

## **Relationship of Superior Judiciary and Executives During Democratic Regimes in Pakistan: An Analytical and Historical Study**

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### **Abstract:**

*An independent, impartial and robust judiciary is a condition precedent for a successful democracy. Its role becomes more important in fragile democracies like Pakistan. Therefore, this research paper involves the analytical and historical study of relationship between superior judiciary and political democratic regimes in Pakistan. Since its independence the democracy in Pakistan has been facing multifarious constitutional and political crisis. Each time there was a constitutional or political crisis, the higher judiciary has been asked to play its constitutional role. The apex judiciary of Pakistan was brought into political arena by the politicians thereby asking the judiciary to answer the political questions. This research paper finds that unfortunately, the role of the judiciary in those crises was not appreciated in the constitutional and judicial history of Pakistan respectively. Similarly, the apex judiciary of Pakistan had often strained relations with political regimes. The political governments have been trying to subjugate the judiciary whilst the Judiciary have been involved in the game of thrones. This tussle between the executive and the judiciary sometimes led to the demise of democracy in Pakistan and imposition of martial laws.*

**Keywords:** Political, Constitution, Executive, Judiciary, independence

### **I. Introduction**

The Indian subcontinent has been ruled by the Hindus, Muslims and Britishers respectively and subsequently it was divided into two independent states namely Pakistan and India in August 1947. Therefore, the current judicial system of Pakistan finds its roots throughout these three eras. Nevertheless, the current judicial system of Pakistan is the one, though with some cosmetic changes, which was framed by the British Empire. As Pakistan was created through a democratic process, the ultimate decision of the forefathers of the Pakistan was to adopt a democratic system of government. Pakistan

chose parliamentary form of government following the foot prints of British Empire. However, this dream could not be realised due to various political and constitutional crisis which led to the fall of democracy and imposition of martial laws. Whenever there had been a constitutional or political crisis, the politicians invited the judiciary to intervene. Contrary to the judicial norms, the role of the judiciary during these crises had been partisan instead of being impartial and neutral. Every time the higher courts tried to fence the unleashed powers of mighty executive, it was considered as antagonist by the rulers. Similarly, whenever it gave verdict against the opposition, it was blamed to be subservient to the rulers. Therefore, Pakistan's superior courts have been blamed to be politicized and to act as a power broker instead of guarding the rule of law. For the sake of convenience of the readers, first of all this study sheds light on the importance of strong and robust judiciary in a democratic system and then it divides the analysis of the relationship of the judiciary and executive into four eras respectively; the democratic regime soon after independence; post Ayub regime of Zulfikar Ali Bhutto; post Zia-ul-Haq democratic regime; post Musharraf Democratic Regime.

## **II. Importance of Judiciary in a Constitutional System**

The presence of a strong and well reputed judiciary is imperative to strengthen and uphold constitutional values in new born states and to convey a strong message to the power brokers that contravention of constitutional boundaries for the sake of political or personal motives cannot be allowed (Herron&Randazzo, 2003). Bhagwati suggests that the democratic system and the rule of law derive their life line from the presence of a strong and robust judiciary, the loss of which in a democratic system will result into erosion of rule of law and democracy at the hands of dictatorship (1989). Her statement can be verified from the fact that whenever the authoritarian regimes replaced democracy, it tried to manoeuvre the integrity and impartiality of the judiciary. Nevertheless, the judiciary cannot play its watch dog role if the capacity of the judicial organ is constrained by a fragile institutional heritage, meagre professional training, want of support from other state organs and lack of individual integrity and reverence for judicial independence. If the judges are unable to deliver impartial judgements, the democratic system may be hindered and resultantly leading towards constitutional upheavals and dictatorships (Herron&Randazzo, 2003). Hart suggests that there exists a strong nexus between the social constraints on institutions and the establishment of rule of law. He further suggests that all branches of the state must consider laws 'as common standards of official behaviour and appraise critically their own and each other's deviations as lapses' for the sake of ensuring the efficacy of the legal and political systems (2012).

