

THE LAWYERS MOVEMENT FOR JUDICIAL INDEPENDENCE IN PAKISTAN: A STUDY OF MUSHARRAF REGIME

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ABSTRACT

The main objective of the paper is to highlight the struggle of the lawyers for judicial independence in Pakistan. As an institution judiciary should be independent and free from all influences but the authoritarian styles of various governments are responsible for the Institutional decay of judiciary in Pakistan. In 1999, Musharraf came into power in the shape of a military coup. The constitution was suspended and the judiciary legitimized his military rule. The same judiciary showed independence in 2007 when chief justice was deposed. This was a turning point of the judicial history. Lawyers from all over the country started a movement for the rule of law and independence of judiciary. The study explores the role of lawyers in supporting the judicial construction.

Keywords: Pakistan, Judiciary, Musharraf, Lawyers.

INTRODUCTION

General Pervez Musharraf dismissed the government of Prime Minister, Mian Muhammad Nawaz Sharif on October 12, 1999. In the immediate aftermath of the coup, the judiciary was purged of judges who might have opposed the military's unconstitutional assumption of power. The purge was accomplished by requiring judges to take an oath to General Musharraf's Provisional Constitutional Order an oath that required judges to violate oaths they all had previously taken to uphold the 1973 Constitution. General Pervez Musharraf promulgated the Oath of Office (Judges) Order 2000 to weed out judges of the superior courts. The reconstituted court lost no time in reversing gears. Its judgment in the case of Zafar Ali Shah validated the takeover of the government by General Musharraf. It is, indeed, an ironic comment on the times in which we live that the then Chief Justice of Pakistan, Irshad Hasan Khan, openly flaunted and distributed the copies of his infamous judgment at international judicial conferences to demonstrate his genius in jurisprudence.¹⁰⁰

Since General Musharraf's takeover on October 12, 1999, there have been a large number of judicial casualties.¹⁰¹ On March 9, the chief justice of Pakistan, Iftikhar Mohammad Chaudhry, was charged with "misconduct" and "misuse of authority" by President Musharraf and a reference was sent to the Supreme Judicial Council for a decision. Justice Javed Iqbal was sworn in as the acting chief justice presumably because Justice Bhagwandas, the senior-most judge after the chief justice, was out of the country. All these actions were justified under Article 209 of the Constitution. However, members of the bar, opposition leaders and many commentators, speaking a few hours after the event, condemned the action on several

¹⁰⁰ Azmat Abbas and Saima Jasam, "A Ray of Hope: The Case of Lawyers' Movement in Pakistan in the publication series on promoting Democracy under Conditions of State Fragility", Pakistan: Heinrich-Boll-Stiftung, 2009, p. 8.

¹⁰¹ Qazi Faez Isa, *The Judiciary at the Receiving end*, the Daily Dawn, March 17, 2007

grounds. Moreover, the public has its own perceptions of what promises to become a landmark event, similar to the Maulvi Tamizuddin Khan case which laid the foundations for the erosion of democracy in Pakistan.¹⁰²

The Suo Moto Actions

The Chief Justice is also known to use his *suo moto* powers to take up matters where he believes injustice has occurred. He has taken up many cases involving violations of human rights as well as other cases of political and public importance, and he has afforded relief to some of the most disadvantaged people in Pakistan. In his Petition to the Supreme Court challenging the Reference to the Supreme Judicial Council, the Chief Justice asserted that during his tenure he incurred the intense displeasure of the Prime Minister, the President and many of their close associates because he investigated ‘more than 6,000 cases of human rights abuse during one year’, ‘began inquiring into the land allotments to influential people in Gawadar’, restrained environmental degradation and ‘prevented parks from being converted into commercial enterprises.’¹⁰³

Among the most sensitive cases, including one which the Chief Justice heard just a day before his ‘suspension’, were those related to ‘forced disappearances’. At the end of 2005 the Chief Justice, through his *suo moto* powers, began investigating the disappearance of between 400–600 people.¹⁰⁴

