

# LAWYERS' MOVEMENT FOR THE RENAISSANCE OF THE INDEPENDENT JUDICIARY IN PAKISTAN

Written by

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The conspicuous onslaught between democratic institutions and military establishment has been the most salient feature of the chequered constitutional history of Pakistan until the year 2005 when Mr. Iftikhar Chaudhry assumed the office of Chief Justice of Pakistan. He worked hard for clearing backlog of the old cases, established a human rights cell; and to the utter distaste of military establishment, started taking notices of the controversial matters of Public importance concerning fundamental rights under article 184 (3) of the constitution. He believed in independence of the judiciary and had held the senior government officials to the account for various violations of fundamental rights. Such exercise of jurisdiction falling within the domain of public interest litigation became a serious challenge for the military dictator and the President of Pakistan General Pervaz Musharraf who eventually cudgelled the judiciary. He had dismissed the Chief Justice along with sixty judges.<sup>[1]</sup> This research essay explores as to how the resistance of the Chief Justice became a catalyst and was characterised as a volte-face of the rampant perception of the people about the judiciary of Pakistan. They apprehended that earlier the courts had always been ratifying subversion of the Constitution of Pakistan by the military dictators.<sup>[2]</sup> The lawyers' movement stemming from the refusal of Chief Justice to resign from his office was further advanced by renowned politician and lawyer Barrister Aitezaz Ahsan, and the Bar leaders like Mr. Muneer A. Malik, Mr. Ali Ahmad Kurd and Tariq Mehmud, all the consecutive Presidents of the Supreme Court Bar Association (SCBA) during the movement, who were also regarded as pioneers of the movement in order to mobilise the lawyers' community to rise to the occasion. They also solicited help of and were joined by the civil society, human rights organisations, and political parties to initiate a mass movement which culminated in the restoration of an independent judiciary, expulsion of the military dictator, return of democracy, and had also strengthened the rule of law in Pakistan.

The grim trajectory dated back to the year 1955 when a judgement was passed by the Federal Court of Pakistan in Moulvi Tamizuddin Khan's case.<sup>[3]</sup> The doctrine of necessity was coined in the said case to justify the measure of Governor General to dissolve the Constituent Assembly. Such a decision dealt a serious blow to the democracy and the rule of law. It paved the way for all military dictators to plunge into the country's politics thenceforth.<sup>[4]</sup> The Court's verdict laid down the principle which lent countenance to the subsequent military interventions in Pakistan. In October, 1958 when the President Iskander Mirza abrogated the Constitution, the Court went onto hold that a *Coup d'état* was a valid mode to abrogate the Constitution.<sup>[5]</sup> In the case of Begum Nusrat Bhutto, the judgment was based on the same principle of necessity laid down in Governor General's Reference of the year 1955. It supported General Zia-ul-Haq who seized power through a military coup.<sup>[6]</sup> It was, unfortunately, the doctrine of necessity had consistently found favour with the PCO courts, prevailed upon the constitutional provisions to justify martial laws, had played havoc with the democratic culture and potentially changed the politico-legal complexion of Pakistan. When the military regime of General Musharraf took over the government, he had issued a Provisional Constitutional Order (PCO), 1999. The PCO provided a governing framework for decision making by him.<sup>[7]</sup> Musharraf had declared himself as Chief Executive of the country. In the year 2000, the judges of Supreme Court entertained the matter of legitimacy of military coup by Musharraf but they (hereinafter called as PCO judges) were called upon to take a fresh oath administered to them under Oath of Office (Judges) Order, 2000. The six judges including the Chief Justice Saeed-uz-zaman Siddiqui had refused to take such oath and were dismissed by the dictator.<sup>[8]</sup>

The serious differences between the Prime Minister and General Musharraf were genesis of the military rule by Musharraf in the year 1999. The General dismissed government headed by Nawaz Shareef. He promulgated the Oath of Office (Judges) Order 2000 to forcibly expel those judges of superior courts who had ostensibly deemed the action by him as ultra vires the constitution and were not willing to breach their earlier oath under the Constitution of Pakistan, 1973. The new Supreme Court so reconstituted legalised an extra-constitutional measure of the flagrant topple of civilian government.<sup>[9]</sup> Such an approach of the Supreme Court gave trappings of legitimacy to the repeated military regimes which, in turn, had badly reflected on the growth of moderate political parties and civilian institutions.

