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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)**Evolution of Government-Judiciary Relations (1947-2008): A Historical Study****Ruqayya Tayyab**

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Pakistan is a federal democratic country in which the judiciary holds a strong and significant position as an organ of the state. Alongside the executive and the legislature, the judiciary plays a crucial role not only in delivering justice but also in interpreting the laws enacted by the legislature and resolving disputes between the other two organs of the state as well as among the provinces. Since Pakistan's independence in 1947, the role of the judiciary has remained controversial. On one hand, ruling parties have often attempted to influence or control the judiciary; on the other hand, through its judgments, the judiciary has itself shaped the political landscape of the country. This paper focuses on the evolution of the judiciary from 1947 to 2008. because after 2008 the new phase of judiciary emerged after the lawyer's moment. It primarily addresses the research question of how the judiciary's role has varied across different periods and how it has been treated by both military and democratic governments. In addition to examining the structure and inherited features of the judicial system, the paper analyzes six major phases: the initial years (1947–1958), the twelve years of martial law (1958–1971), the Bhutto era (1971–1977), General Zia's regime (1977–1988), government–judiciary relations in the 1990s (1988–1999), and General Pervez Musharraf's era (1999–2008).

Key words: *Judiciary in Pakistan, Judicial Independence, Judicial Activism, Executive–Judiciary Relations, Constitutional History (1947–2008)*

Introduction

State is like a home and its institutions are like family members. To run the administration of the state or home, institutions or family members must be aware of their responsibilities and duties and should perform them properly without interfering or disturbing other institution or family member. In the case of a state, there are three main institutions i.e. legislature that makes law for state, executive that implements the laws made by the legislature and the judiciary that ensures justice in the country according to the state's laws. In any country the

institution of judiciary is considered to be the third pillar of the state administration, besides the executive and the legislature. The judiciary is responsible for administering justice in accordance with the law and to determine the meaning and scope of legal provisions and apply them to cases brought before the court.¹ For smooth working of the state and society it is necessary to that all institutions of the state have good relations. If they get disturbed then the functioning of the state may also disturb. Pakistan's history is not ideal in terms of good relations between judiciary and the government. Government-judiciary relations saw many ups and downs since the birth of Pakistan in 1947. After the creation of Pakistan, the British judicial system was adopted and the 1st Federal Court of Pakistan was established in 1949 at Karachi. From the early years, Pakistani judiciary remained involved in the politics of the country that started with Maulvi Tamiz-ud-din's case in 1954 that had a great impact on government-judiciary relations and continue to influence the present times as well. This paper is about the history of the evolution of the judiciary and the role that it played in the politics of Pakistan. The research is divided into two parts, the first part is about the division and inheritance of judiciary at the time of independence. The second section is about the overview of government-judiciary relations from 1947-2008 which further divided into six sections. The initial years (1947-1958), twelve years of martial laws (1958-1971), Judiciary during Bhutto era (1971-1977), the General Zia Regime (1977-1988), government judiciary relations in the 1990's (1988-1999) and General Pervaiz Musharraf Era (1999-2008).

Literature Review

This literature review aims to provide an overview of the existing scholarly works and research related to judicial activism, constitutional interpretation, and the judiciary's role in Pakistan. None of them however, talked about or covered the objectives of the present study. In one of the works written by Hamid Khan entitled *A History of the Judiciary in Pakistan* (2023).² The author provides a comprehensive account of the judiciary's evolution since independence. He has discussed in detail about the cases that were brought before the Supreme Court between 1947 and 2022. Moreover, the eras of chief justices are thoroughly examined, accompanied by an insightful analysis of their respective jurisdictions. Although this book is good for understanding the role of judiciary but it only gives one side of the picture and does not discuss the clashes of judiciary with the government taken up by the present study.

Yaseer Kureshi's book titled *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan* (2022)³ explores the transformation of the relationship between Pakistan's judiciary and military over time (1947-2017). It explains the reasons behind the shift from a phase of obedient submission to the military's authority to a phase characterized by active competition and confrontation involving both military and civilian establishments. In this work, Kureshi illustrates that alterations in the groups influencing judicial preferences have led to the rise of the judiciary as a forceful center of power. With the passage of time, the judiciary's stance transitioned from one of unquestioning deference to one marked by reduced deference, and this shift in judicial preferences consequently drove the judiciary to assume a more expansive and commanding role within the political

¹ A.R Cornelius, *Law and Judiciary in Pakistan* (Lahore: Law Times Publications, 1981), 25.

² Hamid Khan, *A History of the Judiciary in Pakistan* (Karachi: Oxford University Press, 2023).

³ Yaseer Kureshi, *Seeking Supremacy the Pursuit of Judicial Power in Pakistan* (New York: Cambridge University Press: 2022).

landscape. Moreover, the author constructs a comprehensive framework that has the capacity to explain the diversities and transformations observed in the dynamics between judiciaries and militaries worldwide.

Waris Husain's book *The Judicialization of Politics in Pakistan A Comparative Study of Judicial Restraint and its Development in India, the US and Pakistan* (2018)⁴ explores the evolving relationship between the judiciary and politics in Pakistan by providing a comparative study of India, the United States and Pakistan. One of the major focuses of the author remains the judicialization in Pakistan. The author has focused his enquiry on two instances in which the Supreme Court of Pakistan pursued cases filed against heads of government, occupants of the office of prime minister, to the point that their terms in office were shortened. Although it is an excellent work that adds considerable value to the fields of comparative constitutional study and judicial functioning in Pakistan but major objective of present research to analyze the government's response is missing in this book.

Another work written by Muhammad Azeem under the title *Law, State and Inequality in Pakistan* (2017)⁵ explains the rise of judiciary and explores the complex relationship between law, state machine, and societal inequalities in Pakistan. The heart of the book centers on the rise of the judiciary within the context of Pakistan's complex socio-political landscape. Instead of seeing the judiciary as helpless or struggling against an authoritarian state, the writer argues that the judiciary has been a crucial link in the creation of state and political inequality in Pakistan. The work is full of valuable information but has failed to answer the questions of the present study. Another book is *Constitutional and Political History of Pakistan* (2017)⁶ written by Hamid Khan is about the overview of history of constitutional and political development in Pakistan. Although it is not about the specific development of judicial history in Pakistan but has related political developments in this country that is helpful for understanding judicial developments too. The book however, does not talk about the topics of discussion of this research.

Saima Bazmi in her article "Politico-Judicial Activism in Pakistan: A Historical Overview" (2022)⁷ takes an overview of politics and judicial activism in Pakistan's legal landscape. The article provides a comprehensive historical perspective, shedding light on the significant moments and events that have shaped the role of the judiciary in the country's governance. The article is informative for a general reader but not of much help for the present study. Another article "Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan" (2013)⁸ by Anil Kalhan is about the evolution of judicial independence with reference to the judiciary's

⁴ Waris Husain, *The Judicialization of Politics in Pakistan A Comparative Study of Judicial Restraint and its Development in India, the US and Pakistan* (New York: Routledge, 2018).

