

## The politics of dismissal of the government in Pakistan and the role of the judiciary (1988-1997)

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### Abstract

The judiciary's role is significant in the political and constitutional development of a federal system, as the sustenance of democracy in such countries depends mainly on the independence of the judiciary. This study investigates the judiciary's role in complementing the dictatorial moves of the presidents and non-elected factions against the governments. The 8<sup>th</sup> Constitutional Amendment shifted the power balance to the President, thus establishing a quasi-parliamentary system. Due to the lack of power balance, the president and the prime minister did not work together to safeguard the national interest. The opposition factions always asked the President to dismiss the government. Instead of serving as a check on the government and providing stability to the democracy, the President used this power to dismantle the setup. In such cases, the judiciary has been asked to exercise the power of judicial review. The judgements of the judiciary in such cases had far-reaching effects on the stability of the political system. While passing the judgement, the judiciary looked at a powerful president rather than the principle of merit and justice. The judiciary upheld majority dismissals, mainly due to the nexus between the military and the President, which shows its weakness vis-à-vis other state institutions.

**Keywords:** Democracy, Opposition, Military, Prime minister, Supreme court, Constitution, Parliamentary system, Presidential system, Higher judiciary, Judicial review.

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## 1. Introduction

The prolonged military rule from 1977 to 1988 destroyed democratic norms, subdued democratic values and narrowed the prospects of national cohesion. Therefore, the organised, self-interested and powerful military could not be resisted during the 1990s by the weak political parties. However, the electoral experience shows that the political leaders gained greater autonomy after the 1988, 1990, 1993 and 1997 elections. Despite presidential interventions for dismissing elected governments and dissolving the National and Provincial Assemblies one after another, the aspiration for consolidation of democracy persisted. Benazir Bhutto and Nawaz Sharif raised the people's expectations for democratic rule and supremacy of the parliament. As opposition leaders, although in a limited way, they also contributed towards the consolidation of the democratic process. However, both the leaders had demonstrated an autocratic style towards the criticism of the opposition, as much as they had worked as prime ministers. When acting as opposition leaders, both Benazir Bhutto and Nawaz Sharif supported the president's and the military's undemocratic moves (Rehman et al., 2017).

Considering the history of the superior judiciary in Pakistan, it is evident that most of the time, the judiciary has not been consistent in its decisions and often followed the political power trends of the time. Ever since the first decade, the judges in Pakistan have tried to match their constitutional ideals and legal language to the exigencies of current politics. The judgments of the judiciary have often supported the existing regimes, presumably to retain a degree of future institutional autonomy (Newberg, 1995; Ahmed, 2015). Although the 1973 Constitution provided the parliamentary system, the 8<sup>th</sup> Constitutional Amendment, during the reign of General Ziaul Haq, shifted all the powers in the president's office. Though the military rule ended in 1988, it left behind a new pattern of civil-military relations devised by the architect of the 8<sup>th</sup> Constitutional Amendment. To ensure its dominance over politics, the military adopted a two-fold strategy, i.e., get a political set-up dismantled through the exercise of power under 58(2)(b) by the president and, alternatively, to topple the government directly, as happened in October 1999. Both the civilians and the military have dealt with the judiciary in such a way that it could not develop into an independent institution. Therefore, the judiciary could not resist their influence whenever the military-backed president dismissed the elected government. In most cases, the decision of the Supreme Court came in favour of the president and prime minister, and the legislature had to suffer. Undoubtedly, the opposition did not play a positive role; it always asked the president to dismantle the elected government and filed petitions in the courts against the setting or dismantled government. All these factors undermined the prospects for the growth and development of a democratic political system.

## 2. Dismissal of Junejo Government and Supreme Court Decision

The government of Muhammad Khan Junejo came into power after the party-less elections in January 1985. General Ziaul Haq lifted martial law only after the parliament validated his Revised Constitutional Order 1985 with minor changes as the Eighth Constitutional Amendment. The amended constitution undoubtedly transferred extensive powers to the president's office, including dismissing the government and dissolving the assembly. However, differences between the elected government of Muhammad Khan Junejo and the military establishment soon emerged. It provided uncomfortable signs to President Ziaul Haq that the former's assertions of independence would weaken the latter's control. General Ziaul Haq appeared to have calculated not only the danger from the Prime Minister but also his possible

removal from the post of Army Chief, thereby leading to punishment for the latter. Therefore, exercising his powers under Article 58(2)(b), General Ziaul Haq dismissed the elected government of Muhammad Khan Junejo and dissolved the National and Provincial Assemblies on May 29, 1988 (Waseem, 1992; Yasmeen, 1993).

