LAWYERS' MOVEMENT AND EXECUTIVE-JUDICIARY RELATIONS IN PAKISTAN

Amna Mahmood[*]
Samina Yasmeen[**]

Abstract

General Musharraf suspended Chief Justice (CJ) Chaudhry on the charges of corruption and misuse of authority. This was the start of protest movement by the lawyer community for restoration of CJ, in turn for the independence of judiciary. The Lawyers's Movement (LM) was later joined by all factions of civil society especially in urban areas almost paralysing social and economic activities. After being restored, CJ Chaudhry took a number of suo-moto actions in public matters and declared PCO and NRO as unconstitutional. It was a start of new era of judicial-activism setting the new patterns of executive-judiciary relationship. This paper focuses on how social groups started a movement against a military dictator and what were the results of judicial-activism on the political scenario of Pakistan. How did a social movement shape the pattern of executive-judiciary relations in the long run and whether these patterns continued under civilian governments? It also identifies the consequences that created institutional imbalance and partially paused the working of two eminent government institutions.

Keywords
Judiciary, executive, judicial activism, Lawyers' Movement

Introduction

An independent and free judiciary is considered to be the guardian of basic human rights. No democracy can work without protecting neo-liberal values like basic civil human rights, equality and rule of law which are to be protected by an independent judiciary.

[*]Professor/Chairperson Department of Politics & IR International Islamic University, Islamabad.
[**]Associate Professor Department of Pakistan Studies Allama Iqbal Open University, Islamabad.

Although, in dictatorships or in quasi-civilian setups, state institutions cannot be completely independent. In such settings dictators enjoy unlimited authority and the institutions are used as he desire.

Objective Resolution of Pakistan, passed in 1949 by the first Constituent Assembly of Pakistan, has guaranteed free and independent judiciary. This resolution has served as cornerstone and preamble of 1956, 1962 and 1973 Constitutions and later it has become part of constitution under article 2-A of the Eighth Constitutional Amendment in 1985.Therefore it is clear that all the constitutions of Pakistan have guaranteed free and independent judiciary. However, Judiciary has surrendered its constitutional right to Executive under "Doctrine of Necessity"1 by legalizing illegitimate actions of the chief executives especially in case of all military coups. It provided legitimacy to three out of four matial laws in Pakistan, i.e., 1958, 1979 and 1999. Only coup of Yahya Khan was declared as unconstitutional that too after his resignation. However, the dawn of 21st Century has witnessed the change in Judiciary's tone as Supreme Court (SC) instead of serving Executive's interest took independent stance and challenged many actions of the government, mainly the privatization of the industries, military attack on Bhugti and missing persons cases.

Pakistan has been witnessing Judicial activism since 2006. Chief Justice (CJ) Iftikhar Chaudhry took suo-moto action on privatization of Steel Mill and refused to allow selling this national asset at a very low price. Although the efforts of judiciary to interfere in a few cases agitated Gen Musharraf, the military dictator, however the immediate reason for Musharraf's action against CJ Chaudhry was SC's possible verdict on the eligibility of Musharaf in the upcoming elections. He got aggressive on CJ Chaudhry's stance and suspended him on charges of corruption and misuse of authority and the next senior judge of SC was immediately appointed as the acting CJP.

The lawyers community responded aggressively and, an unexpected, judicial movement started. Infact, it was not just the movement for the refurbishment for the CJ Chaudhary but for the independence of judiciary. Initially it was an elite movement by lawyers which later converted to a social movement as all factions of civil society joined it, especially in urban centres. Nearly all the political parties joined the Lawyers' Movement compelling Musharaf to resign ultimately. The struggle for the respect of Apex court restored civilian rule in the country. This article studies executive-judiciary relations during Musharaf regime and the newly elected government of Pakistan People Party Parlimentarian (PPPP), formed after the elections

of 2008. However it does not cover the inter-institutional reletions after PPPP government.