### **Musharraf's Confrontation With Mr. Justice Iftikhar Chaudhary**

Iftikhar Muhammad Chaudhry, became the Chief Justice of Pakistan in the year 2005.<sup>[10]</sup> He often took *suo moto* actions whenever he was convinced that some injustice of public character was occasioned by the government authorities or state functionaries, and thereby gave prompt relief to the most impoverished groups of the country. While challenging the reference initiated by Musharraf against him, he asserted that his exercise of jurisdiction to investigate about 6000 human rights abuses including illegal allotments of land to the influential people in Gawader, use of public parks for commercial enterprises, environmental degradation, and disappearance of 400 to 600 people by military intelligence agencies, had entailed intense displeasure by General Musharraf against him.<sup>[11]</sup>

There was a tangible change in the stance of the Supreme Court over a period of time as the Chief Justice had started doctrinal justifications to expand his judicial powers.<sup>[12]</sup> His *suo moto* actions to seek explanation from government authorities in matters adversely affecting interest of the general public had perforce to make the executive authorities reverse certain measures prejudicial to the welfare of society. The Supreme Court's decision of annulling the privatisation of Pakistan Steel Mills at a price far below its market price amidst allegations of corruption added fuel to the fire.<sup>[13]</sup> The judgements in the said case had cast aside misgivings concerning the role of judiciary for more than seven years. Musharraf was holding both the offices of President and Chief of Army Staff simultaneously, in flagrant disregard to the constitutional provisions. The missing persons during war-on-terror were allegedly not produced before the courts in contravention with due process of law. These were the real challenges that confronted the judiciary at the crucial juncture of its history.<sup>[14]</sup> The Supreme Court was strident on both the issues of enforced disappearances of civilians and holding of political office by an Army Chief,<sup>[15]</sup> which gained favourable coverage by media and were also supported by the public at large.<sup>[16]</sup> President Musharraf had summoned the Chief Justice Mr. Chaudhry on 9<sup>th</sup> March, 2007, raised allegations of misuse of power by him and attempted to force him for resignation from his office. Mr. Chaudhry refused to resign and was suspended by the President. Such a situation triggered unprecedented protests against Musharraf. The President filed a reference for gross misconduct against the Chief Justice, before the Supreme Judicial Council under article 209 of the Constitution. The reference for impeachment contained allegations of use of influence by Mr. Chaudhry for the progression of the professional career of his son, use of excessive protocol by him, and demand of aircrafts from the provincial Governors for his travels etc.<sup>[17]</sup> The charges against the Chief Justice were bound to pale into significance as they were outweighed by the ones against General's ardent supporters and high government officials. The exercise of character assassination initiated by the government against Mr. Chaudhry could serve no other purpose than to outrage general public against the government.<sup>[18]</sup>

### **The Objectives of Lawyers Movement**

The aim of leadership of the lawyers to start their movement was to seek the restoration of Mr. Chaudhry in the office of Chief Justice for the rule of law and establishing supremacy of the Constitution over the military rule. The President Musharraf has taken a very stern action in the aftermath of his failure to control the proceedings of Supreme Court in these pressing matters of imminent public importance. The Chief Justice was placed under house arrest; which was followed by a furious reaction by the general public.<sup>[19]</sup> The refusal of the Chief Justice smacked of a radical shift of social and political culture in Pakistan as the act of Chief Justice to brave out the awful pressure of military personnel represented an unparalleled judicial independence in Pakistan. The lawyers' protests started immediately after the incident took place. They were joined by the civil society activists who transformed the stature of a jurist into a hero.<sup>[20]</sup>

The image of dragging the Chief Justice by hair into the police vehicle for his appearance before the Supreme Judicial Council had captured the public imagination. The live broadcast on mainstream electronic media and iconic photographs of the scene published in the newspapers, had fanned the fire. Mr. Aitezaz Ahsan, Mr. Hamid Khan and other constitutional lawyers under the aegis of Mr. Muneer A. Malik, the then president of lawyers' representative body i.e. SCBA announced protest and exhorted the people of Pakistan that such use of brutal force against the Chief Justice of the country had necessitated the struggle as the situation amounted to further degradation of their judicial system. A team of eminent lawyers had assembled to defend the case of Chief Justice before the Supreme Judicial Council.<sup>[21]</sup> On the motivation of the Bar leadership, the various local and High Court Bar Associations started to invite Mr. Chaudhry and the speeches of Bar leadership as well as lectures of Mr. Chaudhry were instrumental in giving genuine impetus to the movement and his motorcade attracted very large crowds of lawyers, members of the civil society and human rights organisations. The government resorted to violence and repression to intimidate public support for the Chief Justice.<sup>[22]</sup> In his speeches, Mr. Chaudhry expounded features and advantages of the rule of law and judicial independence.<sup>[23]</sup> The movement had gained full

