

# Pillars of Democracy in Pakistan: Judiciary and Media

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**Abstract – Also, it is important to understand how during the initial years of state-formation, certain circumstances and domestic players shaped the future of Pakistan with democracy strangled by the ‘men on the horseback’ holding onto the reins of power. Thus, it becomes important to study Pakistan as a state and the role played by different state actors (as well as non-state actors) in shaping the country mired in serious structural problems. It would help in understanding the role of each actor in the circumstances that created conducive environment for terrorism to breed. Also, how policy making is influenced in Pakistan thereby affecting its relationship with India. This would ultimately lead us to understanding why Pakistan sponsors terrorism into India, creating internal security problems for India.**

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## JUDICIARY: FROM A SUBMISSIVE TO ASSERTIVE INSTITUTION

The judiciary in a country is called as the fourth pillar of democracy. It is the custodian of the constitution of the state and the guarantor of the fundamental rights of its people. It acts as arbiter between the legislature and executive. The independence of judiciary is the means to ensure democratic progress in the country. In Pakistan, judiciary has gone through different phases under regime oscillating between military and civilian government. This underwent a change in 2005 after the appointment of Iftikhar Chaudhry as the Chief Justice (CJ) of Supreme Court (SC) and the ‘lawyers movement’ that followed upon removal of Iftikhar Chaudhry as CJ of SC by Musharraf.

The judiciary in Pakistan has, for major part of country’s history remained obliged to the executive authority. The Supreme Court developed the “doctrine of state necessity” and applied it to constitutional law to legitimize the three successful military coups in 1958, 1977 and 1999. (Human Rights Watch 2007)[1] After a successful coup in 1999, Musharraf reconstituted Supreme Court (in 2000) to legitimize his rule. Supreme Court validated the coup on May 13, 2000 by invoking “doctrine of necessity” and asked Musharraf to hold elections within three years. (Dawn, 30 July 2009)

From 1947 to 2007, the judiciary in Pakistan has oscillated between the military regime and the democratic government. (Jaffrelot 2015: 390) The prolonged military rule since the formative years of Pakistan’s independence clamped the autonomy of judiciary. Judicial independence ensures democracy, rule of law, constitutionalism and protection of fundamental rights. Between 2005 to 2007, the

superior judiciary transformed from being a submissive institution to an assertive institution. The Supreme Court broke away from its historical role of submissiveness, asserting judicial autonomy under Iftikhar Chaudhry as the Chief Justice to be followed by the lawyer’s movement. The lawyer’s movement in 2007 was the primary reason for the downfall of Musharraf after his attempt to unconstitutionally dismiss Chief Justice Iftikhar Chaudhry.

Supreme Court under Iftikhar Chaudhry started to assert its independence which ushered the judiciary in Pakistan into an era of judicial activism. (Jaffrelot 2015: 390) It took up a number of cases that challenged the government. As the Chief Justice of SC in 2006, Chaudhry blocked the privatisation of Pakistan Steel Mills Corporation that upset Shaukat Aziz, then the Prime Minister of Pakistan. Then comes the *Missing Persons* case. Human Rights groups accuse Pakistan military and intelligence agencies of secretly detaining around four-hundred people including the terror suspects and human rights activists since 2001. (*The New York Times*, 7 May 2007) The SC asked the security agencies to produce the missing people. It came close to opening an inquiry into Lal Masjid military operation. For first time judiciary came to show its constitutional assertiveness and independence in face of military dictatorship. The “judiciary-centered politics” developed under the leadership of CJ Iftikhar Chaudhry.

Musharraf alarmed by the increasing independence of the judiciary decided to oust Iftikhar Chaudhry on charges of abuse of power and nepotism fearing that the CJ would prevent

him from seeking second term as president. The lawyers took Musharraf's action against Chief Justice as an "assault on independence of judiciary". (*Dawn*, 10 March 2007) They protested to protect one of the pillars of democracy, soon to be joined by public on large scale. Various opposition parties like Pakistan-Tehreek-e-Insaf (PTI), Jamaat-e-Islami, Awami Muslim League and others came to support the movement on different occasions but were allowed to play subsidiary role. High profile lawyers joined the movement and played a key role in mobilizing public, especially the urban class. Aitzaz Ahsan, Ali Ahmed Kurd, Muneer Malik and Hamid Khan had acted as counsel of Iftikhar Chaudhry before the Supreme Judicial Council (SJC). On November 3, 2007 a state of emergency was declared by Musharraf to dismantle the movement by the lawyers. Musharraf announced, "There is visible ascendancy in the activities of extremists and incidents of terrorist attacks...posing a grave threat to the life and property of the citizens of Pakistan. I, General Pervez Musharraf, Chief of Army Staff, proclaim emergency throughout Pakistan". (*Human Rights Watch* 2007) The widespread protests in the country and the pressures from abroad forced Musharraf to organize general elections. The lawyers movement that had begun to reinstate Iftikhar Chaudhry as the Chief Justice of SC grew and demanded restoration of constitutional rule.

