

JUDICIAL ODYSSEY: ROLE OF PAKISTANI COURTS
FROM 1947 TO 2018

1. Dr. Muhammad Rizwan

Chairman, Department of Pakistan Studies,
Abbottabad University of Science and
Technology, Abbottabad.
2. Waleed

MPhil Scholar, Department of Pakistan
Studies, Abbottabad University of Science and
Technology, Abbottabad.
3. Ubaidullah Khan

MPhil Scholar, Department of Pakistan
Studies, Abbottabad University of Science and
Technology, Abbottabad.

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Abstract

This paper provides an in-depth analysis of historical journey of Pakistan's judiciary from 1947 to 2018. It analyzes the judiciary's substantial role in the country's political and social landscape, highlighting its struggle for independence from the powerful executive and Military. The judiciary's key decisions, including those that validated military takeovers through the Doctrine of Necessity, are discussed, beginning with the landmark Maulvi Tamiz-ud-Deen case. Many regimes set up parallel courts and changed laws to do so despite constitutional safeguards for the judiciary. The legacy of colonialism and hierarchical structure such as the Supreme Court, High Courts, and District Courts & Federal Shariah is described in-article. Analyses the role of judiciary under the 1973 Constitution focusing on powers and duties with reference to other provisions. The paper explores the judiciary's phases post-independence, marked by significant cases such as the Federation of Pakistan vs. Maulvi Tamizuddin Khan, State vs. Dosso, Asma Jilani vs. Government of the Punjab, and the judicial activism era led by Chief Justice Iftikhar Muhammad Chaudhry.

Keywords: Judiciary, Doctrine of necessity, Political instability,

INTRODUCTION

A historical journey of Pakistan's judiciary has a complex and it had played a significant role in the country's political and social landscape, since the independence of Pakistan in 1947. Judiciary has played an important role in Pakistan coping with the executive pressure and dealing with difficult political scenarios, it is an open fact that in Pakistan, the political setup has always marred the independence of judiciary despite the availability of constitutional safeguards for the purpose.

The post-independence era is replete with examples of executive judiciary clashes and important decisions being held by the higher judiciary in Pakistan with change the destiny of Pakistan. It was the judiciary that legalized the military takeovers and their dissolution of assemblies through the Doctrine of necessity, which was started from the Maulvi Tamiz-ud-Deen case. In the country's politics, we cannot ignore the role of judicial instructions.

All the three constitutions i.e, 1956, 1962 and 1973 provided a guarantee for an independent judiciary but the executive used various techniques for weakening the judiciary such as by establishing parallel system of courts (Anti-terrorist Courts, Speedy Trial Courts, and Military Courts etc.) and amending the laws for the purpose. The Courts were allowed to exercise their jurisdiction with the condition that no judgment is passed against the Martial Law Order, Regulation or Decision.¹

The judiciary becomes an instrument in the hands of powerful executives who manipulated it for their vested interests. Each military and civilian regime clipped the wings of judiciary through various techniques like curtailing their jurisdiction, removal of judges and interference of court proceedings in one way or the other.² Pakistan has had a troubled constitutional history since its very beginning as a nation state. It went through one provisional, one interim and three formally drafted constitutions. Two of them (1956 and 1962 Constitutions) faced abrogation in 1958 and 1969 respectively. The 1973 Constitution, being the first-ever permanent constitution suffered suspension thrice so far i.e., 1977, 1999 and 2007.³ Thus the judiciary of Pakistan had always remained under the extreme influence of Military Dictators and Civilian government since the independence of Pakistan till contemporary times.