Conceptual Framework

The essence of democracy lies in separation of power where all state's intuitions are independent and free to take decisions. The old Institutionalism Theory underlines the politics of state's intuitions in power spheres where all state's institutions i.e. legislative, executive and judiciary try to interfere in each other's' spheres (*Montesquieu*, 1950). In dictatorial settings or in a quasi-civilian regime, the executive branch of government tries to interfere in affairs of legislature and judiciary to fulfil its interest. Here in Pakistan, military dictators have always kept judiciary as their arch to accomplish their unconstitutional deeds. In his first phase as honourable judge of SC, CJ Chaudhary stood with military dictator and took oath under Provisional Constitutional Order (PCO) issued by Musharraf. He was also a part of all the five benches of SC which legitimized all actions of Musharraf regime and consolidated his rule. However, the picture changed when he became Chief Justice in 2005. He realized his role as the guardian of the constitution being head of apex court of Pakistan. As CJ he took stand to restore judicial neutrality and tried his best to work independently. Consequently Musharraf suspended him from CJP office.

Lawyers' Movement in Pakistan was actually a movement to restrict chief executive of Pakistan in its power sphere by restoring independence of judiciary. The libereral democracy required an independent judiciary but it is not it's only pre-requisite. It requires all its governmental organs i.e. legislature, executive and judiciary to work freely within the framework given by the constitution (Rizvi, 2012). The balance in institutions guarantees actual democracy by protecting civil rights of the people. It also bars over empowerment of any state institution. Restoration of Iftikhar Chaudhary as the CJP became a sign of a powerful judiciary with executive and legislature working independently in their own domians. However this activism resulted in over empowerment of one institution leading to institututional power imbalance.

Background

Neutrality and the rule of law was upheld by the SC, in general,in the pre-Lawyers' Movement history of Pakistan. They proclaimed that they will remain honest with their profession and the quality will be maintained in the decisions. Some audacious judgments

were given against the executive branch to establish privacy rights of the citizens, social equality, women's education and suspension of military courts' decisions against civilians. On the basis of these decisions, the SC could be declared as an independent and an honest entity. (Ngarmboonanant, 2014). However, SC seemed helpless when the case of legitimization of military regimes was put forward. From validation of dissolution of the Constituent Assembly by Governor General Ghulam Muhammad to that of imposition of martial law by Musharaf in 1999, its role has been really despicable as a democratic institution. As Ghias (2010) pointed out that the Pakistani Supreme Courts have been validating all but "legitimizing nothing" before 2007.

The SC remained disloyal to the nation by not delivering to the nation when it did not protect the constitutional responsibilities by giving illegitimate decisions. Further that, judiciary gave the power to the dictatros to change the constitution according to their likings despite being the custodians of the constitution. The judges feared the military dictators and let them do what they wanted. Some scholars believe that the judges of SC have 'developed a theory of prudence,' in the form of doctrine of necessity (Wolf-Philips, 1979, p. 4), that it would be better to remain a part of system to keep a check on the illegitimate rule of the military which would not be possible otherwise (Ngarmboonanant, 2014). As Justice Samdani wrote in his book that, "it was perhaps not advisable at that stage to precipitate a confrontation between the judiciary and Martial Law regime"(Samdani, 2007, p.88). However this concept proved wrong since the dictators sacked the judges who dared to resist them when they got legitimacy by the SC. They amended the constitution to leglise their illegitimate actions and seized power for more than decades. The judges were discarded once they validated the rule of a dictator. For example Gen Zia not only used judiciary to legalize his military rule but also to prosecute elected Prime Minister Zulfiqar Ali Bhutto in a lawsuit and the same judges were thrown out in a disgraceful manner later, earning a bad name for the whole institution of judiciary.

Actually this theory only applies to those judges who negotiated and accepted the illegitimate rule of the military dictators under the doctrine of necessity. In fact, it was just a concealment of wish to survive. However, there were many judges who preffered to resign instead of taking the oath under Legal Framework Order (LFO) issued by the dictators. The five judges of the apex court were amongst many othes including the CJ Saeed-uz-Zaman Siddiqi who refused to take oath under PCO and resigned. (DAWN, 26 January 2000).