⁵ Muhammad Azeem, *Law, State and Inequality in Pakistan* (Lahore: Springe, 2017).

⁶Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2020).

⁷ Saima Bazmi, "Politico-Judicial Activism in Pakistan: A Historical Overview," *Pakistan Journal of Social Research*, Vol. 4, No. 3 (September 2022), 97-104.

⁸ Anil, Kalhan. "Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan" *Vanderbilt Journal of Transnational Law*, Vol. 46, No. 1 (January 2013): 1-96.

role in military governments. In this article the author has discussed General Musharraf with special reference to the independence of judiciary but since this work does not cover the time period of the present study, there is a major research gap in it. All the available literature sheds light on the judiciary and the pro-active role of or allegations on judiciary's role. There is therefore, a major research gap that can be filled by the present research.

Research Methodology

The present research relies upon qualitative research design and the tools for the study are primarily documentary in nature. The primary documents include the Constitution of the Islamic Republic of Pakistan 1973, Supreme Court Judgments and the Debates of the National Assembly of Pakistan and autobiographies of judges etc. The present research is analytical in nature and at times it takes the descriptive form as well to share the cases and their impact on government-judiciary relations and political system in general. For this purpose, facts have been collected from the main stream primary sources (government records). As these sources tend to be prejudiced, the tools of internal criticism have been utilized while taking out factual data from them. The facts collected from these sources arranged in order to form a cohesive answer to the questions of the present study. These sources helped to analyze how the judiciary evolved since 1947 and have helped observe the nature of relations the government and judiciary had.

Introduction

Judiciary at the Time of Independence

At the time of independence, not only the piece of land was divided between India and Pakistan but also the government assets and state institutions like military and judiciary were also divided. Both the institutions, military and judiciary were inherited from the colonial India. The division of the judiciary was the most difficult task. In the united India there were High Courts (HC) in the major cities of the provinces. At the time of partition two major provinces Punjab and Bengal were divided. Their High Courts were located at Lahore and Calcutta respectively. After partition Lahore became the part of the West Punjab, Pakistan so there was no need to establish new court and Lahore High Court (LHC) continued its work. Justice Mian Abdul Rashid was the CJ of LHC who later became the first CJ of FC of Pakistan in 1949 and Justice Munir became the CJ of LHC. In the case of Bengal, Calcutta became the part of India so new HC for East Bengal was established at Dhakka and Nurul Azeem was the first Chief Justice of East Bengal High Court. In the case of Sindh there was Sindh Chief Court at Karachi. Hatim Badruddin Tyabji became its CJ after partition. At Peshawar and Quetta there were judicial commissioners' courts so they continued their work after the creation of Pakistan.⁹

To run the functions of the newly founded state, Government of India Act 1935 was adopted as a provisional constitution with minor changes. The judicial structure remained the same in the provinces of Pakistan as prescribed in the Government of India Act 1935.¹⁰ On 23 February 1948, the Governor General (GG) of Pakistan, Quaid-e-Azam promulgated the Federal Court of Pakistan Order 1948 and the court was later founded in May 1949. Mian Abdur Rashid was appointed as the first CJ of FC of Pakistan. He remained in the office from 1949-1954 until his retirement. In the initial years, the FC consisted of three judges included Sir Mian

⁹ Hamid Khan, A History of the Judiciary in Pakistan, Karachi, oxford Uni press, second edition 2023.

¹⁰ Dr. Faqir Hussain, *The Judicial System of Pakistan*, 4th ed. (Islamabad: Federal Judicial Academy, 2015), 123.

Abdul Rashid as the CJ and Abdur Rehman and A.S.M Akram as puisne judges (a junior judge next to chief justice).¹¹

Government-Judiciary Relations in Pakistan Since 1947

The Initial Years (1947- 1958)

The period from 1947 to 1958 was a crucial time in the history of Pakistan, marked by significant political developments and challenges. During this period, Pakistan was struggling with the formation of its political and administrative structures and drafting the constitution for the new state. In terms of government judiciary relations this era, 1947-1958 can be divide into two phases. First was between 1947 and 1954 and second was between 1954 and 1958. During the tenure of the first CJ Sir Abdul Rasheed (1949-1954) the government judiciary relations remained smooth because of restraint attitude of the judiciary. The government created special tribunal court in 1951 to investigate the Rawalpindi Conspiracy Case of attempting coup to overthrow the government of the first PM Liaquat Ali Khan. Hamid Ali Khan in his book talked about the establishment of this special tribunal when he said that it had a special significance in Pakistan's judicial history. It divided the judiciary between ordinary courts and special courts which was not good for the independence of judiciary. The bold action against the special tribunal could stop the later trend of creating special courts especially in criminal cases. In special courts government may appoint their favorable judges from federal or high courts to get desirable decisions and other side judges too established good relations with government officials to get favors.¹² Because of ignoring special tribunal court by the federal court, no conflict was raised and the relations remained smooth.

Second phase started in 1954 when Maulvi Tamiz-ud-din became second CJ of Pakistan after the retirement of Sir Abdul Rasheed. It was the time when constitution making process was in progress and instead of coordination between the executive and the legislature, there was a tussle between these two organs. The political instability in the country created various challenges for the judiciary. As the interpretation of law and the resolution of disputes among various organs of the state was the responsibility of the judiciary, this department played its role in this connection starting from Maulvi Tamiz-ud-din's case which was the first trial case for the judiciary.

In 1954 when the first Constitutional Assembly (CA) of Pakistan was closed to the final draft of the constitution, the Governor General (GG) Ghulam Muhammad dissolved the assembly on 24 October, 1954.¹³ The cause behind this was the introduction of Government of India Amendment Bill 1935 by the PM Muhammad Ali Bogra. According to that amendment Article 10 of the 1935 Act was repealed that gave the power of dismissal of the PM to the GG. With this the PM Bogra wanted to secure his position. In reaction the GG dissolved the

¹¹ According to Black's Law dictionary This was the title formerly used in English common-law courts for a judge other than the chief judge.

¹² Khan, *A history of judiciary in Pakistan*, 28-29.

¹³ Paula R. Newberg, *Judging the State Courts and Constitutional Politics in Pakistan* (New York: Cambridge University Press, 1995), 42.

assembly by arguing that the constituent assembly didn't get assent from him. The irony was that since the creation of Pakistan in 1947 till 1954, GG's consent was not taken for any law.

Maulvi Tamiz ud din, the president of the constitution assembly challenged the GG action in the Sindh Chief Court and filed a writ petition under section 223-A of the Government of India Act 1935.¹⁴ The main question before the Sindh Chief Court was that if the GG could dissolve the assembly or not and was there any need of assent of the GG to the bill passed by the CA?¹⁵ The Sindh Chief Court bench was consisted of four judges including the Chief Judge, Justice Constantine who gave the decision in the favor of Maulvi Tamiz-ud-din¹⁶. The dissolution of the CA was declared to be null and void.