momentum as a result of the sincere commitment of the Bar leaders who had also mustered support of various human rights groups as well as civil society. The lawyers started meetings with representatives of labour unions, trade organisations, groups of doctors, professors, religious scholars and representatives of the political parties. The active members of civil society like Imran Khan, Asgher Khan, Asma Sherazi and Hamid Mir etc joined the movement with their solemn pledge for independence of the judiciary. A famous political and human rights activist Ghazala Minallah narrated the volatile situation to the effect that “the photograph (of the Chief Justice when he was being manhandled) did it for a lot of people, it did it for me ... that just launched us into protest mode and such nature of protests by the civil society grew soon after the Chief Justice was sacked.<sup>[24]</sup> Hence, the analysis suggests that although the lawyers’ movement aimed at restoration of the Chief justice as an immediate objective yet its ultimate goal was much greater i.e. independence of judiciary, establishment of the rule of law, restoration of durable democratic process, protection of fundamental rights of the people, and subordination of the military to the elected government. They succeeded and felt triumphant when the reference was quashed by the Supreme Court and the Chief Justice was reinstated on July 20, 2007. His restoration was celebrated by the legal community and the general public to the optimum.<sup>[25]</sup>

### **Proclamation Of Emergency: The Second Phase Of The Movement**

The Chief Justice had taken a principled stance against a military ruler which gave him immense popularity and many yearned for initiative to challenge the validity of military establishment in their democratic polity. President Musharraf continued his efforts to dominate the judiciary which, in turn, further reinforced the struggle of people for independent judiciary. The President Musharraf ultimately suspended the Constitution once again and declared emergency rule on 3<sup>rd</sup> November, 2007 while anticipating the outcome of an important ruling the Supreme Court was about to announce concerning his re-election as President in military uniform.<sup>[26]</sup> The majority of Judges of the superior courts (sixty in number) either refused to take PCO oath or were forcibly removed by the government and placed under the house arrest.<sup>[27]</sup> Thousands of lawyers including the leadership of lawyers’ movement and activists of civil society were harassed, brutally tortured and arrested.<sup>[28]</sup> The public gatherings and rallies were banned. The students and other activists protested in defiance of military rule and were subjected to cruel beating and crackdown by the police.<sup>[29]</sup>

The lawyers’ movement, once again had gained full impetus. They were conscious of the fact that autocratic emergency rule necessitated greater co-operation among themselves, the political parties, the civil society, and religious parties. They had boycotted proceedings before the courts, their practice had badly suffered, the street agitations and innumerable meetings had devastating financial implications for them, and the general public stopped instituting litigation as they became so weary of the situation.<sup>[30]</sup> Some differences between the Supreme Court Bar Association and High Court Association also cropped up on the issues of leadership. Nonetheless, the legal fraternity turned out to be the most effective group in the whole campaign. A faction of the lawyers was opposed to the boycotting of proceedings before the PCO courts as they were of the view that it will further undermine the rule of law, weaken efforts for independence of the judiciary, and halt transition from military to civilian rule. However, the lawyers ultimately became unanimous to persist in boycotting the courts presided over by the PCO judges, which brought about enormous financial hardships for them. The people protesting outside the Supreme Court were the poor and the rich of the country.<sup>[31]</sup> Heavy police contingents had besieged the residence of Mr. Chaudhry and blocked the passage through concrete barricades and barbed wires. The Former Prime Ministers Benazir Bhutto and Nawaz Shareef tried to visit the deposed Chief Justice Mr. Chaudhry but they were prevented to meet him.<sup>[32]</sup> In a developing country like Pakistan, the poorest daily labourers had badly suffered as a result of strike calls. They were prevented to earn livelihood when they woke up hoping a better day to bring food for their children. The blockade of roads and daily strikes for the reinstatement of Mr. Iftikhar Chaudhry were serious issues for them to circumvent their earnings for the starving kids. The heat in the months of summer caused numerous deaths and many dehydrated people, mostly the lawyers, were admitted to the hospitals. Their families often travelled on foot or used non-air conditioned vehicles for the treatment of those who suffered injuries in torture by the police, or to manage the release on bail of those who were arrested by the police. On a few occasions the protestors pelted stones on the police, for instance, when the police blocked their way while they were marching from the Supreme Court to the Office of Election Commission.