Higher Judiciary and Musharraf's Martial Law

Musharraf imposed martial law in 1999 after dismissing Nawaz Sharif and issued LFO on 21 August 2001 (The News, Islamabad, 22 August 2002). The SC provided him legitimacy under the 'doctrine of necessity'. SC also legitimised referendum and election of October 2002 (Shah, 2014). Musharraf announced, "The Supreme Court allowed me to amend the Constitution. I will not remove my military uniform, nor would give a time in this regard. I understand uniform has to be removed, as it is not democratic" (LFO Can't be Undone, 2003). On the basis of this judgment of the SC, Musharaf remained the Chief of Army Staff (COAS) even after becoming president. He civilianised his dictatorial regime by making his political party 'Pakistan Muslim League Quaid-i-Azam (PML-Q)' which braced his actions "in the interest of democracy" (Musharraf Set to Win, 2002).

Executive Judiciary Confrontation

The issues started when the CJ started taking suo-moto against a number of government actions. However there were two important issues which perturbed Musharraf. One was the steel mill case (Pakistan Steel Mills Case, 2006). Musharraf felt embarrassed nationally and internationally when the SC declined to agree the sale of nationalised steel mills at a throw-away price, in 2007. Second was missing person's issue. SC held security agencies to be responsible in forced disappearance of Pakistani citizens without due process of law, since 2001.

CJ Chaudhry's aggressive stance towards government actions alarmed Musharraf. He wanted a submissive CJ to support his action because he wanted to contest election for next term of presidency. To secure his position he decided to sack the CJ. Musharraf called him on 9th March 2007 and ordered to resign in the presence of the PM and ISI Chief on the charges of corruption and misuse of power. Chaudhary refused to resign. The matter was exposed to media and was telecasted nationwide. CJ Chaudhary was sacked by Musharaf and a reference was sent against him in Supreme Judicial Council under the Article 209 of the Constitution. Justice Javed Iqbal was appointed as the acting CJP under Article 180. (Kamran, 2007)

First Phase of Lawyer's Movement

The CJ Chaudhry's refusal to bowdown before Musharaf and challenging his reference in court activated the lawyers to launch a

movement to restore CJP. It later galvanized pro-democratic forces, civil society, students and ultimately the commeners.

Musharraf tried his best to restrain the movement which included the suppression of media, to the baton charge on protesters and arrests etc. Private news channels were banned by PEMRA for broadcasting live protests (Journalist take to streets, 2007). Journalist responded this high handedness by joining protest against the government, further augmenting the anti-government momentum created by Lawyers' Movement.

Under the public pressure a full bench of SC restored CJ Chaudhry in office, by a majority decision, (Chief Justice of Pakistan-vs-President of Pakistan, 2007-PLD-578) declaring his suspension by President as illegal, on 20 July 2007 (CJP Iftikhar Reinstated, 2007). Chaudhary became the emblem of judiciary's independence. The way he attracted public and won the hearts never happened before in the history of social movements. The public support gave him the power to look into the eyes of the dictator and restore civilian supremacy.

CJ Chaudhry became more of a threat to Musharraf after his reinstatement in office. He totally embarrassed regime by a historic judgment when he allowed exiled chairman of Pakistan Muslim League-Nawaz (PML-N) to come back home. Under the court decision Nawaz Sharif returned in September 2007 from London but vehemently sent back to Saudi Arabia, by the authorities within hours. As it was the court decision, and public support was with CJ Chaudhry, Musharraf could not resist and Nawaz returned again in November 2007 (Nawaz Sharif-Dost Pakistan, 2013). In order to counter Nawaz, Musharraf concluded deal with Benazir Bhutto, the co-chairperson of Pakistan Peoples' Party Parliamentarian (PPPP), former prime minister of Pakistan for two terms, for the withdrawal of all cases against her husband. Later to implement that agreement he issued the National Reconciliation Ordinance (NRO). It was issued on 5 October 2007. Section A was added to Ordinance, XVIII of 1999, which assures the withdrawal of long standing court cases against public office holders. It was enforced with immediate effect (Dawn, 6 October 2007). Pakistan government published the list of those who benifited from NRO 22 November 2009, which approved exoneration to the executives and the highest office holders who were accused of corruption from 1986-to-1999 (Dawn, 23 November 2009). Musharraf's PML-Q did not welcome this NRO and declared it as a US-imposed decision (Statement of Ijaz-ul-Haq on PTV, 2008). However for Musharraf, it was barely possible to ignore changing mood of the US Congress and