In sacking the premier, President Ziaul Haq stressed the main reason as the delay in implementing the Islamization program in the country. A caretaker cabinet was constituted without any prime minister. Realising the mood of the masses well, General Zia ul Haq announced on July 16, 1988, the new elections to be held on November 16, 1988, although, once again, on a non-party basis (Yasmeen, 1993; Aziz, 2009; Ahmad, 2010). When General Ziaul Haq passed away in 1988, his political system was in shambles. Therefore, he was defensive and, once again, on the retreat. The populace was not amused, and it was pretty clear that a phasing strategy of democratisation was not the main agenda of General Ziaul Haq and had mala-fide intentions. It was largely assumed that the General-cum-President was pulling the strings of a quasi-civilian setup and had been planning for his appearance on the stage once again. After the death of General Ziaul Haq, a high-level meeting was held in Islamabad, attended by the civil and military leadership to decide on the issue of succession. The Constitution resolved the problem, and Ghulam Ishaq Khan, the Chairman of the Senate, stepped into the presidential office as Acting President of Pakistan.

Neither Muhammad Khan Junejo nor others challenged the validity of the dismissal and dissolution order of the government along with the National and Provincial Assemblies in any court during the lifetime of General Ziaul Haq. When General Ziaul Haq died, Haji Muhammad Saifullah Khan, one of the dissolved National Assembly members, filed a writ petition in Lahore High Court titled: Haji Muhammad Saifullah Khan vs Federation of Pakistan. Hearing the case, the Court rejected the charges based on which President General Ziaul Haq had dismissed the National and Provincial Assemblies. The Court declared the charges so ambiguous and unreal that they could not be sustained in the law. The verdict of the Full Bench of Lahore High Court in this regard was that the dissolution of the National Assembly by the President was illegal and unconstitutional. However, the Court neither restored the civil government nor the assemblies, though the common people sympathised with Muhammad Khan Junejo. Further, the Court held that since the elections had been scheduled for 16<sup>th</sup> and 19<sup>th</sup> November 1988 and the nation was preparing for that, the Assemblies could not be restored (Sehri, 2012; Ahmad & Afridi, 2014; Waseem, 2012).

As the Lahore High Court declared the dissolved National Assembly dead, maintaining that it could not be restored, the Supreme Court of Pakistan challenged the judgement. The Supreme Court held detailed hearings and, scrutinising the case, upheld the verdict of the Lahore High Court in the first week of October 1988 (PLD, 1989, SC. 166). Although declaring the dissolution of the National Assembly as illegal and unconstitutional, it did not restore the National Assembly. Later, General Mirza Aslam Baig, the successor Army Chief, accepted in a press conference on 4th February 1993 after his retirement that a message was sent to the Supreme Court judges not to issue orders to restore the assembly and let the elections occur as scheduled. It proves that the apex court played an anti-democratic role and that the Army Chief committed an unqualified interference in the proceedings of the Supreme Court. This also shows the powers of the Army Chief to influence the civilian institutions during the transfer of power from the military to the civilians. It discloses the weaknesses of the judiciary as an institution that could not deliver justice, support democracy, and make independent decisions

in the matter. After this press conference, the claims of Mirza Aslam Baig were not denied by the judges of the Supreme Court. Instead, proceedings for contempt of court were initiated. However, Mirza Aslam Baig, taking a stand on his words before the Court, maintained that he had disclosed the reality. Though found guilty of contempt of court, Mirza Aslam Baig was not charged with any punishment because he had already been reprimanded in the Court (Shah, 2001; Bray, 1997; Husain, 1990).

The decision of the Supreme Court against the dissolution of the National Assembly by President General Ziaul Haq at least confirmed its mala-fide, illegal, and arbitrary nature. President General Ziaul Haq and his advisers also knew this. However, they thought they could overcome the difficulties and effectively manage the crisis as in 1977. Nonetheless, the dissolution of the National Assembly validated the assumptions that General Zia ul Haq was not sincere in his promises to democratise the system. If he could not share power with his handpicked prime minister and if he could not tolerate his assertion of authority in the mandated sphere, how could he agree to the transfer of power in an orderly and peaceful manner? His action also pushed those political forces to the opposition, who cooperated with him in holding the 1985 elections. He even began to think and talk about restructuring the parliamentary system and forming a new coalition of pro-Zia ul Haq cronies. The elections Ziaul Haq had announced for November 1988 could, most likely, be postponed or used for a referendum on new constitutional proposals. General Zia ul Haq had exhausted all his political cards to legitimise his stay in power and to counter the growing demand for complete democratisation (Hussain & Hussain, 1993; LaPorte, 1997).

It has remained a question whether the judiciary would have declared the dissolution of the National Assembly illegal and unconstitutional had the petition been filed during the life of General Ziaul Haq. Moreover, had the denial of the Supreme Court to restore the National Assembly undermined the spirit of the declaration of the dissolution as unconstitutional? Despite these questions, the general effect and role of the Supreme Court of Pakistan in the process of democratisation was appreciated as positive and constructive. At that time, had General Ziaul Haq lived, he would have faced an effective and highly hostile opposition. The plane crash that took his life gave him an honourable exit from the upcoming hostile political arena of Pakistan. Realising the mood and possible response of the people, civil society, political parties and the international democratic forces, the military high command decided not to take control of power and let the democratic process continue by allowing the scheduled elections. However, this transfer of power by the military to the elected government was allowed mainly due to the Eighth Constitutional Amendment, which they could still exercise indirectly through the indirectly elected President.