It is indeed heartening to note that the Supreme Court lately has opened its doors to public interest litigation, particularly through judicial activism under its *suo moto* jurisdiction. The decision in Pakistan Steel Mills case is a silver lining around the dark clouds that have hung over the judiciary during the last seven years. The Supreme Court has also entertained cases of police excesses as well as other matters of the high handedness of government officials. It has given relief to some members of the disadvantaged segments of the society. This is good, but not sufficient. The Supreme Court, all by itself, does not have the time and resources to remedy the distress of the disadvantaged sections of the country. It can only be accomplished if the four Provincial High Courts and the courts subordinate to them join the Supreme Court whole heartedly in this endeavor. This cannot be accomplished, unless the judiciary puts its own house in order which should be the first priority for the Supreme Court. Only a strong, independent and assertive judiciary can be a guarantor for the protection of the rights of the poor and downtrodden. Weak and spineless judiciary can further expose the underprivileged sections of the society to the excesses, highhandedness and oppression at the hands of the governmental machinery. This is the challenge that faces the judiciary in Pakistan at this critical juncture of its history.¹⁰⁵

President’s Reference

On March 9, 2007, as already noted, Musharraf summoned Chief Justice Chaudhry to his office and effectively dismissed him for alleged “misuse of office.” Justice Chaudhry’s refusal to resign triggered country-wide anti-Musharraf protests for several months. Subsequent to Chaudhry’s restoration, the Supreme Court remained strident on issues such as

¹⁰² Ibid

¹⁰³ International Bar Association, The Struggle to Maintain an Independent Judiciary, A Report on the Attempt to Remove the Chief Justice of Pakistan, London WIT IAT

United Kingdom, July 2007

¹⁰⁴ Ibid

¹⁰⁵ Hamid Khan, Role of Independent Judiciary in Countries of South Asia, Particularly Pakistan, paper presented in judicial conference held on 6-8 June 2006, Islamabad, Pakistan.

enforced disappearances. However, it sought to avoid a direct confrontation with Musharraf, controversially dismissing, on September 28, 2007, a constitutional challenge to Musharraf's dual role as president and army chief on technical grounds. The Pakistani constitution prohibits the chief of the army from holding political office.¹⁰⁶

The Reference filed by the President against the Chief Justice mainly focused on allegations that the Chief Justice used his influence to assist the advancement of his son's career, initially in the medical profession and then in the police service. It is also alleged that the Chief Justice had more cars than he was entitled to and that he insisted on being provided protocol which has not previously been sought by or provided to a Chief Justice. This included demanding that police vehicles escort his cars and that senior bureaucrats meet him at airports. It is also alleged that he frequently demanded the use of the aircraft of Governors or Chief Ministers for his travel.¹⁰⁷

The charge against Justice Chaudhry was based primarily on a letter by TV personality and Supreme Court advocate Naeem Bokhari. In his letter of February 16, 2007, Naeem Bokhari accuses the chief justice of announcing decisions in court and then giving an opposite decision in the written judgment, insulting and intimidating lawyers, insisting on ostentatious protocol and using expensive cars and airplanes, and influencing decision-makers to help his son make his career in the bureaucracy without due merit. Bokhari argued that he was not complaining about the first two items but the fact that he mentions them obviously makes the reader cognizant of them. As the letter was published in the press, it must have caused his reputation a lot of harm.¹⁰⁸

The exercise in character assassination launched against the Chief Justice by leaking the contents of the charges against him, both before and after filing the reference with the Supreme Judicial Council, has added fuel to the flames of public outrage. Even if true or plausible, the nature of the charges, which have been made public pale into insignificance before a number of more serious charges that can be levelled against any number of the regime's most ardent supporters.¹⁰⁹

Beginning of the Lawyers Movement

The main objective of the lawyers' movement was establishment of Rule of Law, Supremacy of the Constitution, and Civilian Supremacy over the military. Restoration of the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, along with sixty judges dismissed by Pervez Musharraf illegally on 3 November 2007 was secondary objectives.¹¹⁰

Members of the legal profession formed the vanguard of the popular movement to restore Chief Justice Chaudhry. They also bore the brunt of the attacks of the Musharraf regime when protests were stifled. Many lawyers (and judges) were detained for opposing the government's actions from 2007 onwards. Many were injured, some severely, in the struggle. Shocking photographs of this appeared around the world in the media. The Karachi violence was particularly appalling, lasting several days. The Tahir Plaza building containing 200 lawyers' chambers was torched by unidentified attackers and many lawyers were incinerated. A proper investigation has never been held. The Sindh High Court Bar Association publicly

¹⁰⁶ Human Rights Watch Report, *Pakistan Destroying Legality, Pakistan cracks down on lawyers and judges*, New York: Volume 19, No. 19 (C), 2007 also see www.hrw.org.