In response the GG challenged the Sindh Chief Court decision in the FC. It was the very first kind of trial for the FC and a test case as well. This was a pure political case not a legal one, Justice Munir first tried to resolve the dispute through political negotiations but the government refused to cooperate. In the meanwhile, the GG started to put pressure on Justice Munir to get the case in his favor in which he finally succeeded.¹⁷ In this case the main question was that either the CA needed assent from GG or not. The full bench of the Pakistan FC headed by the CJ Muhammad Munir consisted of Justice A.S.M. Akram, Justice A.R. Cornelius, Justice Mohammad Sharif and Justice S.A. Rehman, gave verdict in the favor of the GG. The verdict was written in 4:1 ratio in which Justice Cornelius wrote a dissenting note. While disagreeing with Justice Munir, Justice Cornelius stated, "There was no obligation that all laws made by the Constituent Assembly of a constitutional nature required the assent of the GG for their validity and operation".¹⁸

This verdict had disasters consequences. After that verdict, forty-six laws in Pakistan became invalid as these laws did not have the GG's consent. In order to make previous laws valid, the GG issued Emergency Power Ordinance IX of 1955 that validated all laws again. This ordinance of GG was challenged before the FC by Usif Patel who was a commoner from Larkana and was confined under Goonda Act 1952. After the invalidation of the older ordinances, he filed the case claiming that he was wrongly confined. Now the FC in the verdict of Usif Patel v. The Crown, stated that the GG could not make any law and invalidated the Emergency Powers Ordinance (IV of 1955).¹⁹ The court further ordered to establish the new CA as soon as possible. The verdict shows that the (FC) tried to correct its earlier mistake.²⁰ Here at this point a constitutional crisis arose because of the FC's confusing judgement when in the first case it invalidated the emergency powers of the GG but when the GG filed a petition for the clarification of the judgment, the FC issued another judgment that turned out to be the counter judgement of the first one. The second judgment justified the dissolution of the CA at the hands of the

¹⁴ Rizwan Ullah Kokab, *Lawyers' Movement in Pakistan* (Lahore: Pakistan Study Centre, University of the Punjab, 2013), 45.

¹⁵ Newberg, *Judging the State Courts and Constitutional Politics in Pakistan*, 42.

¹⁶ Ibid, 43.

¹⁷ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 39

¹⁸ Khan, *A History of the Judiciary in Pakistan*, 35.

¹⁹ Usif Patel v. The crown, PLD 1955 SC 387

²⁰ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 41.

GG. The Court further declared that under the doctrine of necessity the GG could validate the law under emergency power ordinance and could summon the new constitution assembly anytime. The use of doctrine of necessity set the example for future cases as all unconstitutional acts of martial laws were validated by the judiciary on the basis of this very doctrine.

It was the time to set the tradition and basis for the future developments. Unfortunately, however, the tradition which was set, paved the way for undemocratic and unconstitutional steps for dissolving the legislative assemblies by the heads of the state. Under the Doctrine of Necessity, FC validated the GG's action of dissolving the CA of Pakistan. As a result, absolute power was shifted to the head of state from the legislative assembly. On the basis of this, a tradition was set to dissolve the national assemblies (NA) that disturbed not only the democratic process of the country but disturbed the government judiciary relations too. These cases not only had the short-term effect but had a long-term effect too in the form of legal battles between the executive and the judiciary. Because of the prevailing situation, constitutional development was disturbed that delayed the making of the first constitution of Pakistan. Finally, after nine years first constitution was adopted on 23 March 1956. Under the new constitution, the FC of Pakistan was given the title of Supreme Court (SC) of Pakistan which was consisted of seven judges including the CJ. As SC was the successor of the FC so there was no major changing in the authority but in wider scope. Under the 1956 constitution, the President had the power to appoint judges of the SC with the consultation of CJ and the CJ of SC himself was directly appointed by the President. The Parliament had the power to increase the number of the judges in the court.²¹

In an overview of the government judiciary relations, it can be said that initially it remained smooth but later disturbed from 1954 when FC justified the dissolution of first CA which had long lasting impact on government judiciary relations. It was a time when constitution making was in progress and first constitution adopted on 1956 but it got just two years of implementation.

Twelve Years of Martial Law (1958-1971)

The first constitution of Pakistan proved short-lived and was abrogated after two years of its implementation. On 7 October, 1958 President Iskandar Mirza abrogated the 1956 Constitution and imposed the first martial law in the history of Pakistan. He declared General Ayub Khan as the Chief Martial Law Administrator (CMLA). Later on, 27 October, 1958 Ayub Khan ousted the president and himself became the new president of the country.²² After the proclamation of the martial law, the judiciary came under trial and faced yet another test. The State v. Dasso Case²³ was a challenge for the SC. Dasso was a murderer who was convicted from the Loya Jirga. His relatives challenged the case in the LHC and the decision came in the favor of Dasso. The FG however, challenged this verdict in the SC and the date of hearing was fixed to be 12 October. Before that day though, martial law was imposed and the Constitution of 1956 was abrogated and a new legal order was imposed. The verdict of SC had a great significance. If SC would uphold the decision of LHC it meant that the 1956 constitution was still

²¹ G.W Choudhury, *Constitutional Amendment in Pakistan*, (Lahore: Bhatti Sons Publishers), 98-99.

²² Inam R Sehri, *Judges & Generals in Pakistan*, (United Kingdom: Grosvenor House, 2012). 25-26.

²³ PLD 1958, Supreme Court, 533

under working, if the decision was to come against the LHC than it meant that the SC accepted the new legal order and, in this way, legitimized the martial law. Justice Munir however, followed the same pattern of doctrine of necessity and gave the decision against the LHC.²⁴ So, in this way the case validated the imposition of martial law and in return the CJ Munir got benefit from General Ayub Khan after his retirement when in 1963, the General appointed him as the Minister of Law and Parliamentary Affairs.²⁵

To run the state system the constitution was necessary therefore, after the abrogation of constitution of 1956 a second constitution was promulgated on 1 March 1962. In this constitution the presidential form of government was adopted and the powers were in the hands of the President and the role of the SC became secondary as compared to 1956 Constitution. The judiciary was under control as it had no powers to declare any law unconstitutional. The judges were appointed directly by General, later President Ayub Khan and the appointments were purely political. He appointed Afzal Cheema (deputy speaker of National Assembly) as a judge of West Pakistan High Court and Abdul Ghani the relative of Yousaf Khattak (supporter of Ayub Khan in presidential election 1965) was appointed as the judge of SC. Furthermore, on the request of Ayub Khan's *Pir* of Dewal Sharif, Shamim Hussain Qadri was appointed as the judge of West Pakistan High Court. General Ayub Khan himself interviewed the judges before their appointments.²⁶ Through appointing the judges himself, he tried to hold his control over judiciary and he succeeded as in many cases SC favored the government during the entire martial law regime.