### **3. Dismissal of Benazir Government and Supreme Court Decision**

The elected government of Benazir Bhutto supported the acting president, Ghulam Ishaq Khan, in the presidential election. However, due to the power struggle, differences between the two emerged mainly over the appointments of high-level posts. Moreover, the military did not like the interference of the Benazir Bhutto government in matters related to defence and foreign affairs. On July 21, 1990, the top military command in its Corps Commanders' meeting concluded that the Benazir Bhutto government had crossed the limits. They decided that the government of Benazir Bhutto was not tolerable anymore and, therefore, the military would support any anti-government move by the President (Nawaz, 2008; Cheema, 2018a; Ahmad &

Aman, 2021). President Ghulam Ishaq Khan, using his powers of 58(2)(b) under the Eighth Constitutional Amendment, dismissed the elected government of Benazir Bhutto and dissolved the National and Provincial Assemblies on August 6, 1990, with an announcement of fresh elections scheduled for October 1990. The charges of corruption, nepotism, inefficiency, violations of the Constitution, maladministration, financial decline, bad law and order, especially in Sindh and many other issues were declared as the reasons for dismissing the PPP government. The dismissal, as well as the dissolution order of the President, was challenged in the High Courts. Only the Lahore High Court received five petitions. Hearing the petitions in detail, the Lahore High Court gave a unanimous verdict that the ground reasons heavily weighted with the President to dissolve the elected government and the National and Provincial Assemblies. The judges held that the president's orders directly related to the pre-conditions prescribed in Article 58(2)(b) under the Eighth Amendment. Therefore, the judgment of the Lahore High Court eliminated the hopes for the restoration of the Benazir Bhutto government under the 1973 Constitution. The Court further held that a recourse to the electorate had become necessary after the President's dissolution order of the assemblies.

Petitions were also filed to challenge the order of the President regarding the dismissal of the Benazir Bhutto government in the Sindh High Court. A five-member bench was formed headed by Chief Justice Sajjad Ali Shah for hearing the petitions on September 24, 1990. However, the Governor of Sindh took off for Saudi Arabia on September 19, 1990, 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 President's order to dismiss the Benazir Bhutto government. The initially planned visit of the Governor of Sindh was for three days only. However, the tour was extended, claiming the reasons for his illness in this regard. As a result, the Governor stayed abroad and did not return until the petitions were disposed of (Shah, 2001; Cheema, 2018a; Ali et al., 2021). The dissolution of the Benazir Bhutto government was also challenged in the Peshawar High Court (PHC), which declared that the decision of President Ghulam Ishaq Khan was by his powers under Article 58(2)(b) of the Constitution (Aziz, 2009; Faqir, 2017).

An appeal was filed against the decision of Lahore High Court in the Supreme Court. Hearing the case, the Court, in its judgement, upheld the verdict of the Lahore High Court, thereby granting legality to the dismissal order for the Benazir Bhutto government and dissolution order for the National Assembly (PLD, 1992, SC. 646). The President and his team had analysed the Supreme Court judgment of October 5, 1988, regarding the dismissal of Muhammad Khan Junejo's government. Besides the charges of corruption, etc., President Ghulam Ishaq Khan also used other grounds for the dissolution of the Benazir Bhutto government: the confrontational politics between the federal and two provincial governments (Punjab and Khyber Pakhtunkhwa then NWFP), the inability of forming and activating constitutional bodies like the National Finance Commission and the Council of Common Interests coupled with the continuity of ethnic strife in the country (Aziz, 2009; Gargan, 1993). These allegations amounted to a constitutional impasse; therefore, the Courts ruled in favour of Ishaq Khan.

#### **4. Dismissal of Nawaz Sharif's Government and Reinstatement by Supreme Court**

When Nawaz Sharif assumed power in October 1990 as prime minister, the relationship between Ghulam Ishaq Khan and the newly-elected premier was expected to remain cordial.

The expectations were high since Ghulam Ishaq Khan and Nawaz Sharif were the legacies of General Zia ul Haq's military rule. Moreover, Ghulam Ishaq Khan consistently supported Nawaz Sharif as Chief Minister of Punjab during the Benazir Bhutto government. These expectations proved correct; however, differences emerged when the prime minister started making decisions independently. The efforts of Nawaz Sharif to establish an independent identity as a public representative and an all-powerful prime minister had been an alarming issue for the president. Ghulam Ishaq Khan was alarmed by the growing popularity of Nawaz Sharif. The differences grew to the point that the prime minister indulged in tussles and issued public statements against the president. Therefore, Ghulam Ishaq Khan ordered the dismissal of Nawaz Sharif's government and the dissolution of the National Assembly on April 18, 1993. The grounds for dismissal were corruption, nepotism, maladministration, violation of the Constitution, and failure to work effectively with the provincial governments, unleashing a reign of terror against the opposition. They had been unable to investigate the death of former Army Chief General Asif Nawaz Janjua. It did not end there because a week later, the ousted prime minister filed a reference to the Supreme Court on April 25, 1993, challenging the dismissal order of his government by the president.