¹⁰⁷ Ibid

¹⁰⁸ Dr Tariq Rahman, *Public perceptions of judicial crisis*, the Daily Dawn, March 12, 2007

¹⁰⁹ S.M Nasim, Unforeseen consequences of judicial reference, Dawn, April 8, 2007

¹¹⁰ http://en.wikipedia.org/wiki/Lawyers'_Movement

blamed the ruling party (MQM). Others met by the delegation in Lahore told how they had been arrested by police, who were waiting at the court premises with tear gas from 7am during 'Operation Zero Tolerance', and charged with terrorism under the Anti-Terrorism Act.¹¹¹

Suspension of the Chief Justice of Pakistan and the circumstances surrounding that event has led many observers to conclude that the country had seized of a judicial crisis. Several hundred lawyers have been out marching on the streets in various towns and boycotting the courts as gestures of protest against the government's action. Opposition politicians insist that it is at once a judicial and a political crisis.¹¹²

In September 2007, lawyers in some districts of Punjab locked courts, preventing fellow lawyers, court staff and litigants from entering the premises. Such extreme steps damaged the movement's credibility and support. The movement has also witnessed internecine disputes and turf battles, especially between the SCBA (Supreme Court Bar Association) and the Pakistan Bar Council (PBC) over the movement's leadership. Nevertheless, the legal community remained an important pressure group. According to a prominent lawyer "I would like the judges to be restored but that's not my main issue at the moment. My main issue is the restoration of the 1973 constitution and the removal of all accretions made under Musharraf".¹¹³

Different Phases

The lawyers' movement unfolded in different phases. First, the Pakistan Supreme Court asserted its independence and gained credibility in the eyes of the Pakistani public while lawyers began to protest in the streets. On March 9, 2007 Musharraf removes Chief Justice Iftikhar Mohammed Chaudhry. The removal brought months of protests by lawyers. 20 July, 2007 the Supreme Court of Pakistan restored the Iftikhar Mohammed Chaudhry with full dignity and authority. In short, the lawyer's movement infected the majority of the superior judiciary with the constitutional disease of independence. There are two striking aspects of the lawyer's movement in this first phase. Firstly, the victory was complete, conclusive and beyond expectations. Secondly, Chief Justice Iftikhar Chaudhry was restored by a petition moved by the lawyer's movement on behalf of Chief Justice Iftikhar Chaudhry. In other words, the lawyer's movement was not dependent upon the government for restoration because the actual logistics, method or mechanics of the restoration of Chief Justice Iftikhar Chaudhry was in their hands in the form of a legal remedy before the Supreme Court.¹¹⁴

Second, a broader coalition of lawyers, political parties, and other groups responded to executive overreaching through large-scale, nationwide protests, and spurred changes in the Pakistani political system writ large. This Part addresses each of these phases in turn and then discusses the singularly important role of the media in facilitating protest over the course of the movement in its entirety.¹¹⁵

The lawyer's movement contributed towards the enhancement and preservation of the independence of the judiciary by keeping a vigilant watch on the performance of the superior

¹¹¹ International Bar Association Report, *A Long March to Justice: A report on judicial independence and integrity in Pakistan*, London: 2009

¹¹² Anwar Syed, Interesting but Unlikely, Dawn, Islamabad, April 1, 2007

¹¹³ The Daily Times, October 19, 2006, also available at <http://www.dailytimes.com.pk/default>.

¹¹⁴ Faisal Siddiqi, The Lawyers Movement Achievements and Challenges see http://blog.ale.com.pk/?page_id=882

¹¹⁵ The Pakistani Lawyers Movement and the Popular Currency of Judicial Power, see www.harvardlawreview.org/.../vol123_pakistani_lawyers_movement...

judiciary as well as by testing the limits of judicial independence through public interest litigation. As a result, the performance of the High Courts and the Supreme Court in this second phase was exemplary e.g. the missing persons cases, the case regarding the correction of the electoral lists, the Nawaz Shariff and Shahbaz Shariff cases, the bail application in the treason case of Javed Hashmi, the presidential election case of General Musharraf the suo-moto proceedings in the May 12th, 2007, case, the conviction of senior civil bureaucrats and police officials in the Chief Justice's manhandling case etc.¹¹⁶