On the one hand, there were good relations between government and judiciary primarily because the latter was in subordination to the former. There are various case examples in this connection, one of which was the case of General Ayub Khan's son, Gohar Ayub who was given relaxation in the cases of corruption and nepotism. On the other hand, there were cases of other kinds as well in which the verdicts came against the will of the general but he did not pay any heed to them. One case was that of Jamat-i-Islami which was banned by the government. The SC declared this ban unlawful. It further stated the amendment in 1962 ultra vires which meant that it was beyond the legal powers of the president to do such a thing. One of the justices, Justice Kiyani criticized the military rule but the General did not take action against him. It was claimed that Ayub Khan was convinced by Justice Munir not to take action in this regard.²⁷ It proved that in major cases relations between government remained smooth because of the subordinated attitude of SC. But in some cases, although SC criticized but it was less important so didn't impact on government judiciary relations.

Although Ayub Khan was trying to run the state system smoothly but he failed in doing so. His economic policies and political appearance by winning presidential elections through rigging and Tashkent Declaration after the Pakistan-India War led to massive mass protests against his rule. As a result, he resigned and transferred power to the Army Chief General Yahya Khan in 1969. General Yahya Khan became the president of

²⁴ Sehri, *Judges & Generals in Pakistan*, 26.

²⁵ Kokab, *Lawyers' Movement in Pakistan*, 11.

²⁶ Khan, *A History of the Judiciary in Pakistan*, 91-92.

²⁷ Kokab, *Lawyers' Movement in Pakistan*, 15.

the country and abrogated the 1962 Constitution. He then introduced the Legal Framework Order (LFO) to run the affairs of the state and to conduct the elections.²⁸ During his era until 1971, there was no proper constitution and the LFO was the only source of law implementation. General Yahya Khan issued a presidential order in which judges were forced to submit the details of their assets in the Supreme Judicial Council. In protest, the judges of Lahore High Court resigned and another judge was removed from a High Court.²⁹ The courts in the new regime did not operate independently and were under the subordination of the military government.

During the second martial law era, two constitutional petitions were filed in Lahore and Sindh High Courts. Malik Ghulam Jilani, a politician from Punjab and Altaf Hussain Gohr, the chief editor of Dawn Newspaper Karachi was both in jail on the orders of the military regime and the petitions were filed demanding their release. Both high courts rejected the petitions by stating that they had no authority to invalidate the actions of the martial law. Later both the cases were appealed in the Supreme Court. In the case of Asma Jilani v. Government of the Punjab³⁰, the Supreme Court of Pakistan gave a positive verdict in the favor of the former and said, the constitution has always been superior to martial law. It was further declared that the land of Pakistan was not the captured territory of anyone and General Yahya Khan was not its victor. The court also opined that his acts were unlawful and labeled him as a usurper.³¹ The irony however, was that the SC gave that verdict in 1972 when the General was no longer in power and Zulfikar Ali Bhutto was the Chief Martial Law Administrator (CMLA). During the entire episode of the 2nd martial law regime, the Supreme Court remained silent and obedient to the martial law government.

During these 13 years (1958-1971) of military government, the judiciary was under the control of military executive. It was maintained by two means, firstly by giving benefits to judges in return of the military support like appointing justice Munir as a minister after his retirement. Secondly, by pressurizing the judges and harassing them with threats etc.

Judiciary During Bhutto Era (1971-1977)

After the separation of East Pakistan on 16 December, 1971 power was transferred to Zulfikar Ali Bhutto as his party, Pakistan People's Party (PPP) got a majority in the General Election of 1970 from West Pakistan. Z.A Bhutto served as a CMLA until the NA adopted interim constitution on 17 April, 1972. Under this interim constitution, Bhutto became the President of Pakistan. The National Assembly finally passed the 1973 Constitution with the consensus of all the political parties in the parliament and it was promulgated on 14 August 1973. The basic structure of the judiciary in the new constitution remained the same. The powers and duties of the SC were defined in detail in the Constitution of 1973. As an apex court, the SC had the power to hear appeals on all cases and it also enjoyed advisory jurisdiction besides its original jurisdiction. In the original jurisdiction, the SC resolved disputes between two or more governments of the country; federal vs. provinces or provinces

²⁸ Khan, *Constitutional and Political History of Pakistan*, 239.

²⁹ Kokab, *Lawyers' Movement in Pakistan*, 17.

³⁰ PLD, 1972, SC 139

³¹ Shabbir Ahmad Khan, "Judicial Independence in Pakistan: A Case Study of Lawyers' Movement, 2007-2009" *Master's thesis*, West Virginia University, (2021): 87.

vs. provinces. In its advisory capacity, it resolved any doubtful matter related to law, where explanation was needed. In this case the President referred such matters to the SC. In the case of appealed cases, the Supreme Court heard cases of appeals made upon the judgments of high courts or any other lower court.³²

During the Bhutto era, government-judiciary relations relied on the constitutional amendments. Three amendments were introduced which were related to the judiciary and had impacts on government-judiciary relations. These amendments were fourth, fifth and sixth amendments. The first among them, the Fourth Amendment attempted to reduce the authority of the High Courts. The courts were deprived of their authority to issue bail for those in prison under Article 199.³³ The bill of the Fifth Amendment to the constitution passed by National Assembly on 5 September, 1976 and was passed by Senate on 8 September, 1976 that became an act on 15 September, 1976. In the Fifth Amendment, separate high courts for Sindh and Baluchistan were established before that there were no separate high courts for the two provinces. This amendment further fixed the term for CJ when after the amendment the CJ of SC could hold office for five years until he retired at the age of sixty-five. Similarly, the CJ of HC could hold office for five years. It was the same amendment that disturbed the powers of judiciary. It curtailed the powers of punishment of contempt of court, compulsory transfer of judges from one high court to another and restriction of the jurisdiction of high courts to grant interim bill.³⁴ Since the significance of an independent judiciary could not be denied, it was committed that the judiciary will be completely separated from the executive in five years.

The Sixth Amendment to the constitution was passed hastily overnight to extend the term of CJ of Pakistan and HC although they were on the brink of their retirement ages. This amendment was done only in the favor of CJ Yaqub Ali because he was a close friend of Bhutto. After the amendment, Bhutto was able to get legal decisions in his favor.³⁵ Given the special privileges to some close friends just to get favorable decisions was an injustice to the not so favorable judges too.

The aim of Bhutto behind these constitutional amendments was to enjoy the absolute authority without interference from any other institution primarily the judiciary. Being the head of the state, he could now use his executive powers to appoint judges to get verdicts in his favor that reduced the authority of the entire judicial system. To achieve his desires, Bhutto introduced the constitutional amendments just to justify his actions according to the constitution. Z.A Bhutto ruled an autocratic style of government.

The General Zia ul Haq Regime (1977-1988)

The rule of the third martial government of General Zia ul Haq was no better than his predecessors in terms of his dealing with the institution of judiciary. On 7 January, 1977 Pakistan hosted its next general elections under the PPP government. The opposition parties of the country made an electoral coalition named Pakistan National Alliance (PNA). PPP won the elections by securing 155 National Assembly seats out of a total of 200.³⁶ The

³² Khan, *A History of the Judiciary in Pakistan*, 281.