This time, against the background of negative imagery, the judges had been at pains to emphasise the commitment of the judiciary to decide the case of Nawaz Sharif based on merit. On the first day of hearing the petition of Nawaz Sharif, Chief Justice Nasim Hasan Shah recalled the widely criticised decision by Justice Muhammad Munir, which had validated the order of Governor General Ghulam Mohammed to dissolve the first Constituent Assembly of Pakistan on October 24, 1954. Chief Justice Nasim Hasan Shah mentioned that jurists and the nation had not pardoned Justice Muhammad Munir for the decision, thus indicating the intentions of the Court not to repeat history by making a similar mistake. During the hearing, the panel questioned the legality of the presidential decision, noting that the President is not authorised to dismiss an elected government and dissolve the National Assembly simultaneously under Article 58(2)(b), which only refers to the dissolution of the National Assembly. The Court also declared that the premier could only be removed under Article 91(5), which entitles discretionary power to the president to dismiss an elected government.

Chief Justice Nasim Hasan Shah stated that Article 58(2)(b) did not confer unlimited authority, and the president is constrained from using this power subjectively. The dismissal of an elected government can only be ordered after recourse to other constitutional means. For instance, the judges asked why the president had not asked the premier to seek a fresh vote of confidence from the National Assembly. The Attorney General of Pakistan informed the Court that the president had intended to summon the National Assembly on April 22, 1993. However, the speech of Nawaz Sharif on April 17, 1993, altered the scenario. The Court declared that the speech could have been the beginning of the government's impeachment procedures against the president. The Court also questioned dismissing an elected government based on unsubstantiated allegations of corruption. Supreme Court pointed out that only actual findings of investigations conducted by the president or references filed in court against the prime minister could be used as "material" to prove corruption charges. The chief justice, for instance, questioned the attorney general's references to corruption and said that all you need to do is hire a hundred people, get letters written to the president, and by the weekend, the prime minister will be sitting at home.

Meanwhile, during the hearings, the son of Justice Shafiur Rehman passed away, which raised

the possibility that the proceedings may be postponed. However, emphasising the gravity of the ongoing situation and the responsibility that the judiciary owed to the nation, Justice Shafiur Rehman attended the Court on the same day after burying his son and took active participation in the hearings. Together, these actions, questions, and the final decision marked the assertion of the judiciary on its independence and the ability to "correct constitutional irritants" that had allowed the presidents to dismiss the governments and the national and provincial assemblies. During the hearings, the Court questioned the underlying concept that the president "operates as a custodian of national interest" and, hence, the validity of presidential 'interventions' in the working of an elected government. The Chief Justice declared that the president could inform the elected government of his views, but then he should leave it to the people to decide in the next elections.

The decision of the Supreme Court, thus raising the possibility of repealing the Eighth Amendment, brought Pakistan to the verge of genuine democracy. The Court also questioned the constitutional validity of the president's power to appoint the Army Chief and other service chiefs. It was argued that by allowing the president to dismiss the National and Provincial Assemblies and to be the virtual guardian of the security of Pakistan as Commander-in-Chief of the three services, the Eighth Constitutional Amendment had opened the way for decisions that may be dangerous for the security of the state. Interestingly, the criticism of the Eighth Constitutional Amendment went beyond the issues of transfer of powers to the parliament, questioning the presidential powers in terms of the Islamic identity of Pakistan. It was argued that under the Constitution of Pakistan, the sovereign powers lie with Allah Almighty alone. However, the 8<sup>th</sup> Constitutional Amendment breaches the basis of the 1973 Constitution, giving powers to the President of Pakistan to the extent that he is not answerable to anyone.

Thus, the presidential power in Pakistan suffered a significant setback on May 26, 1993, when the Supreme Court reinstated the government of Nawaz Sharif and the National Assembly. 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.' The Court declared in its verdict that the order of April 18, 1993, was not by the powers granted to him under Article 58(2)(b) of the 1973 Constitution and other similar powers, thereby making it of no legal effect. The Court declared that Ghulam Ishaq Khan and not Nawaz Sharif played an instrumental role in subverting the constitutional process. Ghulam Ishaq Khan had ceased to be a neutral head of the state and had aligned with the prime minister's opponents to encourage these actors, thus making efforts to destabilise the elected government (PLD, 1993, SC. 473).