The movement continued even after the elections were held due to the failure of Zardari's government to reinstate Iftikhar Chaudhry to the office of Chief Justice. In early March 2009, the leaders of the lawyer's movement called for a 'long march' to initiate a campaign to collect ten million signatures for reinstating Iftikhar Chaudhry and all the other deposed judges. Ali Ahmad Kurd, the former president of Supreme Court Bar Association (SCBA) emphasized on implementing supremacy of constitution and an independent judiciary as the ultimate goal of the movement. (*Dawn*, 8 March 2009) The 'long march' garnered major support from the main opposition parties, mainly PML(N). The police arrested a large number of lawyers and their supporters but with Nawaz Sharif's participation the protest swelled to include thousands of people. After the intervention of the General Kayani, the army chief the government announced to reinstate the chief justice and other judges. (*Dawn*, 16 March 2009)

After Iftikhar Chaudhry was reinstated as the Chief Justice of Supreme Court in March 2009, "what had been a conflict over judicial autonomy from the military, rapidly transmitted into a conflict over judicial autonomy from an elected parliament". (*Dawn*, 19 November 2013) In July 2009, Iftikhar Chaudhry in a landmark judgment invalidated all the orders taken by Musharraf during the emergency which included removal of judges who had taken oath under the Provisional Constitutional Order (PCO). [2] Next, the Supreme Court invalidated the National

Reconciliation Ordinance (NRO)[3] that Musharraf had passed. This helped in opening the corruption cases against the politicians such as Nawaz Sharif and Asif Zardari. In 2012, the Supreme Court asked the government to reopen an old corruption case against the President Zardari but Prime Minister Gilani refused to write to Swiss authorities to reopen the investigation. The Supreme Court could not start a case because Zardari enjoyed immunity as president but declared PM Gilani ineligible to hold the office. Iftikhar Chaudhry read the order, "Yousaf Raza Gilani is disqualified from membership of parliament from April 26, the date of his conviction. He has also ceased to be the prime minister of Pakistan". (*The Express Tribune*, 19 June 2012) The Supreme Court's treatment to the democratically elected government came under criticism by certain sections of intelligentsia. Asma Jahangir, the former president of Supreme Court Bar Association (SCBA) while expressing concern about the way the Supreme Court was undermining the parliament authority said, "We want a strong judiciary, not a powerful one". (*The Express Tribune*, 8 August 2012) Another former president of SCBA, Muneer Malik in an interview with the *New York Times* admonished this as a dangerous trend and said that "the judges are not elected representatives of the people and they are arrogating power to themselves as if they are the only sanctimonious institution in the country. All dictators fall prey to this psyche- that only we are clean, and capable of doing the right thing". (*Dawn*, 27 January 2012) Judiciary is walking on a thin line between strong judiciary and powerful judiciary.

The Supreme Court under Iftikhar Chaudhry tried to strengthen the judicial system by revising the judges appointment procedure. The Supreme Court took this opportunity during the drafting and revision of the 18<sup>th</sup> Constitutional Amendment by parliament. But after a brief period of judicial activism, judiciary seems to have again become pliant of the Pakistani military. After the Pakistan Tehreek-e-Insaf (PTI) leader, Imran Khan moved the Supreme Court to disqualify Nawaz Sharif as head of the government on basis of Panama Papers leak (in 2015) the court decided to hear the case (on October 28, 2016).

## MEDIA IN PAKISTAN

The successful campaign for judicial independence can be credited to the emergence of independent Pakistani media. Media has played a significant role in the 'lawyers movement' by mobilizing civil society. Both the print and electronic media provided wide coverage of the movement. Pakistan had two major news stations which were state-owned. This monopoly of government over radio and television came to end in 2002 ushering Pakistan media into a new era.

The year 2002 can be called as the watershed point in the history of Pakistani media. General Pervez Musharraf introduced liberalization of media which allowed private players to enter the broadcast news arena of media in Pakistan. This put an end to the monopoly of the state-run *Pakistan Television* (PTV). By 2007, many private news channels came up. Presently the three largest private media groups in Pakistan are Jang group, Dawn group and Lakson group. The Jang group owns Geo TV which is Pakistan's most popular private television network. The Jang group of newspapers is the largest media group to be followed by the Dawn group of newspapers. The Dawn media group has grown from the English paper *Dawn* which was founded by Quaid-e-Azam and first published in 1941. This competition among the private players has only increased the quality, credibility and diversity in the news reporting.