declining ability of US administration to support him as an inevitable ally in War on Terror (Siddiqa, 2007).

Second Phase of the Lawyers' Movement

The CJ Chaudhry, confident by his public following, became more hostile towards the executive decisions. Musharraf was perturbed due to this attitude because he was interested in his re-election as president of Pakistan. As expected the legitimacy of the presidential candidate in uniform was challenged in SC. The SC provisionally allowed the assemblies, federal and provincial, elected in the general elections of 2002, to elect the president on 6th October 2007. However the Election Commission was ordered "to keep the results classified until a final decision was reached on the petitions challenging the candidacy of President Musharraf"(Ghauri, 2007). Musharraf found it hard to face disqualification and proclaimed so-called emergency (Emergency will Endanger Pakistan, 2007), and issued PCO second time. However it was not an emergency under the Constitution.2 Musharaf was using threat from Al-Qaeeda leaders as justification to impose emergency and suspended articles 15, 16 and 17, dealing with fundamental rights of citizens.

It was the third attack on judiciary in Musharraf's rule. First attack was when Judiciary was asked to take oath under first PCO (2000); second time when the CJ Chaudhry was suspended in March 2007; and third time when judges were asked to take fresh oath under PCO in 2007. Higher Judiciary resisted and CJ Chaudhry, who had taken oath under first PCO, ordered all his colleagues from higher judiciary, not to take oath under PCO. He constituted bench of seven members of the SC, headed by himself and declared imposition of emergency as unconstitutional, the same evening. Responding to CJ's call sixty judges of SC and all HC, refused to take a fresh oath and they lost their jobs. Majority of them took a fresh oath under government of Asif Zardari in 2009.

The motive of asking for fresh oath under PCO 2007 was to pressurise CJ to validate emergency and also grant indemnity to military regime. Eventually Musharraf became successful to institute a cooperative apex court after CJ Chaudhry. The SC validated not only the emergency and the PCO but also gave the powers to Musharaf to amend the constitution under the 'doctrine of necessity.' The Apex court also nullified all the petitions, pending against Musharraf and legality of his candidacy. Musharraf took full advantage of his control over the political scene again and postponed the elections after the assassination of Benazir.

At this time the Lawyers' Movement was re-energized for the protection of judiciary and it attracted more factions of civil-society and all political parties too. Public demonstrations were unprecedented throughout all urban centres of the country. The intensity of the situation forced Musharraf to lift emergency and remove uniform also. However, his election as a president for next term and his constitutional amendments to grant indemnity to his emergency could not save him from resignation and self-exile from the country.

The election results of 2008 were the reflection of public rejection of Musharraf's quasi-civilian order (2002-2007) in which elected prime minister and ministers were directly responsible to military president rather than the elected parliament (Rizvi, 2008). However he never expected that his King's Party PML-Q would be trounced. The sympathy vote due to assassination of Benazir put the PPPP on victory stand with a narrow mandate (Special Report, NOS, 2008).

Post-Musharraf Civilian Government and Restoration of Judges

The expectations were high that the new civilian government would restore Judiciary on pre-emergency position, especially after ouster of Musharraf and inaugural of Asif Ali Zardari, the elected civilian President of Pakistan. It was expected that new government would be free in policy making domain. The 'Charter of Democracy' an agreement between PML (N) and PPPP in Bhurban further raised the hopes (Daily Times, 2008).

