hear a case against the Chief Justice of Pakistan and can only hear the cases assigned by the Supreme Court of Pakistan. The crisis further deepened when Peshawar Circuit Bench, presided over by Justice Saeed-uz-Zaman Siddiqui, held that being party to the case, the Chief Justice is not empowered to hear or issue a suspension order of the decision of the Quetta Circuit Bench. However, it is noteworthy that the Supreme Court, in the Jamal Shah Case in 1966 and later in 1988, declared that the judges of the same court could not hear cases against each other. However, with the tactics employed by Prime Minister Nawaz Sharif's government, the Supreme Court judges, for the first time, got divided into two groups. The grouping resulted in a tug of war-among the Supreme Court judges, and the battleground was the press (Hussain, 2007).

Farooq Khan Leghari and Sajjad Ali Shah met three times on the same day, and the latter was advised to resign because of losing the support of fellow judges. The Army Chief General Jahangir Karamat, DG (ISI) General Nasim Rana, Prime Minister Nawaz Sharif, Wasim Sajjad (Chairman Senate), Khalid Anwar (Law Minister) and Illahi Bukhsh Soomro (Deputy Chairman Senate) visited the President House at midnight. The prime minister and his law minister presented the judgement of the Quetta Circuit Bench against Chief Justice Sajjad Ali Shah. Nawaz Sharif's government insisted on Farooq Ahmad Khan Leghari signing the order for the dismissal of the Chief Justice and the summary for Justice Ajmal Mian to be appointed as Acting Chief Justice. President Farooq Khan Leghari refused to sign the orders because he had obtained some information that the government had used suitcases of money to obtain this judgment from the judiciary. The bribery issue badly damaged the image of Pakistan's higher judiciary, for which the PML-N government was equally responsible, thus weakening one of the state institutions.

As a constitutional lawyer, Chairman Senate Wasim Sajjad declared that the Chief Justice's dismissal in this case was justified on legal grounds. However, President Farooq Leghari, showing his disapproval, opted to give his resignation with a suggestion that the next day, Wasim Sajjad, as acting President of Pakistan, would sign the dismissal order of Chief Justice Sajjad Ali Shah. The Army Chief, DG ISI and Deputy Chairman Senate opposed this arrangement. The Army Chief arranged another meeting in the President's House, in which Sajjad Ali Shah advised Farooq Khan Leghari that he should not resign and would also prefer to fight his battle. President Farooq Khan Leghari expected the restoration of the Eighth Constitutional Amendment by the Chief Justice Sajjad Ali Shah court, which would empower him with 58(2)(b) to dismiss Nawaz Sharif's elected government and the Chief Justice did as was expected from his court.

Nawaz Sharif appeared before the Supreme Court on November 28, 1997, in a contempt of court case. On this occasion, the PML (N) supporters invaded the Supreme Court building, where the senior ministers were also involved. The attack was a tragic incident in the history of Pakistan. The coverage of the media throughout the world became a witness that the PML-N members attacked the Supreme Court building with the backing of the elected government.

Chief Justice Sajjad Ali Shah requested the President and Army Chief through different letters to deploy the Army and provide security to the Supreme Court of Pakistan. While endorsing the demand, the president forwarded the letter to the prime minister for necessary action. Moreover, the Army Chief also forwarded the letter to the Defence Ministry for appropriate action (Aziz, 2009). Thus, General Jahangir Karamat detached himself to be neutral and let the matter be resolved by civilian institutions, mainly because his interests were not at stake. The Army Chief did not protect because that would have given a signal to take sides. To him, the president and the chief justice were playing the game for personal interest. The government released the letter to the press, and the prime minister responded that the military did not need to protect the Supreme Court. It exposed the controversy between the two high offices of the state regarding the judiciary issue.

As they were free from the stress of non-intervention of the military, the prime minister, the president and the Chief Justice of Pakistan publicly challenged each other as rivals to maintain their superiority. Nawaz Sharif decided to seek impeachment of Farooq Khan Leghari through the parliament. However, on the same day, the Chief Justice restored 58(2)(b) to a three-member bench, which empowered the president to dismiss the elected government and dissolve the National Assembly. The same day, a ten-member full court upheld the decision of the Quetta Bench and suspended the suspension order of the 13th Amendment taken by the three-member bench under Sajjad Ali Shah (Aziz, 2009). Although the president knew that he could be impeached and had the power to dismiss the elected government and dissolve the National Assembly, Farooq Khan Leghari preferred to resign one year before the end of his term in office. It is noteworthy to mention that the resignation of the President occurred on the same day when a session of the National Assembly was called for his impeachment.