## **III. First Democratic Regime Soon After Independence**

Haq considers that the social norms are not strong enough in Pakistan to protect its legal system (2003). Regrettably, soon after its independence, Pakistan was devoid of this kind of social constraints and even could not nourish them in the days to come. It is evident from the constitutional history of Pakistan that the independence of the judiciary has been undermined numerous times at the hands of political and dictatorial regimes. The factors impairing the independence of the judiciary in Pakistan are thus embedded in its constitutional and political history, as the outcomes of actual trends based on ground realities have diluted constitutional pledges (Fohr, 2012; International Bar Association, 2009).

The notion of judicial independence has been deep rooted in the constitutional scheme of Pakistan as the Objectives Resolution, which has been a preamble of the 1956 and 1962 Constitutions and a substantive part of the 1973 Constitution, declared, 'Wherein the independence of the judiciary shall be fully secured.' However, despite its constitutional acknowledgment it cannot be used as a threshold to gauge the state of judicial independence in Pakistan. The first open confrontation between the constitutional players in Pakistan occurred when Ghulam Muhammad, the Governor General, in exercise of his constitutional powers, dismissed the government of Nazimuddin in 1953 (Hassan 2006; Jennings, 1959). The Governor General did not only dismiss the government but also appointed Muhammad Ali Bogra, a diplomatic agent of Pakistan in USA at that time, as a new prime minister. The Governor General did not stop here and violated all parliamentary norms by himself appointing cabinet ministers for the new prime minister (First Constitutional Case; Waseem, 2006).

Noticing the Governor General's voracity for power and in order to avert any abuse of power, Muhammad Ali Bogra planned a constitutional amendment which was forwarded in the constituent assembly and was accepted in a rush (Khan & Hussain, 1988; Waseem, 2006). By virtue of this amendment the Governor General's power to remove the Prime Minister at his discretion was abolished and he was made bound to act upon the ministerial advice. The Governor General considered this amendment as an open attack on his powers and instead of showing his displeasure/ anguish in a civilised manner by offering his resignation, he hit back and dissolved the constituent assembly on October 24, 1954. The assembly was dissolved on the following grounds:

The Governor General having considered the political crisis with which the country is faced has, with regret, come to the conclusion that the constitutional machinery has broken. He, therefore, has decided to declare state of emergency throughout Pakistan. The constituent Assembly as at present constituted has lost the confidence of the people and can no longer function. The ultimate authority vests in the people who will decide all issues including constitutional issues through their representatives to be elected afresh. Election will be held as soon as possible..... The Security and stability of the country are of paramount importance. All personal, sectional and provincial interests must be subordinated to the supreme national interest (Gazette of Pakistan, Extraordinary, 1954).

The grounds of dissolution as mentioned in the Governor General's order seemed to be vague and unsubstantiated. It seemed to be a result of the strained relations between the Governor General and the Constituent Assembly which were a no secret at that time (First Constitutional Case). For example, the proclamation did not specifically mention the dissolution of the Assembly, instead it was declared only that the Constituent Assembly had failed to hold the confidence of the people. Even the proclamation did not specify the Articles of the Interim Constitution, under which it was issued (Fruman, 2011; Kalhan, 2013; Hussain, 2004). This dissolution of the Constituent Assembly gave a clear indication that the parliaments would have to be submissive to the executive otherwise be ready to face the repercussions. However, the politicians could themselves be blamed for this dissolution of the Assembly as they failed to react in a proper way against the dissolution of the cabinet. They should have discussed the merits of the dissolution of the cabinet in the forthcoming meeting of the Constituent Assembly. The

silence of the parliamentarians set the stage for the future constitutional crisis to happen as they had failed to nip the evil in the bud (Waseem, 2006).