Under the rhetoric of Lawyers' Movement all the political parties except PML-Q were committed to restore all the judges who lost their jobs due to not taking oath under Musharraf's PCO in November 2007. But President Zardari was hesitant to restore CJ Chaudhry because of the fear of SC's decision on NRO. Zardari was expecting that after the restoration, CJ would open all the cases closed against him under NRO.3 (Dawn, 20 June 2012).

Although Prime Minister Yousaf Raza Gillani released CJ Chaudhry from house arrest along with all other judges, immediately after taking oath of his office, but PPPP government took another year to decide the issue. Climax of the movement was the "Long March" by opposition parties and Lawyers, in March 2008, led by Nawaz, to restore the CJ Chaudhry. In the morning of 16 March, when Long March was en-route to Islamabad, Prime Minister Yousaf Raza Gillani restored CJ Chaudhry by an executive order. However government's resistance, arrests of political workers, baton charge on demonstrations, and blockage of routes to Islamabad, further discredited it. The Gen

Kayani's role was very positive in resolution of issue during Long March. He had several meetings with the PM and the president. Phone calls from Hillary Clinton, the US Secretary of State were also quoted as external pressure on Zardari to restore judges of higher judiciary.

Civilian government of PPPP and executive judiciary relations

A reinstated CJ Chaudhry emerged as a popular national figure, supported by a strong and vibrant Lawyers' Movement supported by opposition political parties. The PPPP government's delay in implementation of its word of honour about deposed judges placed it as a target of CJ Chaudhry. CJ Chaudhry took hard decisions by declaring all the action taken by Musharraf after 3rd November's emergency as unconstitutional. On 31st July 2009, he decided, in response to a constitutional petition about the legitimisation of the appointments in 14 months when Chaudhary was sacked, that all such appointments were illegal. 110 judges of the SC and 4 judges of the HC were dismissed after this decision. These judges were not just the judges who took an oath under PCO but also those who were appointed in the higher courts before the restoration of Chaudhary in the four months. These judges, including CJ Adul Hameed Dogar, were declared as not to have been judges at all. (Gazdar, 2009).The hostility in the form of nullifying government actions and suo-moto actions against government decisions, which were once the feature of SC against Musharraf were extended with new vigour to the PPP government.

Although SC avoided confrontation with military as an institution and did not order the accountability of Musharraf and his co-conspirators either civilian or military. The SC deflected the question of accountability of Musharraf to the parliament, in response to a petition. Gazdar discussed the detail in his article that Aitzaz Ahsan, right hand of CJ Chaudhry and a highlighted front runner of the Lawyers' Movement, "held a meeting with the Army Chief General Ashfaq Pervaiz Kayani day before the judgment…speculation was rife that assurances might have been exchanged between the CJ confidant and the top soldier" (Gazdar, 2009). Although it was a known fact, but supporter of court declared it as the supremacy of civilian authority.

Initially CJ Chaudhry and PPPP government avoided confrontation by giving good gesture to each other. Government welcomed courts' verdicts with open arms, and in return courts did not invalidate general elections 2008. All legislations enacted during the period of emergency and NRO came under the review of court but court referred those to the parliament. The CJ Chaudhry also did not take any action against the routine working of the PCO courts and oath

of President Zardari by PCO CJ Abdul Hammed Doger.4 The SC also did not question the legality of government's action to continue CJ Doger in office till his super annum age. However later developments revealed that CJ Chaudhry aimed at to expand its powers first, without igniting an all-out war rather 'only preparing for it' (Gazdar, 2009).