Surprisingly, in the post-Ziaul Haq era, the president resigned instead of dismissing the government under 58(2)(b). The Army Chief knew Nawaz Sharif would deteriorate the country's political and economic situation. Therefore, he tried to convince Farooq Khan Leghari not to resign but wanted the government to continue (Nawaz, 2008). President Farooq Leghari knew the Army Chief would not stand by his side, so he resigned. Chairman Senate Wasim Sajjad took oath as acting President of Pakistan. Being a loyal member of the PML-N, he signed the order to dismiss the Chief Justice of Pakistan (Aziz, 2009). Therefore, Chief Justice Sajjad Ali Shah was sent home without a reference in his honour. The dissenting judges were also successful, mainly due to the government's support of Nawaz Sharif, in removing their peer judge humiliatingly.

Justice (retd) Rafiq Tarar, a family friend of the prime minister and former legal advisor to Sharif Industries was elected as the President of Pakistan. Having no opposition from all sides, Nawaz Sharif became more confident and defeated all his opponents individually. He made himself entirely secure; thus, the prime minister's office virtually became all-powerful. Arbitrariness was seen in the exercise of power when Justice Rashid Aziz, the Chief Justice of Lahore High Court, went on Ex-Pakistan leave in June 1999. The Chief Justice of Pakistan had recommended Justice Falak Sher, the seniormost judge of Lahore High Court, for appointment as acting Chief Justice. In clear violation of the judgement of the Supreme Court in the case titled *Al-Jehad Trust vs Federation of Pakistan* and against the recommendations of the Chief Justice of Pakistan, Nawaz Sharif appointed the next senior judge as acting Chief Justice of Lahore High Court (Khan, 2009).

4. Conclusion

No doubt, the ultimate destination of Pakistan's politicians should be democracy, irrespective of the fact that whatever they do and the illegal ways they adopt to achieve their self-interests. They should restore the role of the state institutions. This is the ultimate way, and they should adopt it. However, the controversial role of civilian governments during the 1990s in dealing with the judiciary further weakened civilian institutions. Thus, it increased the opportunities for the military to take over directly and/or indirectly in political affairs through the powerful president. However, the president's office was considered virtually ineffective when the Benazir Bhutto government elected Farooq Khan Leghari (a party loyalist) as the President of Pakistan. As a result, the Chief Justice of Pakistan, with the president's support, was forced to maintain a check on the workings of the elected government. Similarly, there was no check on the government of Nawaz Sharif when the president was deprived of all major powers, including Article 58(2B), through the 13th Constitutional Amendment. Furthermore, the government's interference resulted in a tussle between the Chief Justice of Pakistan and the Prime Minister. As the government successfully created a rift among the Supreme Court judges, the symbolic head of the state sided with the chief justice. However, this time, the military decided to remain neutral, due to which the civilian government forced the president to resign, and the chief justice was removed from office in a humiliating manner. The government's strategy to use its parliamentary majority to strengthen the position of Prime Minister was the main reason for the executive-judiciary conflict. It led to a confrontation between the judiciary and the executive, i.e., the Chief Justice and the President, on the one side and the premier on the other, further aggravating the polity with a severe political crisis.

Judicial independence and judicial accountability are interdependent and important in Pakistan. Even if competent and independent, the judiciary in Pakistan could never be preserved without an effective system of judicial accountability, both legal and public accountability. An unaccountable judge may be willing to disregard the principles that an independent judiciary is supposed to follow in its judgements. Therefore, a system of judicial accountability should be developed in line with the principles of judicial independence and integrity of the judiciary as an institution. However, irrespective of any political gains by the government, the sole purpose of the judicial accountability system should be advancing the cause of justice in society. Cosmetic changes are not enough to improve the judiciary's image unless the state managers fulfil their responsibilities towards this vital organ of the state. Only the technical steps, legislative corrections, reforms, constitutional amendments and judicial review cannot revise the role of the superior judiciary and make it independent in its decision-making. It needs the elected government's commitment to ensure the rule of law, institute a transparent system of appointments of judges to the higher judiciary and ensure that the judicial decisions are enforced in their letter and spirit.