³³ Khan, *A History of the Judiciary in Pakistan*, 117.

³⁴ Hamid, *A History of the Judiciary in Pakistan*, 117.

³⁵ Ibid, 122.

³⁶ Hamid Khan, *Constitutional and Political History of Pakistan*, 308.

political situation was disturbed after the general elections. PNA denied the election result and called these elections flawed and rigged. These parties protested and launched a mass movement and the situation was out of control for the government. So, the civilian government called the military to control the situation. The military however, refused to accept the civilian government orders. Between 4 and 5 July, the military Chief General Zia ul Haq imposed another martial law throughout the country and dissolved the national and provincial assemblies and declared the 1973 Constitution to be suspended.³⁷

A Martial Law Order 1977 was issued according to which the courts were allowed to exercise their respective powers of jurisdiction but fundamental rights which were provided under Article 199 of the constitution were abrogated. General Zia appointed Sharif-ud-din Peerzada (Advocate of the Supreme Court) as the Attorney General (AG) and Chief Advisor to the military government. The governors of the provinces were replaced by the CJ of the provincial High Courts.³⁸ Through these steps General Zia tried to control the judiciary. In this way he introduced the merger of judicial and executive powers making the former subordinate to the latter.

The judiciary started to behave almost exactly the same way it behaved during the previous martial law governments. In the Nusrat Bhutto Case³⁹ the judiciary once again legitimized the martial rule. Begum Nusrat Bhutto, the wife of Z.A Bhutto challenged the imprisonment of her husband and the imposition of martial law in the SC under article 184(3). As the military regime feared the expected verdict from CJ Yaqub Ali, 5th and 6th amendments to the 1973 Constitution were withdrawn. In consequence, CJ Yaqub Ali was made to retire as he had turned sixty and could no longer stay in position due to the withdrawal of the retirement age amendment. In his place, his successor, Justice Anwar-ul-Haq became the new CJ of Pakistan. The case of Begum Nusrat Bhutto was heard by the full bench of nine judges headed by the new CJ Anwar-ul-Haq. After hearing both sides the SC dismissed the petition on 10 November 1977. The court justified the martial law action once again by using the Doctrine of Necessity. The court further allowed the CMLA to amend the constitution in light of the same doctrine.⁴⁰ This decision blocked the way to democracy and paved way for a full authority military regime. It is clear from this decision that the judiciary yet again surrendered to the military government and could not go against the military dictator.

Bhutto's trial and hanging in 1979 was another case which showed the subordinate attitude of the judiciary. Bhutto faced charges of conspiring to murder of Nawab Mohammad Ahmad Khan, a political opponent. The trial was controversial, with allegations of political bias and lack of due process. Initially, Bhutto's case was heard before the full bench of LHC headed by Chief Justice Maulvi Mushtaq. In the judgment Lahore High Court awarded him death sentence which was upheld by the Supreme Court in the appealed case and Bhutto was sentenced to death⁴¹.

³⁷ Ibid, 323.

³⁸ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 51.

³⁹ Begum Nusrat Bhutto vs. Chief of the Army Staff, PLD 1977

⁴⁰ Najeeb, *The Judiciary and Politics in Pakistan 1999-2013*, 55.

⁴¹ Rehman, *The Judiciary and Politics in Pakistan*, 55.

In General Zia's tenure, initially roughly between 1977 and 1979, the relations between judiciary and the military government were smooth as they can be observed in the case of Nusrat Bhutto and Bhutto's trial. The superior judiciary surrendered to the military dictator and in return the judges like the CJ of SC Anwar ul Haq and CJ of LHC Maulvi Mushtaq got benefits from the government. CJ of Pakistan also served as the acting president of the country during the foreign visits of General Zia and Maulvi Mushtaq got confirmation from the acting to full Chief Justice⁴².

The later years that began in 1979, the relations between the two powers however, turned strained especially when the military courts were established in 1979 through a constitutional amendment by adding Article 212-A in the constitution.⁴³ These courts were established for trial of offences punishable under the Martial Law Regulation or Martial Law Orders. Through this amendment more than a hundred military courts were formed all over the country. According the new laws, any case could be transferred from a civilian court to the military courts.⁴⁴

Another constitutional amendment was introduced in the constitution on 27 May, 1980 in which writ jurisdiction of High Courts was restricted and it also stopped the High Courts to review the judgments of military courts. The background of this amendment was that there was the case regarding the dissolution of a political party named Tehrik-e-Istiqlal dealt by the CJ LHC. It is stated that during the proceedings he shared anti-government sentiments that created an alarming situation for the martial law regime that then introduced the said amendment in order to reduce the power of the judiciary.⁴⁵ It seems like the strategy of the previous governments like during the times of PM Bhutto he introduced the constitutional amendment to reduce the powers of judiciary although it was the democratic government.

The judiciary was trying to offend the government on its own part when the Baluchistan High Court (BHC) took three bold decisions against the government. Firstly, against the death sentence given by military courts. In the case of Hamid Baloch, the BHC gave stay order and warned jail authorities to obey the court orders otherwise contempt of court would be initiated. Secondly, Baluchistan High Court declared the induction of Article 212 and clause 3A, 3B and 3C in the Article 199 *ultra vires*. Thirdly, the court insisted that the ordinary citizens could not be tried in the military courts for an ordinary offense. The federal government went to the SC against the steps of BHC but the SC tried to refrain from taking sides of the government and did not take any initiative in this regard.⁴⁶

In this critical situation when the government felt threatened from High Courts, General Zia promulgated the Provincial Constitutional Order (PCO) in March 1981 that served as the Constitution of Pakistan by altering the 1973 Constitution. PCO caused worsts relations between the judiciary and the military government. All the judges had to take fresh oath under PCO and the chief judges were not allowed to continue in office if they

⁴² Ibid, 56.

⁴³ Ibid, 57.

⁴⁴ Khan, *A History of the Judiciary in Pakistan*, 143.

⁴⁵ Rehman, *The Judiciary and Politics in Pakistan*, 58.