JUDICIAL SYSTEM OF PAKISTAN

Pakistan's judicial system is a legacy of the colonial era. Before the advent of British Raj, there was a judicial system in place having the influence of various dynasties belonging to the Hindu and the Muslim faith. The judicial system of Pakistan has, in its making, a mixture of the indigenous and foreign notions but The British period has had the greatest impact on the structures and functions of the court system of Pakistan.⁴

COURTS STRUCTURE IN PAKISTAN

The Judiciary of Pakistan is a hierarchical system with two classes of courts: the superior judiciary and the subordinate judiciary. The superior judiciary is composed of the Supreme Court of Pakistan, the Federal Sharia Court and five High Courts, with the Supreme Court at the apex. We can divide the courts as follows⁵

SUPREME COURT

It is the court of ultimate appeal and therefore the final arbiter of law and the constitution. Its decisions are binding on all other courts. The Court consists of a Chief

Justice and other judges, appointed by the President as per procedure laid down in the Constitution. An Act of Parliament has determined the number of judges. The number fixed at the moment is Chief Justice and 16 judges.⁶

HIGH COURTS

There is a High Court in each province and a High Court for the Islamabad Capital Territory. Each High Court consists of a Chief Justice and other judges. The strength of Lahore high Court is fixed at 60, High Court of Sindh at 40, Peshawar High Court at 20, High Court of Baluchistan at 11 and Islamabad High Court at 7.

DISTRICTS COURTS

District courts exist in every district of each province, and have civil and criminal jurisdiction. Each Town and city now has a court of Additional District & Sessions judge, which possess the equal authority over, under its jurisdiction. When hearing criminal cases, it is called the Sessions Court, and when it hears civil cases, the District Court. Executive matters are brought before the relevant District & Sessions Judge.⁷

FEDERAL SHARIAH COURT

The Court consists of 8 Muslim Judges including the Chief Justice. The method of selecting the judges for the Federal Shariah Court has changed after 18th and 19th amendments as previously such judges were appointed by the President from amongst the serving or retired judges of the Supreme Court or a High Court or from amongst persons possessing the qualifications of a judge of the High Court.⁸

JUDICIARY UNDER THE CONSTITUTION OF 1973

THE CONSTITUTION OF 1973

In 1971, the Eastern Province of Pakistan gained its independence and became Bangladesh. 1970 elections in the Western Province of Pakistan led to the selection of new National Assembly, renamed the Constituent Assembly and its first job was to create a new constitution for the former Western Province.⁹ The Constitution of 1973 introduced a parliamentary form of government following the British tradition whereby the elected Prime Minister is the real and effective head of the government having all of executive powers and the President is a titular or ceremonial figurehead. Another key feature of the 1973 Constitution is that of federalism. Pakistan now consisted of four provinces and each province has its own elected executive and elected provincial legislature. In the original Constitution of 1973, before amendments, there were lists of powers reserved for the Federal government, for the provinces, and a concurrent list composed 60 of the matters where both the Federal government and the provincial governments had the powers to legislate. After the adoption of the Eighteenth Amendment to the Constitution, the third list was repealed with a significant number of the powers transferred to the Provinces, especially in terms of education and local governments. However, when federal and provincial law clash, federal law will prevail. There is also a principle of a bicameral legislature: the National Assembly is composed of members elected on the basis of population; and the Senate, where all provinces have an equal share of representatives.¹⁰

COURTS UNDER THE CONSTITUTION OF 1973

The judiciary of Pakistan, under the constitution of 1973, plays a crucial role in interpreting and upholding the constitution, ensuring the rule of law, and protecting

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the fundamental rights, granting justice to the citizens. From 175 to 212 articles of 1973 constitution provides a comprehensive role of judiciary in the state. Article 175, Section 1, of the Constitution of 1973 states "there shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law". Section 2 adds "No court shall have any jurisdiction save as it is or may be conferred on it by the Constitution or by or under any law."¹¹ Article 176 address the appointment of chief justice and other judges of Supreme Court and 187 articles provides for enforcement of decisions of the Supreme Court.¹²

The Supreme Court of Pakistan is at the apex, five High courts form the second tier, followed by five District courts for each revenue district, with civil magisterial courts at the lowest level.¹³ There is also a Sharia Appellate Bench of Supreme Court judges along with the 62 federal Sharia Court to hear cases related to Islamic injunctions, such as cases under the Hadd laws/rape cases. Additional courts such as Accountability Courts, Terrorist Courts, Military Courts, and the Special Courts for Drugs add a layer of complexity to the system. The superior courts have the powers of judicial review; the High Courts and the Supreme Court may declare any law passed by the legislatures, National and Provincial, as null and void. The superior courts can also issue writs of mandamus and declare the actions of the executives, both national and provincial as unconstitutional.¹⁴