After the order of dissolution of the Assembly was passed, the next day it held meeting on October 25, 1954 and sanctioned the draft of the 1<sup>st</sup> Constitution of Pakistan and decided that the voting would be held on October 28, 1954. However, one day prior to its meeting for voting the assembly was actually dismissed as the parliamentarians were debarred from heading towards the assembly secretariat. It is worth mentioning here that the Prime Minister had already announced that the Assembly was going to promulgate the 1<sup>st</sup> Constitution of Pakistan on December 25, 1954, the eve of birth day of Muhammad Ali Jinnah. The actions taken by the Governor General ruined all that progress and hampered the promulgation of the first Constitution of Pakistan which ultimately derailed the democratic process in the country. After his blatant attack on the democratic process, the Governor General tried to repair the damage done to the democratic process by employing a new Prime Minister and his cabinet. However, the damage had already been done and could not be reverted by these superficial treatments. Some senior military officials were also selected as cabinet members, which meant that the army had its involvement in the political affairs of Pakistan. It also suggested that the executive could topple elected representatives with the help of the armed forces. This inference was strengthened by the various military interventions in the political affairs in the days to come. However, the intervention in the political matters was not limited to the army only as the judiciary too had to play its role in the game of thrones and destruction of democratic process in this newly liberated state (Fruman, 2011; Kalhan, 2013; Hussain, 2004).

Afterwards, the higher judiciary of Pakistan was called for, as an arbitrator and ultimate source of legitimacy, to intervene and adjudicate upon a political dispute between the political branches of the state (Waseem, 2006). The logic behind this judicial intervention was that the most of the countries around the globe had written constitutions which postulates the powers of the state institutions and also the sanctions on those powers. Nevertheless, the mere presence of these constitutional guarantees is scant to limit the institutions within their jurisdiction, therefore the judiciary has been given the task of a watch dog to ensure that no state institution crosses its limits (Bhagwati, 1989). Molvi Tameezuddin Khan, speaker of the Constituent assembly, challenged this arbitrary dissolution of the assembly in the Chief Court of Sindh. This challenge by Tameezuddin lead to a series of cases in the Federal Court of Pakistan. In the given circumstances the Federal Court should have chosen one of the two options. It should have either decided this case strictly within the constitutional boundaries without being partisan, or it should have denied playing any role in the political affairs. Unfortunately, it failed to choose any of these two options and instead favoured the powerful executive. It used the doctrine of state necessity to validate the acts of the Governor General. Under the same doctrine it also empowered the Governor General to create a new constituent assembly for the purpose of framing a new constitution (PLD 1955 Federal Court 435). Basit and Hussain suggests that from that time the executive and the judiciary had nexus with each other and the general public also believed that the judiciary had been playing a subservient role to the executive in deciding political cases (2012).

#### **IV. Post Ayub Regime of Zulfiqar Ali Bhutto**

The 3<sup>rd</sup> Constitution of Pakistan was promulgated in 1973 during the regime of Zulfiqar Ali Bhutto (Blue, Hoffman and Berg, 2008; Mullally, 2009). Contrary to the previous constitution, this constitution introduced a parliamentary system of government and curtailed the powers of the president by making him bound to act upon the advice of the Prime Minister. The jurisdiction of the superior courts was determined in this Constitution and it was also declared that the judiciary and the executive will be separated from each other not later than fourteen years of its promulgation (Constitution of Pakistan 1973; Habib & Zahraa, 2012). However, this constitutional promise could not be fulfilled until the *Government of Sindh v Sharaf Faridicase* (PLD 1994 SC 105; Karim). In this case the Supreme Court held that the separation of the judiciary from the executive should be enforced immediately as it was mandatory to ensure the independence of the judiciary. However, the Bhutto regime could not continue to respect the independence of the judiciary. Bhutto curtailed the contempt of court powers of the judges through fifth Constitutional amendment (Constitution (Fifth Amendment) Act 1976). Through this amendment the tenure of Chief Justices of the Supreme Court and High Courts was fixed for five years in case they do not reach their retirement age till then (Constitution of Pakistan 1973, Art. 175). The executive was authorised to transfer a judge of a High Court from one High Court to another even for a term shorter than one year and without any consultation with the chief Justice of the concerned High Court (The Constitution (Fifth Amendment) Act 1976). However, the legal community did not show any support for the judges against these restraints on the independence of the judges. In the view of Mullally, the judges had lost the sympathies of the legal fraternity due to their excessive use of contempt powers against those lawyers who used to criticise them for their misdemeanours (2009). This attempt of Bhutto to gain control over the judiciary was considered by many as an assault on judicial independence by a political leader (Khan, 2009).