SC started vitalizing against PPPP government was not without cause. The dismal performance of PPPP government in governance and rising corruption stimulated more suo-moto actions than ever. Moreover the SC was not ready to sale national steel mill at a through-away price as it did during Musharraf period (Suo-moto Case No. 15 of 2009 A/W Cmas). NRO Cases also were accepted by the SC and were handled by the benches presided by CJ Chaudhry himself (Supreme Court Jurisdiction). SC disqualified the Prime Minister of Pakistan in contempt of court case for not writing letter to Swiss government against President Zardari's accounts recovery. The next Prime Minister in office has to face trial in rental power plants corruption case. However PPPP government adopted a dual strategy: it continued the policy of non-confrontation with any of the government institutions and tolerated all criticism; continued to resist the implementation of SC's decisions. The apex court under CJ Chaudhry invoked contempt of court against the other government officials as well. The SC also intervened in daily governance issues like pricing of basic commodities, gas, oil etc., and also checked government efforts to expand tax base. Federal budget was revised under the SC court decision (Boones, 2013). This was unprecedented in a democracy and against institutional balance created in Constitution of 1973, but under a strong wave of judicial activism CJ Chaudhry continued it till his retirement.

Discussion

In a democratic state, when the governments cannot deliver up to the expectations of the people, judiciary takes the task as did Pakistan's Apex Court in first decade of the Twenty-first Century. The expansion in media's role helped to establish higher judiciary as a guardian of people's liberties. In Pakistan Judicial activism appeared in 1990s, but in the battle of supremacy over each other, the executive branch won over judiciary because of internal divide within the higher judiciary and CJ Sajjad Ali Shah had to resign (AetizazAhsen, 20 October 2009). In case of military regimes higher judiciary remained submissive and validated their illegitimate rule under the doctrine of necessity.' Both in case of imposition of martial law by Gen Zia in 1977 and Gen Musharraf in 1999, judiciary used this supra-

constitutional concept to validate military rule and extended power of constitutional amendments to the military rulers. However they were alarmed when military governments flexed their muscles beyond the powers granted by the SC. But it was the time of military dictators to curtail the powers of the courts under PCOs. Those judges who refused to follow military's dictates had to lose their jobs.

CJ Chaudhry took the oath in 2000, under 1st PCO of Musharraf and validated martial law, referendum as a president, and granted him powers to amend the constitution. He was a trusted loyalist to military regime until 2005, when he became CJ of Pakistan. When his suo-moto actions started perturbing Musharraf then he decided to get rid of him. It was the same action taken by Zia against then CJ Yaqub Ali, when he accepted constitutional petition similar to that accepted by CJ Chaudhry. But nobody raised voice for CJ Ali's forced exit from office. However CJ Chaudhry's case was different. Infact the power of media augmented image of CJ as custodian of people's rights in Pakistan, and civil-society accepted the call of lawyers to launch a social movement to restore his honour as CJP.

With the rising level of education, continuity of democratic process and liberalisation of media created more consciousness among the people for their fundamental rights. Previously it was supposed that the people of Pakistan are contented to the provision of the services and good governance only, as Laila Bokhari, pointed out in her chapter contributed to Cohen's Future of Pakistan (Cohen,2011). But peoples' response to assault on judiciary proved that it was not true. They became politically conscious and were not ready to compromise on rule of law, provision of rights and political participation in decision making process. Generally this argument proves that people have parochial attitude and always welcomed martial law in the country, especially in 1977 and 1999 when the military dictators dismissed elected governments of Zulfiqar Bhutto and Nawaz. But if we probe into the matter, it can be accessed that people of Pakistan do not like authoritarian behaviour even in civilian governments. It is visible that above mentioned prime ministers had lost their credibility as public representatives because of their dictatorial acts. Their drive to subordinate judiciary and strive to acquire absolute powers in their hands made them unpopular. People of Pakistan accepted military rulers only on their pledge for free and fair election and restore political order at the earliest.

The lawyer Movement made higher judiciary a public institution though not elected by the people of Pakistan. Thanks to the strong role of media, CJ Chaudhry emerged as a defender of peoples'

interests. This image mobilised civil society against Musharraf's assault against apex court. If Musharraf would have been confined to legal proceeding against CJ Chaudhry, people could have tolerated. Nonetheless the media coverage of first humiliation by a dictator and later manhandling of the CJ Chaudhry by police, made people realise that if CJ Chaudhry's rights were not protected then where stood an ordinary citizen.