JUDICIARY'S ROLE IN POST-INDEPENDENCE ERA

The era after the creation of Pakistan is divided into several phases:

THE FIRST PHASE (1947 – 1958)

The Government of India Act 1935, with some amendments, was adopted as a temporary constitution after independence under the Indian Independence Act 1947. On account of Section 8 of the Indian Independence Act 1947, the country had to be governed under the Government of India Act 1935 until the constitution was framed by the Constituent Assembly of Pakistan. Section 18 of the Indian Independence Act, 1947 laid down that all the laws of the pre-partition time continue to remain the same, and new legislations could be made according to the circumstances. A Federal Court of Pakistan was established in 1949 and the jurisdiction of this Court remained the same as under the Government of India Act, 1935. This was followed by the abolition of the appellate jurisdiction of the Privy Council and its transfer to the Federal Court under the Privy Council (Abolition of Jurisdiction) Act 1950. The whole judicial structure remained the same but at Dhaka a new High Court was established. The country was unable to draft a new constitution until 1956 because of various obstacles in constitution making.¹⁵ The government machinery was running smoothly and the constitution making task was assigned to the Constituent Assembly. Having autonomic powers under the Indian Independence Act 1947, the Governor General Ghulam Muhammad dissolved the Constituent Assembly on 24th October 1954 through a proclamation that the Constituent Assembly was unable to perform its constitutional function. It was due to these autocratic powers that judiciary was pressurised to perform its leading role and court's judgment had far-reaching effects on the promotion of democracy in Pakistan.¹⁶ This dissolution of Constituent Assembly was challenged under the Federation of Pakistan Vs. Maulvi Tamizuddin Khan.

FEDERATION OF PAKISTAN VS. MOULVI TAMIZUDDIN KHAN

The doctrine of necessity was adopted by superior Courts in 1955 in

Tamizuddin case and hence became responsible for democratic and political instability of Pakistan. Governor General Ghulam Mohammad dissolved the constituent assembly of Pakistan on 24th October 1954. The unconstitutional act was challenged before the Sindh High Court under Section 223 through a writ petition on behalf of Moulvi Tamizuddin Khan, Speaker of the Constituent Assembly of Pakistan at that time. Sindh High Court declared the act of dissolution of assembly unconstitutional. The decision of Sindh High Court was challenged in Federal Court where Chief justice of Pakistan justice Muhammad Munir along with four more judges Mr. Justice A.S.M. Akram, Mr. Justice A.R Cornelius, Mr. Justice Muhammad Sharif and Mr. Justice S.A. Rehman declared the act of dissolution of constituent assembly validated (federation of Pakistan vs. Moulvi Tamizuddin khan, PLD 1955).¹⁷ The judgement of Sindh High Court was set aside by majority of Federal Court judges however only Mr. Justice Cornelius wrote a dissenting judgement. The judgment of federal court was widely criticized because it did not only affect the politics of country but also put deep scars on democratic development of Pakistan.¹⁸

1956 CONSTITUTION AND 1958 MARTIAL LAW

On 23rd March 1956, after legal battle, the first Constitution of Pakistan was promulgated that ensured independence of judiciary. It was thought that democracy would take root in Pakistan, but practice proved to be contrary, and martial law was declared on October 7, 1958. As a result, the 1956 Constitution was repealed and all assemblies were dissolved. With the execution of laws (continuance in Force) order 1958, General Ayub Khan assumed the role of Chief Martial Law Administrator.¹⁹

THE SECOND PHASE (1958 - 1971)

The Second Phase, 1958-1971, was replete with events of great significance in the judicial history of Pakistan. During this period, the institution of the Supreme Court of Pakistan was brought into being in 1959 to replace the Federal Court. This resulted in an extended jurisdiction for the latter through the grant of appellate power. It began to play a more aggressive role in the shaping of the legal scene in the country. These were the times when leading judgments were delivered, like the Dosso case in 1959, which laid down the principle of judicial review, and the Gandhian case in 1963, which put limits on the powers of the president. Besides this, a Judiciary Act was passed in 1960 that reformed the judicial system and introduced a new hierarchy of courts. It is in this phase that the judiciary emerged as an important institution in Pakistan's legal framework and played a very important role in shaping its constitutional and political framework. The abrogation of constitutional assembly and promulgation of Martial law came before the Federal court of Pakistan which leads the State vs. Dosso Case.