⁴⁶ Ibid, 59.

refused to take fresh oath under the new order. As a result, three judges of the SC including Chief Justice Anwar-ul-Haq and sixteen judges of High courts refused to take oath and resigned from their positions.⁴⁷

In this way the Zia government suppressed the judiciary by hook or by crook. This suppression however, did not have lasting impact. Due to the General Zia's strict policies, political situation was disturbed. The opposition parties made an alliance against him called Movement for the Restoration of Democracy (MRD) and started a country wide agitation. In the middle of this general elections were conducted on a non-party basis on 25 and 28 February, 1985. Muhammad Khan Junejo became the PM after getting vote of confidence from the NA. He was a powerless PM though and a puppet in the hands of General Zia. Later the Eighth Amendment in the 1973 Constitution was passed in the national assembly in November 1985 which totally changed the structure of the constitution. This amendment increased the power of the president and reduced the authority of the PM. The president had the power to dissolve the National Assembly under Article 58 2(b). After passing the Eighth Amendment, General Zia resigned from the Chief of Army Staff position and became a civilian president. Soon the differences arose between President Zia-ul-Haq and the PM Junejo on foreign affair matters especially on Geneva Agreement. As a result, the president dissolved the national assembly on 29 May, 1988 by using Article 58 2(b) and central and provincial governments were dismissed. After this General Zia announced new elections that were to be held on a non-party basis on 17 November, 1988.⁴⁸

When the elections were announced on non-party basis, Benazir Bhutto, the leader of PPP filed a petition to lift the ban on political parties and challenged the Political Parties Act of 1962. It was an act passed by General Ayub Khan according to which any person could be banned from holding public office or joining any party if convicted of two years imprisonment. Surprisingly in the case of Ms. Bhutto v. Federation of Pakistan and another⁴⁹ SC took a bold step and in a judgment on 20 June 1988, declared the Political Parties Act 1962 unconstitutional and against the fundamental rights and freedom of association under Article 17 of the Constitution of Pakistan⁵⁰. In this way the Supreme Court lifted the ban on political parties and paved the way for constitutional democracy in Pakistan. It was a shocking judgment for General Zia government as for eleven years he suppressed the political parties. As a result of the SC judgment, party-based elections were made possible for the upcoming elections in November 1988. Before the elections, the whole situation was not in the favor of Zia-ul-Haq. He faced internal political challenges as well as external challenges. In this atmosphere Zia-ul-Haq was killed in a plane crash on 17 August, 1988.⁵¹

The dissolution of national assembly and dismissal of central and provincial governments on 29 May, 1988 were challenged in the LHC. In its verdict the court declared the orders unsustainable but refused to restore the assemblies as election date was announced. The decision of LHC was appealed in the SC. The SC in

⁴⁷ Dawood, Jan Mohammad. *The Role of Superior Judiciary in the Politics of Pakistan*. Pakistan: Royal Book Company, 1994.

⁴⁸ Khan, *Constitutional and Political History of Pakistan*, 384.

⁴⁹ PLD 1988 SC 416

⁵⁰ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 63.

⁵¹ Hamid Khan, *Constitutional and Political History of Pakistan*, 386.

the case⁵² gave decision on 5 October, 1988 after the death of Zia-ul-Haq and upheld the decision of Lahore High Court and declared the dissolution of the National Assembly unconstitutional.⁵³

The eleven years of General Zia regime is a long span of military government in which the government-judiciary relations were initially smooth until 1979. Later however, after the formation of the military courts in 1979 the relations became strained when the judiciary tried to resist. BHC and LHC both resisted the most and used the power of judicial review. As a consequence, they were suppressed by the military government with the announcement of PCO and judges were forced to take fresh oath or to resign. In a nutshell it can be said that judiciary in the Zia regime suffered a lot and were refrained from using its authority.

Government-Judiciary Relations in the 1990s (1988-1999)

Judicial and political history in this decade is significant and revolved around the power struggle between executive, legislative and judiciary. The relations between government and judiciary remained disturbed and not so good because of the hearing of political cases in the courts. In this decade four elections were held that resulted in the making of four governments but no government could complete the five-year term because of the use of article 58 2(b)⁵⁴ three times and the last government of Nawaz Sharif was dissolved by the military interference in 1999. The government-judiciary relations were disturbed mainly because of three reasons. One issue between government and judiciary was on the appointment of judges. The executive wanted to appoint pro-government judges. The second was on the cases of dissolution of the assembly under article 58 2(b) when every party wanted the decision in their own favor. Lastly the issue was on the constitutional cases, as the 13th and 14th amendments were challenged in the SC.

First Term of Benazir Bhutto's Government (1988-1990)

In November 1988, general elections were held for the National and Provincial Assemblies of Pakistan. In the election results, PPP won majority seats and made government. On 1 December, 1988 the President Ishaq Khan nominated Benazir Bhutto as the new PM. Bhutto faced many challenges in her time period. She had disputes with president and the army chief and major differences arose on the appointments on top military and civilian posts. The bad relation between the president and PM resulted in the dissolution of the National Assembly on 6 August, 1990.⁵⁵

The President Ghulam Ishaq Khan dismissed the 1st tenure of Benazir Bhutto by using the article 58 2(b). This action of the president was challenged by a politician Khawaja Tariq Rahim in the LHC and SHC, and both the courts sided with the president's decision of the dismissal. Then the LHC order was challenged in the SC in Khawaja Ahmed Tariq Rahim v. Federation of Pakistan⁵⁶ case. In the verdict, the full bench of SC upheld the decision of the LHC and dissolution of the NA by the president. The Supreme Court verdict in no way was

⁵² Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and Other PLD 1989 SC 1966

⁵³ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 56-64.

⁵⁴ After Eighth Amendment President acquired discretionary powers to dissolve the National Assembly under Article 58 2(b)

⁵⁵ Khan, *Constitutional and Political History of Pakistan*, 402.

⁵⁶ PLD 1992 SC 646

democratic to justify the actions of the president as it was the right of the national assembly according to the constitution to finish its five years term. The PM could only be removed by motion of no-confidence in the national assembly if needed. Here at this point it can safely be said that the judiciary was suffering from self-contradiction. When during the Zia era, the NA was dissolved, the judiciary declared it against the law but when the same sort of case appeared in 1990, the judiciary declared legal under the same law.

First Term of Nawaz Sharif Government (1990-1993)

After the dissolution of the Benazir Bhutto's government, fresh general elections were held in October 1990. Islami Jamhuri Itihad (IJI) which was a nine-party alliance won the elections with 2/3 majority. The president of the IJI, Nawaz Sharif became the new PM after securing 153 votes in the NA. The relations between the government and the judiciary did not get disturbed in the first tenure of Sharif government. The judges of the SC and High Courts were made happy by an increase in their salaries through 12th amendment which was passed on 28 July 1991. In the same amendment, special courts for trial of heinous crimes were created for the term of three years.⁵⁷ Although these courts were not under the Supreme and High courts, the judges of these special courts were appointed in consultation with the CJ of High courts. The bill in this connection stated that A Special Court would be consisted of a Judge, being a person who was, or had been or was qualified for appointment as a Judge of a HC was to be appointed by the Federal Government. It would be done after consultation with the CJ of the HC.⁵⁸

Although the government-judiciary relations were smooth, there were disturbances in the political corridors. Like Benazir Bhutto's government, relations between the President Ghulam Ishaq Khan and the PM were strained. The president followed the footprints of his predecessor and dissolved the NA by using Article 58 2(b). Nawaz Sharif challenged the dissolution of the assembly before the Supreme Court. In this case Nawaz Sharif vs President of Pakistan and others⁵⁹, Supreme Court took a bold and fair step not only declared the act of president unconstitutional but restored the assembly and granted legal legitimacy to Nawaz Sharif government.⁶⁰ However, this decision proved short lived as General Waheed Kakar, the Army Chief of Staff, forced the Prime Minister and the President to resign and to dissolve the NA.