This time, the Supreme Court, under Chief Justice Nasim Hassan Shah, gave its verdict against the Law of Necessity. The Supreme Court's historic decision restored the National Assembly, re-instated the Nawaz Sharif government and restored the public's trust in the judiciary. However, the decision of the Court was also seen as partisan because it was observed throughout the proceedings that the judges had already decided to uphold the supremacy of the parliament and the 1973 Constitution. Moreover, the scope of the president's powers under the Eighth Constitutional Amendment was narrowed down to such an extent that in the future, a president would be thinking hard before taking any action against the National Assembly. However, the verdict eliminated the myth that the President is the overlord of the parliament and the elected government. From filing the petition, the Chief Justice of Pakistan seemed to favour the dismissed government because he had announced that the nation was about to hear

‘good news’ (Siddique, 2005; Khan, 2009; Hashmi, 2018). It is alleged that a deal involving a considerable sum of money had been reached in Dubai, which was why the Supreme Court’s decision went in his favour. However, it is also clear that the decision came against intense public criticism of the dismissal and the presidential powers conferred under the Eighth Constitutional Amendment. Indeed, the Court’s judgement had been a prosecution of the President by the highest judicial organ in Pakistan. The decision was ultimately an insult for a person who had never gotten a taste of defeat, and that was also at the hands of a person who, until yesterday, remained subordinate to his office. The President’s House, issuing a press release on the same evening, declared that the verdict of the Court would be honoured.

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 rather 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 assemblies. However, the tables of the Court had turned in favour of a Punjabi Prime Minister, and the government and the National Assembly had been restored. Justice Sajjad Ali Shah added that the Court had indicated that the decision would please the nation, which should be based on legality only ((PLD, 1993, SC. 473). Benazir Bhutto remarked on the decision, stating that the decision of the Supreme Court was not doubted, but at the same time, the people were left confused. They wanted to know why the presidential order for the dismissal of her government was upheld in 1990 and why it struck down the exact nature of the order issued for the dismissal of Nawaz Sharif’s government. Addressing the PPP congregation at Liaquat Bagh (Rawalpindi), Bhutto also expressed that the people did not know what Nawaz Sharif had, so he remained in power. He had been the ultimate beneficiary in case the government of PPP was dismissed under the Eighth Amendment or that of his own (Nawaz Sharif).

It is pertinent to mention here that the government of Nawaz Sharif and the previous government of Benazir Bhutto were dismissed within different operational contexts. The government of Benazir Bhutto was dismissed in August 1990 with a military-backed initiative on the grounds of corruption, failure to work effectively with the provincial governments and efforts to question the powers of the military. However, the dismissal of Nawaz Sharif’s government was basically due to the efforts of the President for re-election. These two different contexts were the main reason the Supreme Court asserted its independence and questioned the scope of the president’s power under the Eighth Constitutional Amendment, invalidating the president’s April 18, 1993 decision. The decision of the Supreme Court brought Pakistan to a crucial juncture in its history by offering the politicians an opportunity to move in the direction of genuine parliamentary democracy. However, motivated by their interest in regaining the power of the government, these politicians were still participating in the constitutional war of the President against the prime minister. By joining hands with the president, they also prevented a democratically elected government from completing its five-year term.

## **5. Dismissal of Benazir Bhutto Second Government and Supreme Court Decision**

Since the beginning, the government of Benazir Bhutto has been facing strong resistance from the opposition political parties and critical press. This time, Nawaz Sharif was posing a much stronger opposition to Benazir Bhutto and was more impatient to overthrow her government, mainly through agitated politics and a rigorous campaign through the media. Benazir Bhutto’s

government also made some efforts to control the higher judiciary through political appointments, which were unsuccessful. Benazir Bhutto's government also avoided appointing the Public Accounts Committee in the National Assembly, which was meant to scrutinise the expenditures of the PPP government. In 1996, the Benazir Bhutto government alienated the judiciary, the military, the president, the world monetary bodies like the World Bank and IMF (in particular), and the Pakistani public. The confrontation and the intolerance of the government and opposition towards each other again allowed the military and the president to roll down the elected government.

The Army Chief remained neutral in the controversy of Benazir Bhutto with both Farooq Khan Leghari and Justice Sajjad Ali Shah. However, the majority of the military commanders were in favour of the President and the Chief Justice. The military warned President Farooq Ahmad Khan Leghari about the worst situation and demanded quick remedial measures in August 1996. The President called Benazir Bhutto for a meeting in which she issued derogatory statements about Farooq Ahmad Khan Leghari, saying that her party had nominated him as President. In October 1996, the military concluded that Benazir Bhutto's elected government failed to deal with the crisis. Therefore, it became easy for President Farooq Ahmad Khan Leghari to dismiss the government of Benazir Bhutto as he was now sure that the military would not object to his action of dismissal.

On November 5, 1996, the president invoked Article 58(2)(b) of the Constitution to dissolve the National Assembly and dismiss the elected government following months of turmoil. In the dissolution order, the President charged the Benazir Bhutto government for not taking adequate steps to bring an end to the extra-judicial killings and blamed the president and other state institutions for involvement in the killing of Mir Murtaza Bhutto. It showed reluctance to implement the Supreme Court orders and curtailed the independence of the higher judiciary by passing accountability laws. Moreover, it was alleged that moving a bill in the Parliament was meant to prevent corruption. However, its effect deliberately violated the citizen's fundamental right to privacy. In addition, there was rampant corruption, nepotism, favouritism and violation of administrative rules for running government affairs, among lesser charges. This was the fourth elected prime minister dismissed since 1988, and Farooq Ahmad Khan Leghari became the third president of Pakistan to have exercised the constitutional power under 58(2)(b) in this regard. However, the performance of the Benazir Bhutto government had made that day bound to come. Prime Minister Benazir Bhutto was emerging as an arrogant, reckless, capricious and corrupt ruler. Moreover, she was surrounded by sycophants, lackeys, and flunkeys, squandering another good opportunity to prove her services to the country's people (Mahmood, 2017; Neudorf, 2017).