STATE VS. DOSSO CASE

Another example of obstacle to the judiciary's independence in Pakistan's judicial history is the Dosso case. The appellants filed constitutional petitions before the West Pakistan High Court pursuant to section 170 of 1956 Constitution. High Court granted a relief to Dosso according to Article 5 of the 1956 Constitution. After that Supreme Court heard a challenge to these High Court Orders. The Supreme Court upheld the Doctrine of Necessity by overturning the High Court's ruling based on the same reasoning used in the Tamizuddin Case.²⁰

THE THIRD PHASE (1971 - 1977)

After the separation of East Pakistan, Zulfikar Ali Bhutto became the first civilian chief Martial Law Administrator (CMLA). The Martial Law of 1969 was still in operation and was ended with the interim Constitution of 1972 promulgated on 21st April 1972. The Third Phase (1971-1977) of Pakistan's judicial history was marked by significant developments, including the adoption of a new Constitution in 1973, which established the supremacy of the Constitution and the principle of judicial review.²¹ The Supreme Court of Pakistan delivered landmark judgments, such as the Asma Jilani case (1972), which upheld the right to fair trial, and the Nusrat Bhutto case (1977), which limited the powers of the military regime. The judiciary also asserted its independence by declaring General Zia-ul-Haq's martial law regime unconstitutional in 1977. However, the judiciary's independence was short-lived, as General Zia's regime began to exert pressure on the courts, leading to a period of judicial subservience. Despite this, the judiciary's role in shaping Pakistan's legal landscape continued to evolve during this phase.

ASMA JILANI VS. GOVERNMENT OF THE PUNJAB 1972

On 22 December 1971 Malik Ghulam Jilani was arrested under Martial Law Regulation No. 78. The detention was challenged by his daughter Miss Asma Jilani in Lahore High Court. The case was heard and dismissed with the judgement that the court could not question the act of martial law. Miss Asma Jilani challenged the judgement in Supreme Court which was heard by the panel of judges including Chief Justice Mr. Hamood Ur Rehman, Mr. Justice Wahid Ud Din, Mr. Justice Muhammad Yaqub Ali, Mr. Justice Salah Uddin Ahmad and Mr. Justice Sajjad Ahmed. The decision of the appeal was that the proclamation of Martial Law by General Yahya Khan was illegal. It was the exclusive privilege of Apex court to identify laws which are either not laws or bad laws.²² Though Asma Jilani case was another example of doctrine of necessity but in the final verdict the judiciary itself rejected the doctrine and analyzed its responsibilities to correct its own decisions.

THE FOURTH PHASE (1977 - 1999)

In this phase judiciary remained under General Zia ul Haq and two civilian (Muslim League and Pakistan People's Party) government. During Martial Law period from 5th July 1977 to 30th December 1985, the fundamental rights were suspended and the Constitution was put in abeyance. During this period, a case was brought before the Supreme Court by Begum Nusrat Bhutto regarding the legality of Martial Law of 1977. The Fourth Phase (1977-1999) of Pakistan's judicial history was marked by a period of judicial subservience to the military regime of General Zia-ul-Haq, who imposed martial law and amended the Constitution to curtail judicial powers. The judiciary largely acquiesced to Zia's regime, legitimizing his rule through controversial judgments like the Bhutto case (1978) and the Pakistan Lawyers' Forum case (1981). However, with Zia's demise in 1988, the judiciary began to reassert its independence, delivering landmark judgments like the Hussain Bux vs Government of Pakistan case (1989), which established the principle of judicial review. The Supreme Court also played a crucial role in shaping Pakistan's political landscape, disqualifying Prime Minister Nawaz Sharif in 1993 and ordering the dissolution of the National Assembly in 1996.