Second Term of Benazir Bhutto Government (1993-1996)

The next election of this decade was held in 1993 and Benazir Bhutto became the PM for the second time. In her 2nd tenure, Farooq Ahmad Leghari became the president on 13 November, 1993. In this time period, there were differences between the President and the PM on the appointments of judges of the SC. Bhutto desired to appoint friendly judges because of the past experiences in which the judiciary gave verdicts against PPP in the Nusrat Bhutto case, the case of Zulfikar Ali Bhutto and his eventual hanging, and the decision against the

⁵⁷ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 69.

⁵⁸ Constitution (twelfth amendment) act, 1991.

⁵⁹ PLD 1993 SC 473.

⁶⁰ Najeeb. *The Judiciary and Politics in Pakistan 1999-2013*. 68.

dissolution of the Benazir Bhutto's government in 1990. This time the PM wanted to handle the matters from the very start and to have friendly judiciary to avoid any bad experiences in future.

Benazir Bhutto's Government appointed Justice Sajjad Ali Shah as the CJ of Pakistan by superseding a number of senior judges. Appointments and transfers in high courts were also made to make the higher judiciary friendly and loyal. These actions of Bhutto were challenged by Wahab ul Khairi, a prominent lawyer of Jihad Trust in the Supreme Court. A larger bench of Supreme Court headed by Chief Justice Sajjad heard the case. The government put pressure on judiciary for a fruitful decision but to no use. On 20 March, 1996 SC announced the decision in which it decreased the authority of the executive branch to appoint and transfer the judges of superior courts.⁶¹ After that decision the PPP government publicly criticized the judiciary and refused to accept the decision.

When Benazir Bhutto publicly denied to accept the court orders, CJ Sajjad Ali Shah approached the President and pressurized him for implementation. This created differences between the President and the PM Benazir along with many other issues. In this situation the president dissolved the National Assembly and dismissed the government on 5 November, 1996⁶² and the new elections were announced to be held in February 1997. The action of the president was challenged in the Supreme Court by Yousuf Raza Gillani and Benazir Bhutto herself. Here the Supreme Court once again sided with the president and in the case of Benazir Bhutto v. Farooq Ahmed Khan Laghari, gave verdict in the favor of the former and declared his action constitutional.⁶³

Second Term of Nawaz Sharif Government (1997-1999)

The second term of Nawaz Sharif was started on 17 February, 1997 when he became PM for the second time. His tenure is regarded as the reign of conflict between the government and the judiciary. There were many issues that disturbed the relations between the two. One of which was the Promulgation of Anti-Terrorist Law in 1997. The aim behind the establishment of the anti-terrorist courts by the Pakistan Muslim League Noon government was to get quick verdicts on important cases. It also aimed to appoint pro-PMLN government judges in these courts to get favorable decisions.⁶⁴

Another conflict arose between the two institutions when Nawaz Sharif reduced the number of SC Judges from seventeen to twelve on 21 August, 1997 through a notification. This notification was challenged in the Supreme Court and the tension was finally decreased when the government took back the notification. Similarly, the appointment of the judges to the SC created a severe tussle between the executive and the judiciary. The CJ recommended five judges for elevation to the SC on 28 August, 1997 but Nawaz Sharif did not agree on the recommendation right away and it was only after a few days of resistance that he agreed.

The two amendments in the constitution, the 13th and the 14th also created a gulf between the government and the judiciary when these amendments were challenged in the Supreme Court. Through these

⁶¹ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 71.

⁶² Hamid Khan, *Constitutional and Political History of Pakistan*, 440.

⁶³ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 73.

⁶⁴ Khan, *A History of the Judiciary in Pakistan*, 232.

amendments, Nawaz Sharif tried to strengthen his powers. The 13th amendment to the constitution reduced the powers of the president under Article 58 2(b) while the 14th amendment increased the power of the party leaders.⁶⁵ The party members in the legislative assembly could be dismissed now if they spoke or voted against their party leaders.

The 14th Amendment to the constitution was later challenged in the SC and the CJ Sajjad Ali Shah suspended it. In response, Nawaz Sharif in a press conference and in the parliament criticized the decision and called it illegal and unconstitutional. As a result, the SC initiated the Contempt of Court. Nawaz Sharif appeared before the SC on 17th and 18th November, 1997 and submitted the regret statement in the written form but refrained from making any public apology. Later on, 18 November Contempt of Court Amendment (COCA) Bill 1997 was introduced according to which if a person made any remarks about an issue that was the subject of an ongoing legal proceedings and was unaware that those processes are ongoing, he will not be punished in contempt of court. This bill was challenged in the SC when the bill was still in review for the president's consent when the SC ordered the president not to give his approval on the bill⁶⁶. During the contempt bill proceedings, workers of the PML (N) attacked the building of Supreme Court which is still considered to be the darkest phase in the government-judiciary relations. The situation became bad when in the tussle between the executive and the judiciary, the president sided with the latter. The situation temporarily cooled down for a week, from 20th November to 27th November due to the interference of the Army Chief.⁶⁷

During this week, Nawaz Sharif urged his likeminded judges to side with him and go against the CJ. As a result, the SC got divided in two groups, the pro-government and the pro-CJ. All efforts to reduce the tension between the two institutions remained unsuccessful. In this tense situation, the 13th amendment was suspended on 2 December, 1997. It was the pending petition which was heard suddenly by the SC. After that the PM advised the President to appoint a new CJ. The President however, did not do so and resigned instead. Justice Waseem Sajjad became the acting President who followed the government's instructions and appointed Justice Ajmal Mian as the new CJ. After this the government-judiciary relations were stabilized under the new CJ and the Contempt of court against Nawaz Sharif was dropped and 13th and 14th amendments were also declared valid. The emergency was declared by the government on 28 May, 1998, the day of nuclear bomb test on the excuse of security concerns. This emergency was challenged in the SC and in the decision, SC justified the emergency.⁶⁸

The decade of civilian government ended with the military take over on 12 October, 1999 by the then Army Chief General Pervaiz Musharraf. The Kargil issue⁶⁹ caused the tussle between the army and PM Nawaz Sharif.⁷⁰ The two years of the second tenure of Nawaz Sharif is thus remembered as a constant conflict between

⁶⁵ Hamid Khan, *Constitutional and Political History of Pakistan*, 451-452.

⁶⁶ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 75.

⁶⁷ Ibid, 76

⁶⁸ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 78.

⁶⁹ Kargil war was conflict between India and Pakistan over the district Kargil at Jammu and Kashmir, the conflict was arisen in 1999, in result India won.

⁷⁰ Khan, *Constitutional and Political History of Pakistan*, 472.

the institutions. He had not only disputes with judiciary but with the President and the Army chief that resulted in the end of his tenure.