Now comes the question of independence of judiciary, no doubt that an independent judiciary effectively working within the parameters of the constitution, based on separation of power among three organs of the state is taken as the custodian of the peoples' rights, and guarantee of the institutional balance in a state. The Constitution of 1973 grants the powers of judicial review to SC to interpret the law and also to ensure the authenticity of any law formulated or amended by legislature. However, SC has no authority to formulate a law, as it is the sole responsibility of legislature. Similarly fixing prices of daily utilities, transfer and appointments of government officers and use of allocations approved by federal budget are the domain of executive branch (Ashraf, 2013). Such interferences in fact paralyse the working of the government.

Although the judicial activism is an established principle used by the higher courts for protection of peoples' liberties and welfare of society (Rizvi, 2012). However the excessive use of judicial power and suo-moto action by SC and HCs has been a centre of debate in the civil society. As Babar Sattar (2012), a constitutional lawyer wrote:

> There can be a legitimate debate on the need or scope of a 'political question doctrine' as part of our constitutional law that strikes the right balance between judicial activism and restraint. But to argue that the judiciary intrudes into the executive domain out of necessity when people look up to the peoples' court in utter helplessness, is just that another doctrine of necessity.

There should be some limit to the use of judicial power to preserve independence of the other institutions. After 2009, the decisions taken by a reinstated CJ crossed the limits of judicial independence, paralyzing all the machinery of government. Sensing the courts' mood opposition parties raised a number of political issues to the SC that deserved exclusive political treatment in the parliament otherwise (Rizvi, 2012). Courts have been used to re-scheduling of the

elections of Senate and President of Pakistan (Boones, 2013) which was the discretion of Election Commission of Pakistan.

Ironically the excessive coverage of SC proceedings by media gave this very prestigious institution a public image. Comments of honourable judges on the working of government, in particular and the political system, in general, showed a political behaviour, not suited to judiciary. The point is that the honourable members of higher judiciary are not the political leaders, who need to remain in news headlines. As Justice (Retd.) Sardar Muhammad Raza contended that:

> Justifying the intervention of judiciary on the ground that the executive has failed to solve the problems of the people and they look up to the court to redress their grievances, is tantamount to reincarnation of the doctrine of necessity which the CJ claims to have buried forever (Ashraf, 2013).

However a legal approach to judicial activism for the fortification of the human rights and interests of the citizens of Pakistan, and national interests of the country can be justified. The SC should have not accepting issues with political implications and let political matters be decided by the representative forum like parliament.

Conclusion

Democratic norms ensure the autonomy of all state institutions i.e. legislature, executive and judiciary through separation of power in which every organ of government has to perform specific functions. Although the military and bureaucracy are considered to be the major threat to democracy in post-colonial states. However an equally crucial threat to the political system in the transitional phase, is the power struggle among the government institutions i.e. judiciary, executive and the parliament. This threat cannot be countered unless the constitution, responsible for the division of power among these institutions, is not followed in letter and spirit. Separation of power creates an institutional balance in a polity, while an institutional imbalance leads to instability and disruption in political order. Social movements, like Lawyers' Movement help to reform the system, if their fruits are equally distributed in the society and not to benefit a particular class or faction. But in Pakistan Lawyers' Movement gave rise to judicial activism and strained executive judiciary relations never to recover. Moreover it empowered lawyers which disrupted social order many times even after the end of this movement.

[1]Federal Court's bench headed by Justice Muhammad Munir declared the verdict of Sindh High Court unlawful in Maulvi Tameezuddin case on technical grounds. The only dissenting note was written by Justice A.R Cornelius against this decision. Federal Court's verdict favored Governor General in dissolution of First Constituent Assembly.

[2]Emergency can be imposed under the article 232 of the Constitution of 1973, by the President of Pakistan approved by the parliament for four months in case of failure of law and order situation or any internal or external threat to the security of Pakistan.

[3]His expectations came true and the NRO was declared to be unconstitutional in 2009 and PM Gillani was disqualified by SC on 19th June 2012.