#### **V. Post Zia-ul-Haq Democratic Regime**

After the sad demise of General Zia in 1987, the democracy was restored in Pakistan. This switch over from dictatorship to democracy rejuvenated the higher courts of Pakistan. The judges of the higher courts interpreted the constitutional provisions relating to their appointments to reduce the control of the executive over the judiciary (Bray, 1997). Despite their efforts to reduce the executive control over the judiciary, they could not avoid the allegations of partisanship and were involved in further controversies (Diamond, 2000). The controversy first arose when Ghulam Ishaq Khan, the president of Pakistan, dissolved the government of Prime Minister Benazir Bhutto, but the High Court and Supreme Court turned down the petitions filed by her against this dissolution order. Similar to that of Benazir, President Ishaq dissolved the government of Nawaz Shareef too, however the response of the courts was different on this occasion as the Nawaz government was restored by the Supreme Court of Pakistan (Amin, 1994; Iqbal). This dichotomy of judgements of the same court on the similar issues led Benazir to consider about appointment of favourable judges in the higher courts of Pakistan (Iqbal). Therefore, she tried to manipulate the judiciary by appointing her favourite judge as Chief Justice of the Supreme Court in violation of the seniority principle (Blue, Hoffman & Berg, 2008). She did not content herself to the appointment of the Chief Justice of Pakistan and gave the same treatment to the appointments of the Chiefs of High Courts.

She further appointed ad-hoc judges in the High Courts from the lawyers who belonged to her camp (International Bar Association Human Rights Institute, 2009).

The outcome of the appointments was in the shape of *Al-Jehad Trust* case. In this case the Supreme Court held that these ad-hoc appointments of 20 judges in Lahore High Court were against the constitutional principles and framed guiding principles for appointment of judges of Higher Courts (PLD 1996 SC 324). This was a land mark judgement of the Supreme Court in which it interpreted Articles 177(1), 193(1), and 203-C (4) of the Constitution. It declared that the advice given by the Chief Justice in the consultation process will be binding on the President, thus minimising the chances of manipulation of judicial appointments by the Executive.<sup>1</sup> Benazir confronted the similar situation in 1996 when her government was again dissolved by the President Farooq Khan Laghari. The reasons behind her dissolution were that she tried to get approved a bill from the parliament thereby acquiring the powers to send the judges of the higher courts on forced leave (Mullally, 2009). The said bill was also going to empower the National Assembly to impeach a judge permanently through a vote of no confidence. This proposed bill was meant to fence the ability of the judges to pass judgements against the will of the government. She was also accused of failure in implementation of the *Al-Jihad Trust* case decision well in time (Mullally, 2009). Again, the challenge of Benazir against the dissolution of her government was rejected by the Supreme Court of Pakistan (PLD 1988 SC 388).

Lord Acton suggested that ‘Power tends to corrupt, and absolute power corrupts absolutely’ (Quoted in Friedrich, 1989). The powerful governments may become ferocious if judges dare to act against their desires (Hirschl, 2008). The worth of the Lord Acton’s dictum was substantiated when Nawaz Shareef formed government with an absolute majority of two third in 1997. This huge majority empowered him to amend the constitution and he did so to bring the parliamentarians under his control and minimise the powers of the president. He got approved the 13<sup>th</sup> and the 14<sup>th</sup> Constitutional Amendments, which granted him unfettered powers as the members of the Parliament were restricted from casting their vote contrary to the instructions of their party head. It meant that they were unable to support any movement of vote of no confidence against their party head. The presidential power of dissolving the assemblies was also curtailed which meant that the government could not be dissolved even if it acted against the spirit of the Constitution (Houlahan, 2008). After curtailing the presidential powers, ambitious Shareef opened another front with the judiciary (Rizvi, 2000). He tried to subjugate the judiciary by appointing judges in the higher courts from the lawyers who belonged to his ideology. While making these appointments he completely ignored the principles set in the *Al-Jehad Trust* case (Diamond, 2000). Subsequently a rift was created between Prime