BEGUM NUSRAT BHUTTO VS. CHIEF OF ARMY STAFF 1977

The legality of 1977 Martial Law was challenged wife of Zulfikar Ali Bhutto, the detention of her husband under Article 184(3) of 1973 Constitution. Now the question before the Supreme Court was whether to apply the precedents of Asma Jilani or Dosso cases although Constitution was suspended not abrogated in this martial law.²³ The Supreme Court followed the Kelsonian theory and decided the case on basis of state Necessity and all actions of Chief Martial Law administrator were declared as valid²⁴. It caused damage to credibility of judiciary but hampered the democratic process that took its beginning since twelve years.²⁵

AHMED TARIQ RAHEEM VS. FEDERATION OF PAKISTAN (PLD 1992 SC 646)

On August 6, 1990, President Ghulam Ishaq Khan dissolved the National Assembly and dismissed Prime Minister Benazir Bhutto under Article 58(2B). The reason for taking this step was that the Federation had lost good relations with its provinces. Another reason is that the National Assembly has lost public trust due to widespread nepotism. Khawaja Tariq Rahim challenged the President's action in the Lahore High Court. As a result, the full panel upheld the order to dissolve the meeting. Mr. Tariq Rahim challenged the decision of the Lahore High Court in the Supreme Court of Pakistan. The appeal was heard by a full bench of 10 Supreme Court judges. The court's order, written by Justice Saifur Rehman, declared the president's actions illegal. However, this petition was dismissed as the new National Assembly took the oath of office. This was another step back on the country's path of democratic and constitutional development.

MIAN MUHAMMAD NAWAZ SHARIF VS. PRESIDENT OF PAKISTAN 1993

The series of dissolving the National assembly continued and on 18th April 1993 President Ghulam Ishaq Khan dissolved the national assembly dismissing the then prime minister. The dissolution of assembly was challenged directly in Supreme Court of Pakistan; the bench of ten judges was headed by Chief justice Mr. Justice Naseem Hassan Shah. The verdict given by the bench was that the act of dissolution of assembly by President was illegal. The Chief Justice reinstated the national assembly on 26th May 1993. It was a different decision from the previous ones which further invited diverse comments from political circles. Mr. Justice Naseem Hassan Shah emphasized on the commitment of judiciary to the constitution of a state in a civilized and democratic world in which an overthrown government has been restored back to the parliament by the order of higher judiciary. On the other hand, on 18th July 1993, Prime Minister Nawaz Sharif had to resign nearly after two months of the decision as a result of an agreement with chief of army staff Gen. Abdul Wahid Kakar. Afterwards the President Ghulam Ishaq Khan also resigned and the Chairman Senate Mr. Waseem Sajjad took the oath of president.²⁶

BENAZIR BHUTTO VS PRESIDENT OF PAKISTAN

The National Assembly elected by Benazir Bhutto suffered the same fate and the National Assembly was again dissolved by then-President Farooq Laghari under Article 58(2B) in 1996 on corruption charges. The President's actions were challenged in the Supreme Court, which upheld the President's action to dissolve the National

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Assembly of Pakistan. However, the impact of this decision began to be discussed within and outside the state, claiming that the elected assembly would not be able to complete its five-year statutory term and would always remain under the black shadow of 58(2B). This decision also caused unrest and democratic instability in the state.