The third phase started when Musharraf imposed state of emergency on November 3, 2007. Constitution was suspended. Sixty independent judges were dismissed. 5 November, 2007 Police raided the Lahore High Court Bar Association (LHCBA). After baton charging and throwing tear gas into the premises, arrested more than 800 lawyers.¹¹⁷

For the first time in the judicial history of Pakistan, an extra-constitutional military takeover was suspended by a seven member bench of the Supreme Court of Pakistan. Secondly, in comparison to 1977 when one judge was removed under Martial Law, to 1981 when sixteen judges were removed under the P.C.O., 1981, and to 2000 when thirteen judges were removed under the P.C.O., 2000, there was a dramatic increase in judicial dissent under the P.C.O., 2007, because 43 judges of the High Courts and Supreme Court refused the oath under the P.C.O., 2007. In the political sphere, unlike 1958, 1969, 1977 and 1999, for the first time in our political history, this imposition of martial law was actually resisted by the people through public mobilization. The lawyer's movement was at the forefront of the resistance against this martial law and for the furtherance of the democratic revolution of 2007-2008. The political consequences of this public resistance were obvious. Firstly, this was the shortest martial law in the history of Pakistan [i.e. it lasted for only 43 days]. Secondly, General Musharraf ended direct military rule by taking off his uniform and the democratic revolution entered a critical stage.¹¹⁸

The Islamabad lawyer further argues that the Chief Justice is not a petty state official who can be suspended pending inquiry and claimed that if a judge under inquiry were required to be temporarily suspended by implication, the Constitution should have explicitly provided for such suspension. The lawyer asserts: "If a president subject to impeachment proceedings can continue to hold office, there is no reason why the chief justice cannot, so long as he is not found guilty of misconduct by his peers and removed by the president."¹¹⁹

Fourth phase of the black coats revolution started from February 18, 2008 after the dawn of the democratic era, the lawyer's movement and struggle of the deposed judges entered a critical phase. On the judicial front, the lawyer's movement and the deposed judges contributed towards the following remarkable and historic achievements. Firstly, in view of the Murreee-Bhurban declaration and the Islamabad declaration, the majoritarian parliamentarian parties made a public commitment that all the deposed judges will be restored to the November 2nd, 2007, position through a simple parliamentary resolution followed by an executive order. In short, the restoration of the deposed judges and the reversal of the unconstitutional actions of November 3rd, 2007, became the central political project of the PPP-PML (N) coalition government. Secondly, the detained deposed judges and lawyers were released. Thirdly, there was a political consensus that the November 3rd,

¹¹⁶ ibid

¹¹⁷ Timeline of the Lawyers Movement see <http://www.movementforruleoflaw.com/lawyersmovementpakistan.php>

¹¹⁸ Faisal Saddiqi, see http://blog.ale.com.pk/?page_id=882

¹¹⁹ Library of Congress, *Suspension and Reinstatement of the Chief Justice of Pakistan: From Judicial Crisis to Restoring Judicial Independence?* <http://www.loc.gov/law/help/pakistan-justice.php>

2007, actions were unconstitutional and for the first time in the history of Pakistan, the majoritarian parliamentary parties refused to recognize the constitutional amendments made by a military dictator [i.e. unlike 1985 and 2002, when the constitutional amendments were initially accepted and later validated by parliament]. Fourthly, regardless of the complications caused by the recent re-appointment of around 18 deposed judges, it is important to recognize that this is the first time in the judicial history of Pakistan that judges removed by a military dictator have returned to their original judicial position. In the political sphere, the last vestiges of dictatorial rule was surviving in the form of the wounded but politically alive, Pervez Musharraf. The completion of the democratic revolution required the removal of Pervez Musharraf. What people seem to forget that after February 18th, 2008, the only mass, public and country wide, demonstration held in Pakistan calling for the removal of Pervez Musharraf was the 'long March' of the lawyer's movement because Pervez Musharraf both represented the repression of the deposed judges and the unconstitutional actions of November 3rd, 2007.¹²⁰ The four-day long march, which was actually a motor convoy, began in Karachi and converged on the capital, Islamabad. The final estimated number of participants was 500,000 and the total distance "marched" from Karachi was about 1,500 kilometers. What is particularly notable about the outpouring of supporters at this march was that it demonstrated that the lawyers' movement had proliferated beyond the legal community of Pakistan. The march was joined by members of the broader civil society and political activists. This also showed that the mission of the movement had grown from the reinstatement of the judges to something broader in nature—a more democratic Pakistan based on the rule of law.¹²¹ Around 50,000 protesters from around the country converged on the capital. Given the erosion of his power during the last year and mounting opposition to his policies, Musharraf resigned in August 2008.¹²²