The international support of human rights Organisations is always crucial for the success of any sustainable socio-political movement and it also went a long way to contribute to the victory of movement. Mr. Iftikhar Chaudhry became the third ever person to receive the “Medal of Freedom” from the Harvard Law School for his efforts towards freedom, justice and equality. The National Law Journal in New York also conferred an award of “Lawyer of the Year” on him in 2007.<sup>[33]</sup> The support of international human rights organisations and international

media to the lawyers' movement played a significant role in its victory. A change in the earlier image of the Supreme Court through public interest litigation encouraged by Mr. Chaudhry, had significantly enhanced respect for the judiciary. His resistance virtually mobilised all local as well as international newspapers, and the media appreciated role of the Supreme Court in general and that of Mr. Iftikhar Chaudhry in particular.<sup>[34]</sup> Many local T.V. channels were banned by the government during the emergency rule for their support to the movement. In such a situation, the activists and lawyers' community also used social media as a substitute for presenting pictures, videos and tales of crackdowns on protesters by the police.<sup>[35]</sup> The activists of civil society like Mazhar Abbas, Talat Hussain, Safder Abbasi, and Asma Sherazi stood shoulder to shoulder with the lawyers, for their invincible and unsurmountable demand of the restoration of the judges as a symbol of independent judiciary. This role assumed by them was indispensable for protecting the human rights and emancipating their society from the socio-economic exploitation as well.<sup>[36]</sup>

The emergency rule came to an end in December, 2007 in the wake of intense local and international pressure. The lawyers did not crave to get the judges restored only; rather their efforts were also aimed at the removal of a military ruler and the return of democracy in its true perspective. The pro-Chaudhry "Go Musharraf Go" ubiquitous movement had brought together the critics and detractors together from across the social and political spectrum. The continued protest also forced Musharraf to resign from the office of President in August, 2008.<sup>[37]</sup> Mr. Asif Ali Zardari became the President to succeed Musharraf in his office. Mr. Zardari was given immunity from corruption charges by Musharraf through the National Reconciliation Ordinance (NRO), 2007. The new President was prone to delay the reinstatement of Mr. Iftikhar Chaudhry under a fear that he will strike down the NRO by declaring it as unconstitutional. Consequently, Mr. Zardari lost his political popularity drastically on account of his complicity in this regard. A few of the prominent leaders of lawyers' movement including Lateef Khosa, Qazi Anwar, Lateef Afreedi and Asma Jahangir also distanced themselves from the movement owing to their political affiliations with Mr. Zardari. The President Zardari enforced Governor Rule in the Province of Punjab with a view to sideline his political opponent Mr. Nawaz Shareef who was a staunch supporter of the lawyers' movement and also had the provincial government of his party there. His brother, the Chief Minister Mr. Shahbaz Shareef was declared ineligible to run his office, by the PCO judges of the Supreme Court. Resultantly, a massive protest, through a call of long march by the popular lawyers' SCBA leadership in collaboration with the political parties in opposition and activists of civil society, was launched. They vowed to stage a long march and sit-in, at the capital city of Islamabad until the reinstatement of Mr. Chaudhry to his office. The government of Mr. Zardari was virtually helpless to contain massive protests and apparently was about to collapse when, as a result of long negotiations, the then Prime Minister Mr. Yousaf Raza Gilani announced the restoration of Mr. Iftikhar Muhammad Chaudhry as Chief Justice and all the deposed judges on 16<sup>th</sup> March, 2009.