THE FIFTH PHASE (1999 – 2018)

The Army Chief General Pervez Musharraf imposed Martial Law in the country on October 12, 1999. Prime Minister Nawaz Sharif was arrested, and the National Assembly and all four Provincial legislatures were dissolved. The Army Chief installed himself as the Chief Executive, Chairman of the Joint Chiefs of Staff, and later as the President of the country by issuing the Provisional Constitutional Order (PCO) and suspending the Constitution of 1973. The Fifth Phase (1999-2018) of Pakistan's judicial history was marked by a significant resurgence of judicial activism and independence. The Supreme Court, led by Chief Justice Iftikhar Muhammad Chaudhry, asserted its authority through landmark judgments, such as the Constitutional Petition No. 08 (2007), which led to the ousting of President Pervez Musharraf. The court also took a strong stance on human rights, rule of law, and corruption, disqualifying Prime Minister Yousaf Raza Gillani (2012) and Nawaz Sharif (2017) for corruption charges. Additionally, the court played a crucial role in shaping Pakistan's political landscape, ordering the dissolution of the National Assembly (2013) and ensuring the holding of general elections (2018). This phase cemented the judiciary's position as a powerful and independent institution in Pakistan's political framework.²⁷

ZAFAR ALI SHAH VS GENERAL PERVEZ MUSHARRAF, PLD 2000 SC 869

Deposed Prime Minister Nawaz Sharif and his other party leaders challenged the actions of the Army Chief and his Proclamation of Emergency Order of October 14, 1999, and PCO No. 1 of 1999 in the Supreme Court. The petitioners argued the Army Chief had no lawful powers to dismiss the government or the elected assemblies. The twelve-member bench, headed by CJ Irshad Hassan Khan, rejected the petition and upheld the doctrine of state necessity. They argued in their opinion that the Army Chief had the power to amend the Constitution as he deemed fit, thereby giving him powers that even the Supreme Court did not possess. Acting under the powers given to him by the Supreme Court, Musharraf sought a new oath of office from the judges of the Superior Courts. Most of the judges took the oath on the PCO and retained their positions in the judiciary. In the Zafar Ali Shah case, the Supreme Court had also granted three years to Musharraf to hold new elections and for the restoration of the Constitution and, in turn, Musharraf gave three-year extensions of service to the incumbent judges.²⁸

JUDICIAL ACTIVISM BY JUSTICE IFTEKHAR MUHAMMAD CHOUDHRY (LAYERS MOVEMENT)

On June 30, 2005, General Pervez Musharraf appointed Iftikhar Muhammad Chaudhry as Chief Justice of Pakistan. The Supreme Court has started accepting Suo Motto notices in fundamental rights cases, especially missing persons cases. General Pervez Musharraf's response was decisive due to the independent functioning of the judiciary. And on March 9, General Musharraf called Chief Justice Iftikhar Chaudhry at his military home and asked for his resignation. The Chief Justice flatly rejected this. He was held in a military home for five hours. During these five hours, Justice Javed Iqbal was sworn in as the new Chief Justice of Pakistan. General Pervez Musharraf

convened a meeting of the Supreme Judicial Council, the disciplinary committee, to begin the process. In the reference filed under Section 209, the allegations of misconduct were made against former Chief Justice Iftikhar Chaudhry. The Supreme Judicial Council terminated the functions/authorities of the Chief Justice pending an investigation into the misconduct. Massive protests broke out soon after Chief Justice Iftikhar Chaudhry was dismissed. These protests included not only lawyers but also politicians, students, merchants, and religious scholars. The protests continued for months and finally ended when the Supreme Court dismissed the misconduct charges and reinstated Chief Justice Iftikhar Muhammad Chaudhry. However, this restoration was short-lived, with General Pervez Musharraf declaring a state of emergency and imposing a Provisional Constitutional Order (PCO) on November 3, 2007. On the same day, Justice Hamid Dogar took oath as Chief Justice of Pakistan. Some 63 High Court judges have been placed under house arrest for refusing to take oath under the PPA. On November 28, 2007, General Pervez Musharraf resigned as Army Chief of Staff, and the state of emergency was lifted on December 15, 2007. New elections were then held in February 2008, which the Pakistan People's Party won. General Pervez Musharraf also resigned as president. Chief Justice Iftikhar Muhammad Chaudhry was reinstated in March 2009. The restoration of the post of Chief Justice brought a new dimension to judicial activities in Pakistan. Thus, the judiciary won its long fight for survival and became independent and powerful. On the other hand, this move led to the division of the judiciary into two categories: PCO judges and non-PCO judges. In this case, the judiciary played a different role than in the past in political and constitutional history.