References

- Alam, I., Shah, A. M., Reayat, N., & Jadoon, M. A. (2016). Judicial Activism and Institutional Legitimacy of Supreme Court of Pakistan (2006-2014). *Pakistan Journal of Criminology*, 8(4), 58. <http://www.pjcriminology.com/wp-content/uploads/2019/01/5-7.pdf>
- Amin, T. (1995). Pakistan in 1994. *Asian Survey*, 35(2), 140–146. <https://doi.org/10.2307/2645022>
- Aziz, S. (2009). *Between dreams and realities: Some milestones in Pakistan's history*. Oxford University.
- Bickel, A. M. (1961). The Supreme Court: 1960 Term. *Harvard Law Review*, 75(1), 240–244. <https://core.ac.uk/download/pdf/72832749.pdf>
- Black, C. L. (1960). *The people and the court: judicial review in a democracy*. Macmillan.
- Cheema, M. H. (2018). Two steps forward one step back: The non-linear expansion of judicial power in Pakistan. *International journal of constitutional law*, 16(2), 503–526. <https://doi.org/10.1093/icon/moy040>
- Cox, A. (1966). The Supreme Court: 1965 term. *Harvard Law Review*, 80(1), 191–212. <https://doi.org/10.2307/1339351>
- Deutsch, J. G. (1967). Neutrality, legitimacy and the Supreme Court: some intersections between law and political science. *Stan L. Review*, 20, 169–187. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/stflr20&div=26&id=&page=>
- Gazdar, H. (2009). Judicial activism vs democratic consolidation in Pakistan. *Economic and Political Weekly*, 44(32), 8–14.
- Giunchi, E. (2013). Islamization and Judicial Activism in Pakistan: What Šarī'ah?. *Oriente Moderno*, 93(1), 188–204. https://brill.com/view/journals/ormo/93/1/article-p188_9.xml
- Gul, I. (2016). Judicial activism, and the rule of law. In *Pakistan's Democratic Transition* (pp. 152–167). Routledge. <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315626741-17/judicial-activism-rule-law-imtiaz-gul>
- Hussain, H. (2007, June). Judicial jitters in Pakistan: A scholarly and historical perspective. *Defence Journal*. <https://watandost.blogspot.com/2007/05/judicial-jitters-in-pakistan-scholarly.html>
- Husain, W. (2018). *The judicialization of politics in Pakistan: A comparative study of judicial restraint and its development in India, the US and Pakistan*. Routledge. <https://doi.org/10.4324/9781351190114>
- Kennedy, C. H. (2012). The judicialization of politics in Pakistan. In *The Judicialization of Politics in Asia* (pp. 139–160). Routledge. <https://www.taylorfrancis.com/chapters/edit/10.4324/9780203115596-10/judicialization-politics-pakistan-charles-kennedy>
- Khalid, I., & Munir, K. (2018). Judicial Activism in Pakistan: A Case Study of Supreme Court Judgments 2008-13. *South Asian Studies*, 33(02), 321–334. <https://sasj.pu.edu.pk/9/article/view/1152>
- Khan, H. (2009). *Constitutional and political history of Pakistan (2nd ed.)*. Oxford University. <https://examinia.com/wp-content/uploads/2024/06/Hamid-Khan-Constitutional-and-Political-History-of-Pakistan-1-1-1.pdf>

- Khan, M. S. (2014). Genesis and evolution of public interest litigation in the supreme court of Pakistan: Toward a dynamic theory of judicialization. *Temp. Int'l & Comp. LJ*, 28, 285.
- Mayo, H. B. (1960). *An introduction to democratic theory*. Oxford University.
- Nawaz, S. (2008). *Crossed swords: Pakistan: its army, and the wars within*. Oxford University.
- Niaz, I. (2020). Judicial activism and the evolution of Pakistan's culture of power. *The Round Table*, 109(1), 23–41. <https://doi.org/10.1080/00358533.2020.1717091>
- Oldenburg, P. (2016). The judiciary as a political actor. In *Pakistan at the Crossroads: Domestic Dynamics and External Pressures* (pp. 89-120). Columbia University Press. <https://doi.org/10.7312/jaff17306-005>
- PLD 1993, SC. 473. <https://nasirlawsite.com/historic/pld473.htm>
- PLD 1996, SC. 32 (Commonly known as the Judges case, the judgement was declared on March 20, 1996. However, the detailed judgment of Supreme Court came on April 2, 1996.) <https://lpr.adb.org/sites/default/files/resource/1111/pakistan-ali-muhammad-v-the-state-pld-1996-sc-274.pdf>
- Rostow, E. V. (1957). The Supreme Court and the people's will. *Nome Dame Law*, 33, 573-576. <https://scholarship.law.nd.edu/ndlr/vol33/iss4/6>
- Shah, N. H. (1998). Judiciary in Pakistan: a quest for independence. In C. Baxter and C. Kennedy (eds.), *Pakistan in 1997*. Westview.
- Shah, S. A. (2001). *Law courts in a glass house, an autobiography*. Oxford University.
- Siddique, O. (2015). The Judicialization of Politics in Pakistan. *Unstable constitutionalism: Law and politics in South Asia*, 159–91.
- Talbot, I. (2003). *Pakistan: A modern history*. Hurst & Company. <https://hostnezt.com/cssfiles/pakistanaffairs/Pakistan%20A%20Modern%20History%20By%20Ian%20Talbot.pdf>
- Waseem, M. (2012). Judging democracy in Pakistan: Conflict between the executive and judiciary. *Contemporary South Asia*, 20(1), 19–31. <https://doi.org/10.1080/09584935.2011.646077>