Fifth phase of the Black Coats started on August 28, 2008 after the resignation of Musharraf. Although there was no rational reason to despair, it is also important to recognize that the restoration of all the deposed judges and reversal of the unconstitutional actions of November 3rd, 2007, has suffered a major blow. This political project of the restoration of all the deposed judges through reversal of the unconstitutional actions of November 3rd, 2007, was a project of the coalition government of PPP and PML (N), which government has now collapsed. Therefore, unlike the first phase, the central problem of the lawyer's movement still remains that the actual logistics, method and mechanics of restoring these deposed judges is not in their hands and only the government in power can restore these deposed judges. More importantly, the nature of the obstacle in the way of the restoration of the deposed judges through the reversal of the unconstitutional actions of November 3rd, 2007, has fundamentally changed. What is the fundamental obstacle? In one sentence, it is the political insecurities of a rising and consolidating political government. To further elaborate, the PPP as a ruling political party recognizes the potential constitutional structural conflict between a consolidating executive and legislature and a emerging independent judiciary [remember the conflicts between Benazir Bhutto and Chief Justice Sajjad Ali Shah and between Nawaz Sharif and Chief Justice Sajjad Ali Shah]. Therefore, why not just destroy this independent power institution i.e. superior judiciary, and consequently, avoid any structural political conflicts. The dream/ideal political strategy of the PPP government to enhance and preserve a

¹²⁰ Faisal Saddiqi, see http://blog.ale.com.pk/?page_id=882

¹²¹ Jordyn Phelps, Pakistan Lawyers Movement, *International Center on Nonviolent Conflict* P.O. Box 27606 Washington, DC 20038, August 2009

¹²² Daud Munir, Middle East Research and Information project, <http://www.merip.org/mer/mer251/struggling-rule-law>

dependent judiciary is three folds. Firstly, by having a PCO Chief Justice of Pakistan, the immediate threat from the superior judiciary has been neutralized. Secondly, by increasing the number of judges of the Supreme Court and all the High Courts, they will pack the superior courts by appointing their jiyala's or merit-less persons as superior court judges. Thirdly, by passing the judicial amendments in the constitutional package, they will constitutionally amputate the superior judiciary by concentrating and consolidating the power in the hands of the executive. It is precisely for these reasons that the lawyer's movement has to rethink and re-invent itself.¹²³

The lawyer's movement is neither a militant nor a revolutionary group which can themselves restore the deposed judges by reversing the unconstitutional acts of November 3rd, 2007. Nor does the lawyer's movement's commitment to constitutional democracy allow them to seek the help of any un-democratic forces to solve these problems. For the lawyer's movement, their dispute with the PPP government is a fundamental dispute but it is a dispute among family members of our democratic family, which dispute has to be resolved peaceful through agitation, persuasion and negotiation. We will agitate with our brother lawyer's, nationally and internationally, with political parties, with civil society and with the public at large. All bar associations including international bar associations, a major chunk of the political parties, media and national and international public opinion is on our side. One of the main purposes of our agitation would be to persuade the PPP government and it's parliamentarians to do the right thing by restoring the deposed judges or to suffer constant moral shamming by the lawyer's, political parties, civil society, media, international public opinion and the public at large. But the lawyer's movement also has to negotiate with the PPP government in order to solve these problems. Negotiations never implies giving up your principled stance, it is merely a democratic way to solve a problem.¹²⁴

In the end, let us not forget that the lawyer's movement might not have the political power to challenge any government but we hold the key to the persistence of this judicial crisis. The key is the withholding of legitimacy on the part of the lawyer's movement. This judicial crisis will persist unless the lawyer's movement confers legitimacy on any solution proposed by the PPP government. Therefore, following the example of Chief Justice Iftikhar Chaudhry, our ability, courage and persistence to say 'NO' to any unconstitutional and incomplete resolution of this judicial crisis will determine the future of this judicial crisis, of an independent judiciary and the development of constitutional democracy in Pakistan.¹²⁵