Media played crucial role during the lawyers movement by politically sensitizing the public on one hand and making the government accountable on the other. Media is no longer just a source of information or entertainment. With the advancement in the technology the traditional role of media has transformed from an informant of events to building of informed public opinion and holding the powers accountable. For democracy to prosper in any country, freedom of media is quintessential. Many governments in the world try to control the media in order to control its subjects (citizens) and the freedom of the press is clamped down. This is particular to the authoritative regimes especially those under men in uniform which try to colonise the minds of people by controlling the media. Pakistan has been directly or indirectly under military rule which in order to legitimize and secure its rule has tried to control the media throughout. After an initial period of freedom, the news media functioned under some form of government control. The media in Pakistan like the Urdu daily *Jang*, the English daily *Dawn* and *Radio Pakistan*, "had toed the pro-government and pro-establishment line". (Sarwar 2011: 25)[4] During the first military rule from 1958 to 1971, the state-controlled Pakistan Television had remained very much "his master's voice" and Pakistan Television Broadcasting (PTV) reported only what the government allowed. (*ibid.*) General Zia's military regime from 1977 to 1988 clamped down the freedom of the media more fiercely, with journalists critical of the government or military imprisoned, flogged and tortured on a large scale. Even at the turn of the twenty-first century the freedom of Pakistan media seems to be in jeopardy with the upsurge in the killing of journalists. According to a report released by International Federation of Journalists (IFJ), 115 journalists and media workers have been killed in Pakistan between 1990 to 2015 with alone 14 journalists killed in 2014 making Pakistan the fourth deadliest country in the

world for journalists. (*The Express Tribune*, 31 December 2014)

In other forms of strangling the freedom of media and expression of views, sometimes the government banned popular television channels. In November 2007, Musharraf declared a state of emergency during the lawyers movement and shut down private television and radio stations. He called for ban of Geo News, a private news channel in Pakistan which is popular both in the country and abroad for its objective reporting. (*Dawn*, 11 November 2007) This clamp down on traditional media was soon substituted by other forms of media like Youtube, Flicker, blogs, etc. Use of the new social media is specific to the lawyers movement unlike the other movements in the past. The Pakistan Electronic Media Regulatory Authority (PEMRA)[5] has been used by the authorities to silence the broadcast media by threatening to cancel the license.

Media and public awareness can also be credited for the first peaceful transfer of power from one elected government to another (in 2013) after completion of its full-term of five years. Pakistan saw transfer of power from Musharraf to a civilian government after successful elections of 2007. This time the leaders came to power based on popular mandate. This was something witnessed by the people of Pakistan first time in its history of over seventy years. Despite the removal of Nawaz Sharif from the office of Prime Minister (by Supreme Court on the charges of corruption) before completion of his term, the government completed its term and elections were held. It is believed to be army's game plan to have Nawaz Sharif removed from the office but this time the army didn't take over the seat of power itself unlike the past. Media can be credit for the same. The media has also played important role in unveiling various corruption cases such as Pakistan Steel Mills, Media gate scandal, Ephedrine quota case and others.

Media can be said to play an influencing role in the Indo-Pakistan relationship. Media plays important role in shaping perceptions about each other, thereby influencing the foreign policy decisions. More than just providing information media contributes in policy formulation by "reflecting public opinion in the form of criticism and suggestions through the editorial pages, at the same time also influence (what) people are thinking". (Pattanaik 2004: 07) With increased penetration of media and newspapers into Pakistan, the impact on the public opinion and perceptions can be huge thus influencing the foreign policy. The media reporting on both sides of the border, be it during the Kargil war in 1999, Indian Parliament attack in 2001 or Mumbai terror attacks in 2008, did put the pressure on the governments of India and Pakistan to act keeping

in mind the strong public opinion that forms during such incidents. Ayesha Siddiqi agrees that “in both India and Pakistan media has generally become a tool for lobbies that broadly pressure foreign policy re-orientation or its direction. This is often done through building a hype on issues or twisting arguments in a way that it molds public opinion. The hype created thus amounts to pressure on policy-makers”.

The media in Pakistan has suffered due to political instability but the privatisation of media in 2002 can be said to be one of the important chapters in the history of democracy in Pakistan. With emergence of various private news channels the public opinion has got empowered with questions raised to authority including the army which had not been witnessed in the past. As democracy is the panacea to the problems of Pakistan, media can be seen to play a very crucial role in years to come. Media as the fourth pillar to democracy is rising to be an active participant in transforming Pakistan from a feeble to a truly strong and vibrant democratic state with military confining itself to defending the territorial borders than the ideological frontiers.

## REFERENCE

1. Provisional Constitutional Order (PCO) is an emergency and extra-constitutional order that suspends the Constitution of Pakistan and becomes supreme law of land. In January 2000, Musharraf asked the judges to take an oath under the PCO which suspended the 1973 Constitution and banned the courts from ruling against the Chief Executive. Source: Jaffrelot, Christophe (2015), The Pakistan Paradox. Instability and Resilience, Haryana: Random House Publishers India Pvt. Ltd.
2. National Reconciliation Ordinance (NRO) was passed by Musharraf after the negotiations with Benazir Bhutto. It exempted from persecution those who committed acts of corruption from 1986 to 1999.
3. Sarwar, Beena (2011), “Pakistani Journalists: Standing Tall”, Economic & Political Weekly, 46(29): pp. 23-27.
4. Pakistan Electronic Media Regulatory Authority (PEMRA)\*is an independent constitutional body to regulate the private electronic mass-media industry and has the authority to issue licenses.
5. World Press Freedom Index is compiled and published annually by Reporters Without Borders (RWB) which is an international non-profit, non-governmental organization based

in Paris, France that advocates freedom of press. The index measures the degree of freedom enjoyed by the media in 186 countries.

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