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<sup>1</sup> These Articles of the Constitution of 1973 are prior to the 18<sup>th</sup> Amendment; the procedure for the appointment of High Court and Supreme Court judges, mentioned in these articles, has been changed under the 18<sup>th</sup> and 19<sup>th</sup> Amendments. Art. 177(1): The Chief Justice of Pakistan shall be appointed by the President and each of the other Judges shall be appointed by the President after consultation with the Chief Justice; Art. 193(1): A Judge of a High Court shall be appointed by the President after consultation (a) with the Chief Justice of Pakistan; (b) with the Governor concerned; and (c) except where the appointment is that of Chief Justice, with the Chief Justice of the High Court; Art. 203-C(4): The [Chief Justice] and a [Judge] shall hold office for a period not exceeding three years but may be appointed for such further term or terms as the President may determine, provided that a Judge of a High Court shall not be appointed to be a [Judge] for a period exceeding [two years] except with his consent and [except where the Judge is himself the Chief Justice] after consultation by the President with the Chief Justice of the High Court.

Minister Shareef and Chief Justice of Pakistan Sajjad Ali Shah, when Shareef ordered the arrest of two senior government officers and got them handcuffed at the spot, whereas Chief Justice Shah intervened and granted them bail immediately under his *suomoto* powers. Their relations became more tense due to their conflict on the issue of Anti-Terrorist Laws (Hussain & Khan, 2012). The situation reached to point of no return when Shah forwarded the names of three chiefs and two senior most justices of High Courts for their appointment in the Supreme Court. This move of Shah annoyed Shareef and in retaliation he reduced the maximum number of judges of the Supreme Court through an executive order. When Shah insisted on his recommendation of five judges, the Shareef's government conveyed a message to Shah that it can replace this executive order with an Act of Parliament (Rizvi, 1998).

The Supreme Court, in a response to a challenge to the 14<sup>th</sup> Constitutional Amendment, annulled these party discipline and defection clauses till the pendency of the case (Rizvi, 1998). The Supreme Court also reinstated the dissolution power of the President and thus afforded him a golden chance to dismiss the government (Waseem, 2006). However, these acts of Chief Justice Shah could not produce desired results as a rebellion group of Supreme Court Judges nullified his judgement. Though this judgement could not damage Shareef, yet he considered it as an open assault by Shah on his government (Waseem, 2006). Therefore, he started maligning the judiciary at various public forums (Hussain & Khan, 2012). In reply to this campaign, Shah initiated contempt proceedings against Shareef and his companions, the possible result of which might be disqualification and dismissal of Shareef (Hussain, 2004). To avoid the possible consequences, Shareef presented a bill to amend the contempt law but the President used delaying tactics by not signing the bill till a statutory period of 30 days (Rizvi, 1998).

According to Article IX of the Judicial Code of Conduct, it is imperative for the integrity of the judiciary that the judges should be synchronized with their fellow judges (Code of Conduct). However, most of the times the judges in Pakistan failed to strictly observe this important rule. Various instances of rift between the judges have been witnessed in the judicial history of Pakistan. Similarly, the fellow judges of Shah were unhappy with his distribution of fringe benefits and allocation of benches (Mir, 2012). Shareef capitalised this rift between the judges in his favour by dividing the Supreme Court judges in two groups; pro Shah and anti Shah. Rule XI of the Supreme Court Rules postulates that it is the prerogative of the Chief Justice to issue cause list and allocate benches to the judges (The Pakistan Supreme Court Rules, 1980). The rebellious judges issued their own cause list parallel to the one issued by the Chief Justice. This was unscrupulous and ridiculous and even unprecedented that two different benches of the Supreme Court were hearing same cases at the same time and were passing conflicting judgements (Siddique, 2006). This tussle between the judiciary ended with the removal of Shah by his rebellious judges on the ground that his elevation as Chief Justice was unconstitutional (PLD 1998 SC 161).