Crackdown and Mistreatment with lawyers and Judges

At a time when one feared that the value of truth and what is right may not have survived the crush of expediency, sycophancy and habitual sacrifice of all that is holy and worth cherishing for the attainment of narrow self-interests, the 'black coats' have risen to defend the honour and sanctity of the institution they are associated with. The question is how they sustained their movement till they achieve their ends. This was very difficult to do since their own livelihood has been being affected. After all, it was not the affluent, elite echelons of the black coat community that were bearing the brunt but those belonging to the middle and lower classes whose families break no bread if they do not earn on a daily basis. The government has also realised that the momentum of the lawyers' protest needs to be broken. It is for this reason that future hearings of the reference against the 'non-functional' Chief

¹²³ Faisal Saddiqi, see http://blog.ale.com.pk/?page_id=882

¹²⁴ Ibid

¹²⁵ Ibid

Justice before the Supreme Judicial Council are likely to take place at longer intervals. The issue is bigger than the fate of just one judge. It pertains to the independence and sanctity of the judiciary and is, as such, a political issue. In addition to this, democracy, the Constitution, parliament, good governance and the will of the people have all been reduced to a sad burlesque.¹²⁶

The need of the hour is for the mainstream political parties which have gained the most, politically and materially, from the system that now lies in shards and splinters at their feet, to rise to the occasion in support of the black coats. They claim to have the people's card in their pocket but have miserably failed to flex any muscle in recent years. Events have given them another opportunity to redeem themselves. But with the exception of the MMA, which does not command nationwide support, the leaders of the big parties fled the country several years ago to escape legal action on corruption and criminal charges. The people are not going to follow lightweight second-tier politicians who carry no weight into the streets to face tear-gas, *lathi* charge and imprisonment.

The common man has lost all interest in politics. He may come out into the streets only on issues directly related to his interests but not on some arcane points of principles which do nothing to fire his imagination anymore. Besides, this government gauged the depths of the so-called leaders and their parties some time ago and feels no threat from them. They know how to deal with them. In any case, who doesn't avail himself of such perks and benefits when in public office to as great an extent as they can get away with, especially with regard to nepotism and protocol? The prime minister's motorcade on Shahrah-i-Faisal in Karachi on March 21, which I witnessed first-hand, is a perfect example.¹²⁷

The lawyers were protesting a Supreme Court ruling that cleared the way for General Musharraf's re-election as president while he is still in uniform. They tried to march on the Election Commission, which was examining nominations for the Oct. 6, 2007 presidential election. It was the first time since July that the black-suited lawyers, who campaigned for months against General Musharraf's dismissal of the chief justice in March, have come out in force on the streets here in the capital. As they marched the hundred yards from the Supreme Court down Constitution Avenue to the Election Commission, police officers with helmets, shields and long sticks blocked their way. Lawyers began hurling stones, and the officers retaliated, throwing the stones back and firing tear gas, and then charging and beating protesters. Plainclothes officers hauled lawyers off to police vans, including one of the leaders of the movement, Ali Ahmad Kurd. Aitzaz Ahsan, another leading member of the lawyers' movement, was bludgeoned by a policeman who hit him with a heavy brick in his stomach.¹²⁸

"Twenty lawyers have been injured," said Mohammed Ikram Chaudhry, former vice president of the Supreme Court Bar Association. "Three journalists were given a fierce beating. A lot of lawyers were taken away. They will use force against anyone who is against them," he said of the authorities. An advocate from nearby Rawalpindi Rifaqat Bashir, stated that "We wanted to go to the Election Commission and demonstrate in a peaceful manner," who was carrying a police cane which he said he had snatched from a policeman beating him. "The police hit me, and this is his stick," he said. He said he had come with 300 other lawyers, traveling in twos and threes into the city since early morning, to protest General

¹²⁶ Ameer Bhutto, What triggered the Judicial Crisis, Dawn, April 3, 2007

¹²⁷ Ibid

¹²⁸ Carlotta Gall, Lawyers Battle Police over Election Ruling in Pakistan. *New York Times*, September 30, 2007

Musharraf's military rule. "He has no right to rule. He is a soldier; he should serve on the borders."¹²⁹

On the night of November 3, the police and intelligence personnel arrested leaders of the lawyers' movements publicly and in the presence of the media, wherever they happened to be. On the following two days, violent crackdowns against lawyers occurred in Lahore, Karachi, Islamabad, Peshawar, Quetta, and scores of Pakistan's smaller cities and towns. Those who gathered at the Lahore High Court, the Sindh High Court in Karachi, and district courts across the country were unceremoniously beaten, tear-gassed, bundled into police vans, and locked in police stations or jails. Some were placed under house arrest.