In an overview of this democratic decade, it can be said that this period is recognized as an era of worst relations between the government and the judiciary. Although every branch of the government had its own duties according to the constitution but in reality, all of them were trying to interfere in each other's affairs especially the executive thought it to be their duty to interfere with the free work of judiciary. Independent judiciary was the basic demand of the democracy and was also written in the constitution. In this time period the executive branch tried to control the judiciary either through forceful transfers or appointments or criticizing judiciary publicly or by attacking on the building of SC. In this situation the judiciary tried to make sure of its independence by giving judgments against the executive but it was constantly interfered with.

General Pervaiz Musharraf Era (1999-2008)

On 12 October, 1999 the last government of the democratic decade was dismissed by another military dictator General Pervaiz Musharraf. He declared himself the chief executive and later became president in 2002 through referendum. He suspended the Constitution of 1973 and issued the PCO in 2000 that again reduced the power of the judiciary. It was strictly prohibited for judges and courts to go against the Chief Executive or raise questions on the legitimacy of the military regime. Under the PCO fresh oath was required from the judges. A majority of the judges took new oath under PCO but then Chief Justice of Pakistan Saeed ud din Zaman Siddiqui did not take oath and was replaced by the new Chief Justice Irshad Khan.⁷¹ This was the situation of judiciary and justice during this time.

Like the previous eras, this time too, military takeover was challenged in the SC. The case was heard by a twelve-member bench headed by the new Chief Justice Irshad Hassan Khan. As expected, the court validated the military take over and dismissed the petitions.⁷² The history repeated itself and upper courts again surrendered before the military dictator and used the doctrine of necessity.

The relations between the judiciary and the military government remained smooth and friendly under Chief Justice Irshad Khan until 2005. In his tenure many cases were heard and SC gave all decisions in the favor of the military government. In the hijacking of General Musharraf's plane case, Nawaz Sharif was sentenced to life imprisonment. Later however, after a deal, Sharif left for Saudi Arabia. Meanwhile, General Musharraf's presidency was challenged in the SHC on 31 December 2005 but the petition was dismissed. A National Referendum was held before the general elections in 2002 to secure Musharraf's tenure as president. This referendum was challenged in the Supreme Court but petition was again dismissed. Furthermore, LFO was also given validation by the SC. There was another example of the obedient judiciary was the case of 17th Amendment to the Constitution which was passed in December 2003 in which got the powers as president of Pakistan to dissolve NA and dismissed PM and had the power of appointing chiefs of armed chief and governors of provinces. This amendment was also challenged in the SC but the Court again dismissed the petition. After

⁷¹ International Commission of Jurists (ICJ), *Authority without Accountability: The Search for Justice in Pakistan*, December 5, 2013, 3.

⁷² Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 96.

giving all verdicts in the government's favor, the judges in return received benefits from the military government in the shape of increase in salaries and extension in retirement age etc.

The cordial relations between the judiciary and the military government ended with the retirement of Chief Justice Irshad Khan and Iftikhar Muhammad Chaudhry was appointed as the new CJ on 30 June, 2005 after which an era of strained relations started. The CJ Iftikhar Chaudhry initiated steps for an independent judiciary by using court's original jurisdiction under Article 184 (3). In this connection, the Missing Persons Case and the Pakistan Steel Mills Case were the two major cases that caused bad relations between the military executive and the judiciary. In 2006, the PM Shaukat Aziz tried to sale Pakistan Steel Mill to private companies but the SC of Pakistan said this sale was not fair because the mill was sold for too little an amount which meant that the country was facing a huge financial loss. So after examining the facts SC declared it unconstitutional.⁷³ In another case about people who went missing, the SC started listening to people's requests. Since the War on Terror began, more and more people were disappearing. The SC called in officials from intelligence agencies and asked them questions in public courts⁷⁴. Since this was a sensitive issue and the government did not want it to be known by everyone, they had to respond firmly to the situation.

The 9 March, 2007 proved to be a turning point in the political and judicial history of Pakistan when General Pervaiz Musharraf suspended the then chief justice Iftikhar Muhammad Chaudhry along with 64 other judges of SC and high courts. Furthermore, General Musharraf also removed judges with their families and placed them under house arrest. Justice Javed Iqbal was appointed as the acting Chief Justice of Pakistan. Justice Iftikhar Muhammad Chaudhry filed a petition against his suspension when surprisingly on 20 July 2007 he was restored as the CJP on the verdict upon his request. This restoration proved short-lived though as on 3 November, 2007 General Musharraf imposed Provisional Constitutional Order (PCO) and declared emergency throughout the country.⁷⁵

All the judges had to take fresh oath under 2nd PCO but at this time Chief Justice Iftikhar Chaudhry not only denied to take fresh oath but also declared PCO unconstitutional. Followed by Chief Justice sixty-three other Judges of Supreme Court and High Courts also refused to take oath under PCO. All of these judges were deposed and many of them faced house arrests.⁷⁶ After this the lawyers' movement began for the restoration of judges which was also joined by political parties. The main objective of the lawyer's movement was a free and independent judiciary and the restoration of the deposed judges. After the public pressure General Musharraf resigned as army chief and uplifted emergency on 15 December, 2007 and new elections were held in February 2008 and on 18 August, 2008 General Musharraf stepped down as the president of the country.⁷⁷

⁷³ Siobhan Mullally, A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan (September 2009). International Bar Association, Human Rights Institute, 2009, [24](#).

⁷⁴ Rehman, *The Judiciary and Politics in Pakistan 1999-2013*, 153

⁷⁵ Siobhan Mullally, A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan,

⁷⁶ "Authority without accountability: The search for justice in Pakistan"35.

⁷⁷ Siobhan Mullally, A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan, [28](#).

General Musharraf's tenure from 1999-2008 witnessed two phases of government-judiciary relations. The first phase was from 1999-2005 and the second phase was from 2005-2007. In the first phase General Musharraf enjoyed full support of judiciary but in the second phase he faced hurdles when he tried to suppress the judiciary. This tenure was somewhat different from those of his predecessors who were unquestionable followed by their contemporary judge.

In a nutshell, the political and judicial history in Pakistan saw many ups and downs. In any democratic state there are three organs of state, legislative, executive and the judiciary. For the smooth functioning of the state, it is necessary to have a balance of power and every branch of the government should perform constitutionally. Furthermore, independent judiciary is necessary for a progressive state. In the case of Pakistan three constitutions were adopted in 1956, 1962 and in 1973. All three constitutions ensured free and independent judiciary but unfortunately from the birth of the Pakistan in 1947 till 2008 judiciary could not perform freely under the executive. This was significantly seen especially during the military regimes. Constitutional interference of the judiciary in political affairs were termed as illegal by the state authorities both democratic and military. Due to this the judges were constantly under pressure of the executive when even their lives and jobs were under stake whenever they tried to impart justice in the political affairs. There were instances as well when the judges preferred to seek favors from the authorities for which they had to give verdicts in the government's favor. Still the judiciary has a long history of coming forward with the constitutional solutions to the political problems. In this way it can be concluded that during the time discussed in this article the government-judiciary relations were multi-layered in which both were trying to dominate the each other mostly.

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