Benazir Bhutto's government was dismissed for the second time in a coup-like style, and regular troops of the military were asked to take control of all government buildings in Islamabad, including the office of the prime minister. Moreover, all the international airports were closed, and the telephones were jammed for the first time in Pakistan. The military also arrested Asif Ali Zardari from the Governor House in Lahore, who was later taken into custody by the local administration. Initially, the Governor of Punjab was kept under house arrest, but later, he was forced to resign. After completing this operation, the military handed over charge to the para-military forces. All the Corps Headquarters remained open in all the four provincial capitals for the whole night. They had been passing on the instructions from the Presidency and General Headquarters (GHQ) of the Pakistan Army to the top brass of civil bureaucracy

and were ensuring compliance (Rizvi, 2003; Haqqani, 2006; Kundi, 2002). This support and coordination show the level of support from the Army to the decision of President Farooq Ahmad Khan Leghari.

The effort of Benazir Bhutto to get the dismissal order reversed through the Supreme Court was as unsuccessful as her appeal to the public. On November 13, 1996, Benazir Bhutto challenged her dismissal and filed a 42-page petition in the Supreme Court, which “contained blistering criticism of the President.” Three days later, the Court dismissed the petition, stating it was “argumentative, irrelevant, and scandalous.” The Supreme Court, in a 6:1 judgment, upheld the decision of the president. It maintained that the president had been able to submit adequate evidence to prove that the dismissal order of the Benazir Bhutto government was correct. The Chief Justice of Pakistan declared in his judgement that there is enough material to establish corruption, nepotism and misrule against the Benazir Bhutto government. The Court also allowed fresh general elections on the scheduled dates (PLJ, 1998, SC. 27). Thus, the November 5, 1996, presidential order, validated by the Supreme Court, removed Benazir Bhutto as prime minister again. However, the decision of Chief Justice Sajjad Ali Shah’s Court also reflected its grudge against the Benazir Bhutto government. Another petition was filed in the Supreme Court but dismissed for hearing.

## **6. Discussion**

The political history of Pakistan shows that significant crises have brought chaos and confusion, but the sudden exit of General Ziaul Haq from power did not create any turmoil. Contrary to the apprehensions, Pakistan witnessed its first-ever peaceful power transfer to the elected government in 1988. The power vacuum provided the new Army Chief General Mirza Aslam Baig an opportunity to pave the way for an elected government in Pakistan without the umbrella of an army president as head of the state. The political clock of Pakistan began to tick faster with the transfer of power to the Chairman of the Senate, Ghulam Ishaq Khan, who took over as an acting President of Pakistan. The acting President announced that the general elections would be held as scheduled in November 1988. The non-interventionist role of the military, rare in the history of Pakistan, provided credibility and strength to the Acting President's assurance to hold free, fair and impartial elections to the National and Provincial Assemblies.

No doubt, the military had become strengthened during the reign of General Ziaul Haq, and it was difficult to question the actions of their peer. The pressure of democratic political parties, the sudden demise of General Ziaul Haq and public opinion created an atmosphere in which the judiciary established its writ through a historical judgment. Thus, the Supreme Court, now out of the clutches of the military establishment, could take a bold and timely decision in the case titled: Haji Muhammad Saifullah Khan vs Federation of Pakistan. It declared the action taken by then President Ziaul Haq unconstitutional, thus confirming its malafide, illegal and arbitrary nature and further reducing his political stature.

However, General Mirza Aslam Baig wrote a letter to the Supreme Court of Pakistan stating that the dissolved National Assembly should not be reinstated. It proves that the apex court played an anti-democratic role and that the Army Chief committed an unqualified interference in the judgment of the Court. When Mirza Aslam Baig took a stand on his words, though found guilty of contempt of court, he was allowed without any sentence, declaring that he had already

been reprimanded in the Court. These developments disclose the weaknesses of the judiciary vis-à-vis the military as it was unable to deliver justice and make an independent decision in the matter.

The amendments to the Political Parties Act 1962, as challenged by Benazir Bhutto in the case titled *Benazir Bhutto vs Federation of Pakistan* 1988, were declared illegal and unnecessary. The judgement eliminated any distinction between registered and unregistered political parties, thus allowing all political parties to contest the general elections in 1988. With the prospects of party-based general elections, the coup d'état and debacle created by General Ziaul Haq faded quickly into history. Moreover, it frustrated the remanence of the General who planned to build a case for his martyrdom and exploit his legacy for their success in the 1988 elections. The stamp of loyalty to General Ziaul Haq on some of the candidates in the 1988 elections sealed their political fate.