Pakistani authorities have still not provided Human Rights Watch access to jails or police stations where lawyers are still being detained. While many lawyers in Pakistan's major urban centers have been released, scores remain in detention across the country, particularly in smaller cities. Crucially, the four central leaders of the lawyers' movement remain under detention and many others have charges on file against them. The government has also arbitrarily amended laws to assume powers to de-license lawyers effectively depriving them of a livelihood if they continue with active protest against the Musharraf government.¹³⁰

All lawyers except those on the gravy train of the public exchequer are protesting. The government acknowledges that in the two largest cities of Pakistan alone it has arrested 500 lawyers of which 344 have been arrested in Lahore, although according to the BBC, 3,000 lawyers have been arrested. The police barged into courts premises, lobbed teargas shells and beat peacefully protesting lawyers with *lathis* (sticks). Never before in the history of the world have so many lawyers been arrested. Not in Hitler's Germany, Franco's Spain or Saddam's Iraq. Another record to be displayed in the camp office next to the one earned for making Pakistan the 'most dangerous place in the world'.¹³¹

In addition to Chief Justice Chaudhry, five judges of the Supreme Court remain under effective house arrest in Islamabad's Judges' Colony, the enclave where Supreme Court judges are officially housed. These are Justice Nasirul Mulk, Justice Sardar Mohammad Raza, and Justice Shakirullah Jan. Two judges detained in Islamabad, Justice Rana Bhagwandas and Justice Ghulam Rabbani was released on December 16, 2007. Another five Supreme Court judges remain under effective house arrest in Lahore. These are Justice Khalilul Rehman Ramday, Justice Jamshed Ali Shah, Justice Tassaduq Hussain Jilani, Justice Raja Fayyaz, and Justice Falak Sher.¹³²

International Support

Similarly, the struggle for judicial independence also received support of the human rights organizations from across the globe. Many bar associations and leading lawyers demanded the restoration of the deposed Chief Justice that increased pressure on the military government. At the same time, Justice Chaudhry became the third man in history to have been conferred with the prestigious "Medal of Freedom" at the Harvard Law School, in recognition of his individual efforts to uphold the legal system fundamental commitment to

¹²⁹ Ibid

¹³⁰ Human Rights Watch Report, *Pakistan Destroying Legality, Pakistan cracks down on lawyers and judges*, New York: Volume 19, No. 19 (C), 2007 also see www.hrw.org.

¹³¹ Qazi Faez Isa, *Living and Dying under Emergency*, November 11, 2007

¹³² Human Rights Watch Report, *Pakistan destroying legality, Pakistan cracks down on lawyers and judges*, New York: Volume 19, No. 19 (C), 2007. Also see www.hrw.org.

freedom, justice and equality. The past recipients of the award included the legendary anti-apartheid leader Nelson Mandela, and the team of litigants that contested *Brown versus the Board of Education*, that brought an end to racial segregation at educational institutions in the United States of America. The New York City Bar Association granted the Justice Chaudhry, an honorary membership as a symbol of the movement for judicial and lawyer independence in Pakistan. The Chief Justice also received the “Lawyer of the Year” award from the New York-based periodical *The National Law Journal* for the year 2007. That was the time when struggle for the restoration of the deposed judiciary was in progress.¹³³

The independence of the judiciary was widely recognized in a number of international instruments, such as Article 10 of the Universal Declaration of Human Rights (Universal Declaration) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which both require an independent and impartial tribunal. Although Pakistan is not a signatory to the ICCPR, the Universal Declaration is widely regarded as representing customary international law upon which the ICCPR elaborates, and Pakistan’s Constitution provides for an independent judiciary as well as for the other rights referred to below.¹³⁴

Media’s Support

Since the Pakistani Supreme Court, as an institution, has almost always performed the function of legitimating political authority, the public image of the judiciary has rarely been positive. However, when Chaudhry started expanding public interest litigation, public and media distrust of the judiciary started decreasing. Editorials in major newspapers began to hail the Supreme Court, in general, and Chief Justice Chaudhry, in particular.¹³⁵