In addition to this insider attack, Shareef's party workers physically attacked the Supreme Court building during the hearing of contempt case against him, where they damaged the court property and threatened the judges. This was an unprecedented event in the judicial history of Pakistan (Rizvi, 1998). This incident indicated the status of respect for the judiciary amongst the general public during that period (Iqbal). The President Laghari expressed his displeasure over this incident and cautioned Shareef that

his unconstitutional moves would not be endured. Shareef responded to this warning by demanding him to sign the letter of dismissal of Shah and forwarding a resolution in the parliament to impeach the president. This was a clear message for the president that either he had to sign the dismissal of Shah or to face impeachment; he opted to resign (Hussain, 2004). With the dismissal of Shah and resignation of Laghari and elevation of Ajmal Mian as Chief Justice of Pakistan, the war like situation between the state institutions was normalised. However, the damage had already been done to the democracy and democratic institutions as soon after this episode Musharraf imposed Martial Law (Shah).

## **VI. Post Musharraf Democratic Regime**

Musharraf arbitrarily sacked Iftikhar Chaudhry, the Chief Justice of Pakistan, and many other judges of the superior courts in 2007. The lawyer's community and political parties stood up in favour of Chaudhry and other victimised judges. Shareef and Benazir signed the Charter of Democracy, pledging thereby that they will strive for restoration of judicial independence, democracy and rule of law in the country. It was further agreed that they will not become tool in the hands of dictators. However, they could not abide by their pledge and soon after the agreement, Benazir signed a deal with Musharraf. As a result of the deal, Musharraf granted her amnesty against corruption cases through National Reconciliation Ordinance, 2007 (NRO). However, a challenge to this NRO in the Supreme Court led to new constitutional and political crisis in the post Musharraf regimes (Abbas & Jasam, 2009; Ahsan, 2011; Kalhan, 2013; Mintz, 2011; Nelson, 2010; Riaz).

The Pakistan People's Party (PPP) won the general elections in 2008 and formed the government but retreated from its pledge of restoration of deposed judges. It was not inclined to reinstate Chaudhry and instead wanted to have a subservient Chief Justice, hence decided to go with Abdul Hameed Dogar who was appointed by Musharraf (House of Commons Library, 2012; Kalhan, 2013; Lee, 2010; Nelson, 2010). To avoid Chaudhry, it tried to fizzle out the lawyer's movement with the help of lawyers from its camp. To dissipate the impact of Chaudhry's tours across the country, they arranged meetings of Dogar with lawyers at various local bars. Further PPP attempted to divide the toppled judges by offering them reinstatement excluding Chaudhry. This move succeeded in producing desired results as 58 judges out of 64 grabbed the opportunity and only Chaudhry with few other judges left to be reinstated (Ghias, 2010). It was a sorry state of affairs and injurious to the judicial independence that a political government was determined to continue with the judges inducted by a military dictator (Riaz). As those judges were arbitrarily removed, hence constitutionally they were still under oath and they were not required to take a fresh oath and there was no justification for their reappointment (Riaz). By accepting the offer of PPP to take fresh oath they betrayed the lawyers and other judges who are struggling for the judicial independence (Riaz). This move of the government added more to the anger against the government within the legal community (Khan).