Ghulam Ishaq Khan had the discretionary power to appoint a prime minister. The 8<sup>th</sup> Amendment also facilitated the military high command to collaborate with the president and assume the role of kingmaker. The civilian president was bound to protect the military's organisational interests and institutional independence. Benazir Bhutto could take oath as prime minister only when she agreed to fit herself within the parameters chalked out by the military. In the post-Ziaul Haq period, the military preferred to stay behind the scenes and avoid a direct takeover of the civilian government if its organisational and corporate interests remained secure and unthreatened. No doubt, the Generals were looking forward to reasserting their direct role at some suitable time.

Instead of creating political stability, powers under the Eighth Amendment have been used inconsistently to create instability. Solid evidence suggests that the three successive dissolutions of the National Assembly were not free of biases. The military commanders and the President of Pakistan had acted in concert to dislodge at least three civilian governments, i.e., in 1990, 1993 and 1996. The civilian governments were not allowed to complete their mandated tenures, thus resulting in the dissolution of four National Assemblies in eight years. The political leaders were suspicious of the office of the President for being "militarized" and used by the military to protect their corporate interests. No doubt, as presidents, Ghulam Ishaq Khan and Farooq Ahmad Khan Leghari could not maintain offices entirely free of such influences by the military. The weak, anxious, non-independent, and unsteady civilian governments were doubtful of a powerful president. Only those civilian governments approved by the military could survive, and when the latter chose to be neutral, President Farooq Ahmad Khan Leghari was forced to resign.

Apprehension of the elected governments against military domination had never been baseless. Army Chief General Mirza Aslam Baig was quite assertive, and he publicly criticised the elected government's policies. The Army Chief's capacity to question the elected government's initiatives speaks of the military's standing in the Pakistani-styled democracy. The elected government of Benazir Bhutto and Nawaz Sharif feared direct military intervention. Although General Asif Nawaz Janjua maintained a policy of non-interference in politics, he remained unsupportive of Nawaz Sharif's government mainly because the latter had not supported his appointment as Army Chief. General Jahangir Karamat also openly condemned the working of the elected government and criticised the poor economic management and the bad law and order situation. The assertive role of the Army Chiefs and their public statements, like

politicians, remained a reason for the scariness of the elected governments in the post-Ziaul Haq era. Whenever the elected governments tried to exceed their limits, they were indirectly fired by the influential Presidents, often supported by the higher judiciary in granting validity to their dismissal orders.

Ghulam Ishaq Khan and Nawaz Sharif were a product of the Ziaul Haq regime. Therefore, initially, the president, as well as the military, supported Nawaz Sharif. However, when the military decided to remain neutral, the Supreme Court found an opportunity to challenge the president's order to dismiss an elected government. Undoubtedly, General Abdul Waheed Kakar remained neutral because it would have given the impression that a Pashtun General had sided with a Pashtun President. However, the remarks of the only dissenting judge, Justice Sajjad Ali Shah (Sindh), also proved that a Punjabi-dominated court had sided with a Punjabi prime minister. Previously, two prime ministers from Sindh were dismissed under the same Article of the 1973 Constitution. Even though the second dismissal was by the same president, the Court upheld both the decisions. However, it is also noteworthy that the two dismissals' contexts differed. The dismissal of Nawaz Sharif's government was primarily meant for Ghulam Ishaq Khan's re-election.

The controversy over the power of appointments became a significant reason for the deteriorating relations between the prime minister and the president in the post-Ziaul Haq period. Ghulam Ishaq Khan and Farooq Khan Leghari asserted their powers by appointing service chiefs, provincial governors, superior court judges, and other heads of state institutions. On the other hand, the prime ministers attempted to influence such appointments but in vain. When Nawaz Sharif sought the support of the parliament for repealing the 8<sup>th</sup> Amendment, it resented Ghulam Ishaq Khan. However, when the powers shifted to the prime minister under the 13<sup>th</sup> Amendment, there remained no checks on the government. As the unrestricted powers led to the misuse of authority by Nawaz Sharif, the military under General Pervaiz Musharraf had to counter him by taking over the government.

The election of Farooq Ahmad Khan Leghari, a PPP stalwart, as the President of Pakistan was a victory proclamation for the elected government. However, the government took it as an opportunity to misuse its authority rather than promote a democratic culture. Almost in defiance of an efficient executive, the judiciary under Chief Justice Sajjad Ali Shah made efforts to prevent the rise of tyranny devoid of a rule of law and the progressive deterioration of post-martial law democratisation. However, this time, the president and the Chief Justice of Pakistan were perceived by the public as playing a critical role in dismissing the elected government of Benazir Bhutto. No doubt, the Court's decision under Chief Justice Sajjad Ali Shah reflected its grudge against the Benazir Bhutto government, thus granting legality to the president's action.

Like the military regime, the President's power to direct the High Court's Chief Justice to act as a Governor was also misused in the Ziaul Haq period. The practice had been challenged in the courts on several occasions, and the decision favoured the President only if the Governor was out of the country or could not perform his functions for any reason. Usually, the Chief Justices of High Courts had been kept in an acting capacity during the military regime and even by the subsequent elected government whenever favourable verdicts were required from the Courts. The practice was discarded after the Supreme Court judgment in the Al-Jihad Trust Case 1996.