18TH AMENDMENT IN THE 1973 CONSTITUTION OF PAKISTAN

The 18th amendment to the 1973 constitution brought by the Pakistan people's party government in 2010 is a milestone in the constitutional history of Pakistan. It has not only enhanced the provincial autonomy but has also withdrawn the power of dissolution of National assembly from president. This in turn backs the semi presidential system and restores the parliamentary system. In addition, the amendment has changed the procedure of selection of judges of superior courts increasing the judicial independence.²⁹ Before the 18th amendment Chief Justice of Supreme Court recommended a panel of candidates to the president. After the 18th amendment the selection procedure of judges had to pass through two forums the first was the judicial commission and second being the parliamentary committee. It was an effort to maintain equilibrium among the institutions of government hence a remarkable change in traditional mode of appointments. The 18th amendment was an effort to balance out the powers but then again judicial activism has reached its apex in post amendment era.

IMRAN KHAN NIAZI VS MIAN MUHAMMAD NAWAZ SHARIF (PLD 2017 SC 265 PLD 2017 SC 692)

On June 3, 2013, Muhammad Nawaz Sharif became Prime Minister of Pakistan for the third time. He faced very strong opposition from Imran Khan, chairman of Pakistan's Tahreek-e-Insaf Party, and other political parties. The opposition party accused the PML(N) of rigging the general election held in 2013. Later, Imran Khan filed a petition against Nawaz Sharif on 29 August 2016, seeking his disqualification on the grounds of Panama Leaks. Panama Leaks exposed links between Nawaz Sharif's

family and eight offshore companies. The Supreme Court formed a Joint Investigation Team (JIT) to investigate the Panama information leak and its links to the Sharif family. After submission of the JIT report, the Supreme Court comprising five judges - Justice Asif Saeed Khosa, Justice Ejaz Afzal Khan, Justice Gulzar Ahmed, Mr Azmat Saeed and Justice Ijaz-ul-Hasan - delivered the judgment in a split decision 3. -2. On July 28, 2017, Pakistan's Supreme Court sentenced Prime Minister Nawaz Sharif to 10 years in prison, a \$10.6 million fine, and life-long disqualification from being a member of the National Assembly. The Supreme Court's decision was considered both historic and widely known. Pakistan has continued to suffer from a democratization crisis since independence.³⁰

CONCLUSION

Since the independence of Pakistan in 1947, the judiciary has played an inconsistent role in the political development of the country. It earned an image as a stooge of the ruling regime, particularly under military juntas. Through their decisions, the courts gave legitimacy and validation to the military rulers when they abrogated and suspended the Constitution, preserving the laws that safeguarded these leaders' political control and undercut their own authority. These courts also helped the military to curb the powers of elected officials and political parties. As a result, the courts lost the respect of the general public and the legal community itself, further eroding important bases of judicial independence. Pakistan has experienced four military governments in her political history since gaining independence. The military has amended the Constitution to prolong their rule and to curb political freedoms.³¹

After the adoption of the 8th Amendment in the Constitution at 1985, different Presidents dismissed four civilian rulers and elected Assemblies. The superior courts sanctioned the legitimacy and validity to these actions of the presidents, and as result, the courts themselves were weakened. The judges were parties to the diminishment of their own judicial independence. In most cases, the courts in Pakistan played the upstream role of the agent of military rulers and their anti-democratic actions through their verdicts supporting coups. There was very little evidence the second role, that of courts as downstream guarantors where they preferred democratic norms over the justice or truth in order to strengthens democracy through the burial of the past dictatorial actions.³² Similarly, the courts' role in the consolidation of democracy by supporting the transitional democratic regimes has also been insignificant in Pakistan. The superior courts did not support democratic forces when these forces won the battle against the 85 military rulers. The civilian democratic regimes faced difficulties caused by the courts because the judiciary was closely aligned with the military. The major roles of courts in Pakistan have been to provide maximum support to the old guard as an agent of the past and less support to the democratic forces that challenged the status quo.



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