Musharraf did not extend the benefit of absolution granted by NRO to the Shareef brothers against their conviction in hijacking case, hence they were held ineligible to contest the general elections by the judges who were inducted by Musharraf. In retaliation the Shareef brothers launched an aggressive movement with the help of lawyers and other political and civil forces for restoration of the judges who were not yet



reinstated by the PPP government. This movement led to the outbreak of new political calamity in the country (Kalhan, 2013; Lee, 2010; Nelson, 2010). The huge pressure generated by this movement left PPP government with no other option but to reinstate the rest of the deposed judges (Khan; Lee, 2010; Waseem 2012). This series of events suggested that now the politicians had to acknowledge and respect the public support for judicial independence in the country (Kalhan, 2013).

After reinstatement, Chaudhary faced a daunting task of cleansing the judiciary from the judges who were appointed by Musharraf on account of their subservience to him. Without purging the judiciary from these judges, it was difficult to sustain the public confidence in the neutrality and independence of the judicial institution (Khan). There were three categories of judges in the higher courts at that time; the judges who did not refuse to take oath under the Provisional Constitutional Order, 2007 (PCO) of Musharraf; the judges who were inducted afresh by Musharraf after denial of various judges to take oath under his PCO; the judges who were reinstated after restoration of democracy (Mullally, 2009). However, an agreement could not be reached between the legal fraternity as to whether the parliament should remove these judges by its Act or it should be left to the Chief Justice to handle it by himself (Mullally, 2009). Ultimately, the Supreme Court passed a land mark judgement thereby declaring all the judicial appointments, made by Musharraf after imposition of emergency, to be unlawful and void ab initio as they have never been appointed (PLD 2009 SC 879; Gazdar, 2009). The judges, who were serving at the time of imposition of emergency and decided to take oath under Musharraf's PCO, were prosecuted for breach of the Code of Conduct (PLD 2009 SC 879).

After bringing its house in order, the Supreme Court led by Chaudhry passed some judgements in critical cases which were derogatory to the interests of the PPP government (Kalhan, 2013). The PPP government defused these judgements by interpreting these according to its own sweet will and using delaying tactics (Waseem, 2012). The Supreme Court continued its drive and created further panic in the lines of PPP by invalidating the NRO, which resulted into re-opening of corruption cases against PPP leadership, other political leaders and bureaucrats. The Court reasoned that NRO was contrary to the judicial independence as the corruption cases were withdrawn by executive orders and without judicial consent. The plea of beneficiaries of NRO that it was issued in the national interest for reconciliation was also rejected by the Court. The Court held that its sole purpose was to safeguard the big guns against corruption charges (PLD 2010 SC 265). The Supreme Court had to face the allegation of crossing its limits and stepping into political sphere while handling the typical questions of political morality and integrity. However, Kalhan favoured this judicial activism by arguing that the courts are assigned a role of watchdog in a constitutional setup and the Supreme Court did the same while limiting itself to its legal boundaries (2013).

The Supreme Court directed the PPP government to write a letter to the Swiss government for revival of the money laundering cases against the President Zardari, however the government denied executing this order (Express News, 2012). The Supreme Court constituted a special bench to monitor the implementation of its judgement. This bench declared that the Prime Minister Yousaf Raza Gillani was wilfully defying the orders of the Court (Crl M A 486 of 2010 in Criminal Appeal No 22 of

2002). This judgement added more fuel to the already existing tensions between the judiciary and the government (Jetly, 2012).

The Supreme Court prosecuted Gillani for the contempt of court as he had allegedly declined to implement the judgement of the Court and ridiculed it. Gillani was thus convicted for the offence of contempt of court and was sentenced to undergo imprisonment till the rising of the court. After announcement of the judgement the court was adjourned thus Gillani had to spend only one and half minute in imprisonment, but it could have resulted into his disqualification from the seat of the National Assembly (Criminal Original Petition No 06 of 2012 in *Suo Motu Case No 04 of 2010*). This judgment prompted an aggressive argument in the civil society and legal circles about the role of the judiciary. Many considered it as a milestone towards establishing a democratic culture and institutional independence in the country and asked Gillani to resign but he refused (Jetly, 2012). On the contrary some regarded it as a transgression on the part of the judiciary and believed that it could be harmful for the newly established democracy in the country (Jamali, 2012; *The Malaysian Insider*, 2012). Similarly, the supporters of PPP termed it as judicial coup (House of Commons Library, 2012). Many had already expressed their reservations against the judicial activism of Chaudhry (Daily Times, 2010; Rizvi, 2010). Asma Jahangir expressed her concerns by terming it as 'hyperactive' and apprehended it turning into a judicial dictatorship (Daily Times, 2010). Nevertheless, a careful analysis of the case suggests that the court expressed maximum judicial restraint and did not act in haste or anger. The NRO case continued for years and the government used all delaying tactics in implementation of the judgement, but the court held its nerves. However, in the end the court had no other option but to implement the judgement through coercive measures (Jetly, 2012).