The 1973 Constitution of Pakistan is based on the principle of separation of powers, thereby defining the domain of the state institutions with necessary checks and balances. The judiciary has been entrusted with the power to interpret law vis-à-vis the fundamental rights guaranteed by the Constitution. Though the higher judiciary had no power under the Constitution of 1973 to propose any legislation or participate in law-making, the extra-official consultation and personal advisory function of the Chief Justice of Pakistan had frequently been extended to the military ruler. They had been continuing during the civilian government. After dissolving the Benazir Bhutto's government, President Farooq Ahmad Khan Leghari invited Chief Justice Sajjad Ali Shah to the President's House. The Chief Justice of Pakistan was briefed on the entire situation, which, in the President's opinion, had led him to dismiss the government. The chief justice could not realise that he would be presiding over a Bench soon to determine the legality of presidential action.

In clear violation of the Constitution, Nawaz Sharif also invited Chief Justice Sajjad Ali Shah in August 1997, at his residence in Lahore, to discuss the proposed anti-terrorism law and to arrive at some settlement for its enactment. It is difficult to understand under what authority the Chief Justice could talk with the prime minister and arrive at any settlement over an unconstitutional proposed law. Later, the same law, when enacted as the Anti-Terrorism Act (ATA) 1997, was challenged in the Supreme Court. After detailed hearings, some provisions of the ATA 1997 were held unconstitutional by the Supreme Court and were declared void. The result was an antagonism of the government towards the higher judiciary, which further aggravated the already worsening relations.

The absolute majority enjoyed by Nawaz Sharif in their second term allowed him to repeal the Eighth Amendment by passing the 13<sup>th</sup> Amendment Bill, which converted the president's status to a titular head of the state. Moreover, Nawaz Sharif passed the 14th Amendment Bill to secure his parliamentary majority, which barred the parliamentarians from floor crossing and bound them to cast their votes according to the party guidelines. These amendments facilitated a dictatorial role for Nawaz Sharif as a powerful head of the government as well as a parliamentary leader to control his party members. However, instead of strengthening civilian government institutions, Nawaz Sharif used these powers to strengthen himself by dominating all other state institutions.

Nawaz Sharif also tried to override the Supreme Court by appointing loyalist judges. The refusal of the chief justice led to confrontations between the judiciary and the executive and among the executive institutions, i.e., the president and the prime minister, which further weakened the democratisation process. It was a tug of war in which the heads of the state institutions strived for their superiority rather than safeguarding the institutions. An intriguing aspect of the issue emerged when Nawaz Sharif's government successfully created rifts among the Supreme Court judges. When summoned in contempt of court case, the PML-N leadership persuaded the party supporters to attack the building of the Supreme Court, which was a tragic incident in the political and constitutional history of Pakistan.

As the military played a neutral role, the presidency proved weak and could not dismiss the elected government despite the chief justice's restoration of 58(2)(b). As a result, Farooq Khan Leghari had to resign, and Sajjad Ali Shah was set to cease to hold his office. The dissenting judges successfully removed their peer judge disgracefully and humiliatingly. However, these developments proved that the military previously backed three out of four dismissals of elected

governments. That was why the judiciary upheld the presidents' decisions, and the dismissed governments were not restored.

## **7. Conclusion**

Since the first decade of independence in Pakistan, the judiciary has sided with the institutions of the presidency and military in dismissing the elected governments. It created an image of a judiciary lacking absolute independence. The impressions, mainly conveyed during Z. A. Bhutto's dismissal and trial, were further reinforced in February 1993 when General (Rtd.) Mirza Aslam Baig claimed that he had personally asked the Supreme Court of Pakistan not to restore the government of Mohammed Khan Junejo in 1988. The claims also implicated the judiciary in interrupting the democratisation process in the country due to military involvement. Whatever the pros and cons of the constitutional amendments and the resultant imbalance between the powers of the president and prime minister, the superior courts in Pakistan have not been consistent in their judgments and have shown disparities in the resolution and strength with which presidential reasons for dissolution were analysed for judgement. The judgments of the superior judiciary in such matters have far-reaching adverse effects on the stability of political systems, on the one hand, and the image of the judiciary in the eyes of people, on the other. As a result, the role of the judiciary as guardian of the Constitution and the institutions thereunder has only partially materialised in the case of Pakistan. The appointment of judges without merit, especially at the high court, has been a significant factor that has harmed the judiciary's independence in Pakistan. The judicial appointment should be more competitive, and the processes should be transparent. The system of appointment and promotion needs to be conducted through proper channels, i.e., appointment as a magistrate and onward promotions are merit-based. The Supreme Judicial Council has also remained ineffective, which is why the judiciary in Pakistan lacks an effective system of accountability. To make this institution more transparent, the Chairman of the Senate and Speaker of the National Assembly, being neutral offices, shall be made its members. This development will enhance the prestige of these two important heads of parliamentary chambers as well.

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