Chaudhry showed a keen interest in the Court’s media image. The Supreme Court Report in 2006 included a section called “Supreme Court and the Media,” consisting of eighteen press reports on the achievements of the Chaudhry Court (Supreme Court Report 2006). Lawyers critical of Chaudhry called his tactics a “media circus” and argued that Chaudhry was using *suo motu* action for self-aggrandizement. Since Chaudhry had been a regime loyalist, his sensitivity to public and media image can provide an explanation for the transformation of the Court’s political function. As the Chaudhry Court delivered on public interest cases, the media embraced it as the people’s court and encouraged it to address pressing constitutional and political issues as well.¹³⁶ The legal community-media partnership, in fact, worked out to be a great combination that created new heroes and pitched the two communities as ultimate beneficiaries of the political struggle. This is not to suggest that the struggle did not bring any change in the country. However, it did not necessarily denote a transformation of the mindset and change the overall system of governance as there was hardly any introspection by the legal community of its attitudes.¹³⁷

Impacts of the Lawyers Movement

Pakistan’s economy suffered gravely, government focus shifted from work and economy to non-violent solution for the lawyers. PML-N was already fully involved from the onset,

¹³³ Azmat Abbas and Saima Jasam, op.cit., pp.11-12

¹³⁴ International Bar Association Report, *A Long March to Justice: A report on judicial independence and integrity in Pakistan*, London: 2009

¹³⁵ Shoaib A. Ghais, “Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf” *Law & Social Inquiry Journal of the American Bar Association*, Volume 35, Issue 4, 985–1022, Fall 2010

¹³⁶ Ibid

¹³⁷ Ayesha Siddiqi, Did the Movement Bring a Fundamental Change in the State and the Society and the Relationship Between the two? See <http://alaihawah.wordpress.com/2012/03/30/looking-back-at-the-lawyers-movement/>

however, other political parties also jumped on the band wagon causing more disruption in daily life. The poorest and daily labourers suffered the most because of strike calls and road blockages. The real story on the road was that poorest don't wake up every morning to see Iftikhar Choudhry wearing a black suite, sunglasses, sitting in a new car parading on the streets of Pakistan, the poorest wake up and hope for a better day, a day in which they can increase their earnings and support their family, bring food to the table, they don't want to see the roads blocked and strikes called which stop them from earning their daily livelihoods.¹³⁸ The long march conducted during June 2008, gathered a huge momentum when it raveled all the way from Karachi to Islamabad via Multan and Lahore. The marchers gathered in Islamabad, in front of the Parliament House, conducted a day-long public meeting, emphasizing upon their demands and dispersed peacefully and went back to their respective cities. Since then a continuous struggle is going on without any obvious signs of the restoration of the judges.¹³⁹ As the riots and protests were held in the summer months, the intense heat resulted in numerous deaths and hospital admissions because of heat exhaustion, nearly all of which were small time lawyers and their family members travelling either on foot or in non-airconditioned cars. However, the behind the scene aim of ousting Parvez Musharraf was achieved at the end.¹⁴⁰

CONCLUSION

Throughout the history of Pakistan judiciary remained under politicians and military dictators. As an independent institution and having the most important pillar of the state it did not play an outstanding role. But in 2007 a proper struggle started in the shape of lawyers' movement for independence of judiciary. In short term objectives they succeeded in the restoration of Chief Justice and other deposed judges and in the long term, in overthrowing a military rule. In addition the lawyers also got support of the media, politicians of the opposition and international community. After the democratic set up in Pakistan the lawyers' movement continued for the rule of law. This was one of the concrete and successful movements on national level against the military rule. In spite of difficulties the movement succeeded in democratic set up and paved the way for judicial activism in Pakistan.

¹³⁸ The Color Revolution In Pakistan: Black Tulsi, The Sikh Archives, also see <http://www.sikharchives.com>

¹³⁹ Zameer Qadri, *Judicial Conflict: From Dictatorship to Democratic Government* available one www.intermedia.org.pk/pdf/pak_afghan/Zameer_Qadri.pdf

¹⁴⁰ The Colour Revolution in Pakistan: Black Tulsi, see, <http://www.sikharchives.com/?p=3341>

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