[4]Electoral process, qualifications of candidates and results were not touched on the ground that popular sovereignty trumps everything.

References

Ahsen, Aetizaz (20 October 2009), interview by the researcher, at Lahore.

Akhtar, N. (2012). The Upper Hand On Pakistani Politics: An Analysis of Seasonal Politics. *Virginia Review of South Asian Studies.* 14:2.

Ashraf, M, M. (2013, January 9).Judicial activism. *Pakistan Today*. http://www.pakistantoday.com.pk/2013/01/09/comment/columns/judicial-activism/. Retrieved on 14/10/14

Bokhari, L. (2011). Addressing Fundamental Challenges in the Future of Pakistan. Ed. Stephen Cohen. Washington, D.C.: Brookings Institution Press. P. 93.

Boons, J. (2013, August 28). Pakistan's chief justice Iftikhar Chaudhry suffers public backlash. The Guardian.

CJP Iftikhar Reinstated: Presidential References Thrown, (2007, July 21), Daily Times.

Gazdar, H. (2009, August 8). Judicial Activism vs Democratic Consolidation in Pakistan. Economic & Political Weekly.

Ghauri, I. (2007, November 7). Presidential poll today, result after SC verdict. Daily Times.

Ghias, A, S. (2010). Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf. Law & Social Inquiry.

http://archives.dailytimes.com.pk/main/06-Oct-2007/presidential-poll-today-result-after-sc-verdict, retrieved on 28/10/14.

Haq, I. (2008). Former Minister for religious affairs, Interview with PTV, with IsrarKasana, on 06 March.

Journalist take to streets against media curbs, (2007, December 15), The News. http://www.geo.tv/curbsonmedia /1512007.html#1, retrieved on 12/10/2014

Kamran, M. (2007). Musharraf Wants CJP Iftikhar Out. Daily Times.

LFO Can't be Undone: Musharraf: No Time Frame on Uniform, (2003, June 19), Dawn News.

Musharraf Set to Win Fresh Term Today, (2002, April 30), Dawn News.

Montesquieu, Baron De. Standard edition of De l'Esprit des Loix is by J. Brette de la Gressaye, Paris, 1950, 4 vols. The translation by Thomas Nugent (1949), ed. by F. Neumann, New York, 1949

National Integrity Systems, (2003), Transparency International Country Report, Pakistan. http://www.transparency.org.pk/CSR.pdf, retrieved on 12/10/2014.

Nawaz Sharif -Dost Pakistan, (2013, May 12), www.dostpakistan.pk/nawaz-sharif/, retrieved on 12/10/14.

Ngarmboonanant, W. (2014). Dictatorial Tendencies: Chaudhry and Pakistan's Supreme Court.http://yris.yira.org/essays/1236, retrieved on 13/10/14.

Nordlinger, Eric A. (1977) Soldiers in Politics: Military Coups and Governments. Englewood Cliffs: Prentice Hall Inc.

Pakistan Steel Mills Case, (2006, June, 23), Constitution Petition No. 9 of 2006 & Civil Petition Nos. 345 & 394 of 2006,http://www.supremecourt.gov.pk/web/page.asp?id=281. Retrieved on 20/12/14.

Rizvi, A, H. (2008, March 16). Analysis: The New Trio. Daily Times.

Rizvi, A, H. (2012). On Judicial Activism. Pakistan Today,http://www.pakistantoday.com.pk/2012/02/07/comment/columns/on-judicial-activism/ , retrieved on 12/10/2014.

Samdani, K. M. (2007). A Role of the Judiciary in the Constitutional Crises of Pakistan & Other Essays. Lahore: Jahangir Books.

Sattar, B. (2012, December 8). Lost in rhetoric. The News International.

Shah, A. (2014). The Army and Democracy: Military Politics in Pakistan. Haward University Press.

Siddiqa, A. (2007, July 26). "Vacuum after Victory? Indian Express.

Wolf-Philips, L. (1979). Constitutional Legitimacy: A Study of the Doctrine of Necessity. London: Third World Foundation.