#### A New Era of Independent Judiciary

The restoration of independent judges was a reward of a marathon struggle of the lawyers and people of Pakistan who wanted a strong judiciary for keeping in check the arbitrary exercise of authority of the executive and legislature. The judiciary so restored did not fall short of their expectations. After only a few months of his reinstatement in the office of Chief Justice, Mr. Iftikhar Muhammad Chaudhry removed the PCO judges and those who were appointed by General Musharraf. He also declared the National Reconciliation Ordinance (NRO) as unconstitutional and reversed the rulings against Mr. Nawaz Shareef and Shahbaz Shareef.<sup>[38]</sup> The onerous struggle by the lawyers' ousted the military dictator, restored democracy and ensured return of the deposed Chief Justice and other sixty judges to their offices. The call of the leadership of the lawyers found unstinting support by politicians in opposition, the civil society, the media, and the international community, and not only ended up with the reinstatement of Mr. Iftikhar Muhammad Chaudhry but also brought about a sustainable democratic set-up in Pakistan. It was the dynamic leadership of lawyers like Aitzaz Ahasan who persuaded the major political parties in opposition including Pakistan Muslim League (N), Pakistan People's Party, Pakistan Tehreek-e-Insaaf, and Jamaat-e-Islami to join the lawyers' movement. He convinced them that the movement was a last resort for the return of a civilian political rule through restoration of the Chief Justice who was committed to fight against the military dictatorship.<sup>[39]</sup> The parties who supported the lawyers' movement won next general elections either at national or provincial levels respectively. The political leadership like Mr. Shareef was more importantly benefitted.<sup>[40]</sup> There is no denying the fact that it was a result of the genuine commitment of the lawyers and their leadership like Muneer Malik, Ali Ahmad Kurd, Tariq Mehmud, Anwar Kamal, Ather Minallah, Hamid Khan and Aitzaz Ahsan etc., who directed the strategy of the movement, that the dream of judicial independence came true.<sup>[41]</sup>

The movement was a no mean feat which expelled a military dictator from the Presidency, restored independence of the judiciary, strengthened democracy and significantly helped establish rule of law in Pakistan.

Suffice it to say that such analysis leads us to the conclusion that the undaunted and unflinching lawyer's struggle had not only been successful for reinstatement of Mr. Chaudhry but it also achieved their objectives for the democracy and rule of law.

The people of Pakistan were averse to military intervention in a political dispensation since its inception and had always witnessed the judiciary putting a seal of validation on every military coup. But when Mr. Iftikhar Muhammad Chaudhry as Chief Justice of Pakistan, was deposed in a disgraceful manner following his refusal to resign, he became the main plank of lawyers' movement as a result of the resistance he had posed to the dictatorial regime of General Musharraf. The legal fraternity became a vanguard of the most popular movement in Pakistan and foiled all efforts of the executive authorities to stifle their struggle. The unique struggle was remarkable on account of its longevity of two years and the perseverance demonstrated by the lawyers in particular, which not only entailed the eventual triumphant outcome but also discouraged the oft-repeated culture of military take over rather it became and continues to be a symbol of the prospective resistance against any future brinkmanship for autocratic military rule.

The lawyers' movement helped growth of the public interest litigation on account of failure of the government's hierarchy to safeguard fundamental rights. The prime focus of Mr. Iftikhar Chaudhry on public interest litigation was to eradicate corruption by invalidating the parliamentarians on the basis of fake degrees, as well as many illegal appointments, and investigating the financial scandals in the state institutions<sup>[42]</sup> etc. which was widely hailed by the general public and had preoccupied media coverage. There was also criticism that Mr. Chaudhry aggressively extended boundaries of the judicial review to such an extent that it seemed to have no boundaries<sup>[43]</sup> as he not only assailed sensitive constitutional amendments but also raised questions about petty matters like accumulation of rainwater outside the Supreme Court Registry in Lahore.<sup>[44]</sup> Be that as it may, the lawyers' movement has raised expectations of the people and now the courts are playing a leading role for the enforcement of human rights and rule of law in Pakistan. After his re-instatement Mr. Iftikhar Muhammad Chaudhry introduced many reforms in the judicial system and enforced a National Judicial Policy which significantly expedited the process of deciding litigation in the lower courts. The lawyers' community extended their full cooperation to implement National Judicial Policy with a view to allay sufferings of people resulting from their boycott of the courts during the movement.

The lawyers' movement also helped advance greater freedom of expression. The Supreme Court fully backed the right of media for investigative journalism on the violations of human rights and also took many *suo motto* actions on media news. The lawyers' movement operated as a medium to mobilise the people of Pakistan to struggle for their rights of sustainable democracy, independent judiciary, rule of law, and protection of human rights. It has deterred the non-democratic forces from any future intervention in a smooth democratic process and changed the outlook of the judiciary to withstand any pressure against subversion of the constitution, in that, it became abundantly clear that the people of Pakistan are profoundly aspirants of and fully support an independent judiciary protecting their rights guaranteed by the Constitution as such. Hence, the dynamic role of the independent judiciary in Pakistan in the wake of lawyer's movement has greatly helped to set at rest the quest for equilibrium of political institutions in the emerging democratic milieu.

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