Ironically, the speaker of the national assembly assumed the role of appellate court against the judgement of the Supreme Court and declared that the charge of ridiculing the court was not specifically framed hence, constitutionally Gillani could not be disqualified (Jetly, 2012). This ruling of the speaker was challenged by the opposition in the Supreme Court. The court ultimately declared that the ruling of the speaker was against the judicial independence and overruled his order and itself disqualified Gillani as a member of the parliament from the date of his conviction (PLD 2012 SC 660). After disqualification of Gillani, the PPP government attempted to safeguard its new prime minister against any possible disqualification by introducing amendment to the Contempt of Court Act. Nevertheless, the Supreme Court vitiated this attempt by declaring amended law as against the constitution and declared that the parliament cannot be allowed to curtail the powers of the court as it would be tantamount to curbing the constitutionally guaranteed independence of the judiciary (PLD 2012 SC 660).

A new conflict between the judiciary and political forces erupted in 2017 when the Supreme Court of Pakistan formed a Joint Investigation Team (JIT) to investigate the corruption and money laundering charges against Shareef and his family in the aftermath of Panama Leaks (Chaudhary, 2017). The JIT found Shareef and his family guilty of the charges levelled against him and submitted its report in the Supreme Court (JIT Report). The Supreme Court in its judgement ordered the National Accountability Bureau (NAB) to file references against Shareef and his family in the Accountability Court and disqualified him for life from the membership of the parliament (PLD 2017 SC 265). Later, Shareef and his daughter were convicted and sentenced to imprisonment by the

Accountability Court against corruption and money laundering charges (Asad, 2018). Nawaz Shareef and his daughter Maryam Nawaz became furious against the Supreme Court and used very ruthless language against the judges of the Supreme Court in their speeches, resultantly, the courts banned the media to telecast their aggressive speeches against the judges (Khan, 2017).

## VII. Conclusion

The present paper finds that the presence of independent and robust judiciary provides a life line to the democracy against any sort of threat from the non-democratic forces. Therefore, it is a primary responsibility of the political elite to strive for the protection and nourishment of judicial independence. Unfortunately, the political forces of Pakistan who should have tried to perform this vital task in a best possible way, failed to discharge this obligation. Furthermore, this research paper concludes that, instead of working for judicial independence, the political governments of Pakistan considered independent judiciary as a threat to their political designs. Thus, despite the constitutional guarantees, they always tried to subvert the judicial independence whenever their arbitrary use of authority was called into question by the courts.

On the other hand, this paper also finds that the judges have also failed to persistently show integrity and impartiality in the times of judicial or political crisis. They have been accused of partisanship and thereby undermining the repute of the judiciary. The public confidence in the judiciary was restored after the long movement for restoration of deposed judges during Musharraf regime. However, after the return of democracy in the country, the politicians and judges again indulged in political conflicts that potentially could damage not only the judicial independence but also the democracy itself. It is evident from the judicial and constitutional history of Pakistan that after the Zia regime the politicians and the judges indulged into conflicts and consequently the democratic system was purged by Musharraf. Now after the Musharraf regime the politicians and judges have again involved in controversies which potentially can result into another coup. Therefore, the researchers recommend that the political forces and the judiciary should reconcile and stay within their boundaries for the sake of democracy.

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