

## INSTITUTIONAL CONFRONTATION AND POLITICAL INSTABILITY

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### ABSTRACT

Democracy is a coherent way of government. In democracy executive, judiciary, civil and military establishments represent a state. For the progress and prosperity of the state, stability of all kinds is very important. Since its creation, Pakistan is facing internal political instability like Constitutional deadlock, government's instability and institutional confrontation. Confrontation between main organs of the state as judiciary, president, military establishment and mutual confrontation and mistrust of the politicians had badly affected the democratic system of Pakistan. Better working relationship is very important for the progress of the state. With the revival of democracy in Pakistan, the people of Pakistan were expecting political stability in state but their dreams could not become true and sank in the sea of institutional confrontation. Present research explains that how they affected the political system of Pakistan.

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## Pattern of working of Institution during 1988-1999

Institutions	Working Pattern
<b>President</b>	In the presence of 8 <sup>th</sup> amendment was more powerful then Prime Minister Remained in confrontation with PM in person of Ghulam Ishaq Khan 1988-1993 and Farooq Leghar during 1993-1998. Dissolved the Government of Benazir in 1990 and of Nawaz Sharif in 1993 and in person of Farooq Leghari 1993-1998 dissolved the government of Benazir in 1996 and remained in confrontation with Nawaz Sharif.
<b>Prime Minister</b>	Confrontation with president, Army, Judiciary and Opposition.
<b>Military</b>	Hegemony of military establishment remained in politics and Never allowed PM to work freely Backed the presidents' decisions of dissolution.
<b>Judiciary</b>	Validated the orders of dissolution in 1990 and 1996 even military Coupe of 1999 Confrontation with Executive
<b>Opposition</b>	Confrontation with Government Politics of agitation Supported dissolution orders even military Coupe of 1999 Played politics of conspiracy Back door contacts with undemocratic forces to destabilize the sitting Government

Note: in a parliamentary form of government, opposition plays a very vital role through its positive contribution therefore researcher has defined the role of opposition as 'institution'.

Source: Researcher own constructed

A smooth working relationship between the various state institutions is a basic condition for the effective functioning of the state. When institutions act improperly, unrest and instability are the ultimate outcome. Pakistan has been facing the same problem. The primacy of institutions and law over individuals and organizations is an important value of democracy. These institutions must respect each other because every institution enjoys autonomy but does not operate in a vacuum; each institution has to interact with others. If an institution attempts to expand its domain at the expense of others or tries to dominate others or develops a self-ascribed mission of rectifying all other institutions, there will be sharp institutional imbalance and conflict/confrontation which is not helpful to democracy.

### Role of Judiciary

No society can run without justice. Judiciary is the guardian and final interpreter of the Constitution. In the period under study, the judiciary remained under lot of stress. It had to decide several petitions which were filed regarding Constitutional amendments and against the orders of dissolution of assemblies of presidents and COAS. From Governor General Ghulam Muhammad to Musharraf, it had to decide the matters of suspension, abrogation, violation of the Constitution and held in abeyance of the Constitution.

For an independent judiciary, provisions had been provided in all Constitutions of Pakistan. But at different times, practice to control judiciary had been made which later became a reason of confrontation between judiciary and executive and between executive and president which badly affected smooth running of functioning of state. It was tried to put judiciary under control by political appointments and through amendments. Political appointments were started during Ayube Khan Era(Nawa-i-waqat, Lahore, 25<sup>th</sup> January 1985). Even these appointments were made during caretaker period as Ghulam Ishaq Khan made fifty appointments before

elections of 1988(Nasir, 1990) which latter became a bone of contention between him and Prime Minister. As according to article 48 of the Constitution, president was bound to take the advice of Prime Minister. When this matter was brought to Lahore High Court which gave its decision in favour of president without hearing the point of view of federation(Nasir, 1990). Government filled a petition in SCP against this decision. Although this matter was later settled out of the court but it created a sense of confrontation between two powerful institutions president and executive (PM). Along with this, it also created doubts in the mind of government about the judiciary as well.

When on 6<sup>th</sup> of August 1990, government of Benazir Bhutto was dissolved by president by using article 58(2)(b) of the Constitution, Benazir decided to challenge the order in all the four High Courts under article 199(Dawood, 1994a). The federation of Pakistan under article 186-A of Constitution requested the Supreme Court to consolidate all petitions pending in four high Courts(PLD 1992,SC pp 654). On this request, Supreme Court on 15<sup>th</sup> of October 1990 transferred the pending petition of Pishawer High Court to Lahore High Court and Balochistan High Court to Sindh High Court(Dawood, 1994b). Lahore High Court up held the order of president on 14<sup>th</sup> of October 1990 and the petitioner challenged this decision in SCP. A full court bench consisting on 12 judges of SCP judged the petition and dismissed the petition and up held the order of president by 10-02. Justice Sajjad Ali Shah and Justice Abdul Shakoor Salam wrote the disagreeing/dissenting verdict(Dawood, 1994b p,103). In fact the issue of dissolution was of Constitutional nature, it needed a debate in parliament before the execution of the order. Endorsement of the termination of assembly by the court set a sorry practice in the parliamentary history of Pakistan. This decision caused political uncertainty which proved dreadful for the future of democratization(Khalid, 2012, p. 06). On this decision Paula R. Newberg writes in his book that —like rulings in earlier courts, the court took its direction from political winds and refused to examine the soundness of president's arguments or the sufficiency of his claim(Newberg, 2002 p,216).<sup>l</sup>

Under article 243(1) of the Constitution armed forces are under the command of the federal government but instead of this that army perform its duties under federal government it is running the state according to its wishes which resulted in confrontation. During the era under study, it tried to maintain its hegemony over the entire political setup. As it was revealed by Lt. General Aslam Jan Mahsood that when Benazir indulged in confrontation with army on the issue of retirement of Admiral Iftikhar Ahmed Sirohey on the advice of her Minister Nasirullah Babar then army decided to dismiss her government(Dawood, 1994). According to Aslam Jan Mahsood a corps commander meeting was held on 21<sup>st</sup> July 1990 in Rawalpindi in which it was decided to sack the Benazir's government. He further said that it was decided some six month before the dissolution(Akhund, 2000 p, 309). It was the army and bureaucracy that bypassed the Constitution and controlled the Constitutional powers which should have been exercised by elected people. However it is an established fact that army was behind the move of president. Moreover, Benazir was being thought as security risk. Thus, interference and animosity was existed between Benazir and army. The army always desired to have an authority that could preserve its benefits and did not interfere in its functions(Raza, 2001).

### **Role of President**

In parliamentary democratic system of governments, president assumed the office as head of the state. He leaves all the party affiliations while representing federation. It is believed that he would work for the unity of federation and for the betterment of the state. But it did not happen during the period under study. Personal interests bulldozed the national interests. When Nawaz Sharif came in power, Ghulam Ishaq Khan the president, supported him and gave him preference over Benazir. But when Nawaz Sharif urged on 21<sup>st</sup> February 1993 to repeal the 8<sup>th</sup> amendment due to which two governments were already dissolved one of Muhammad Khan Junejo in 1988 and the other of Benazir in 1990 than a tussle started between Prime Minister and president. Later, the same president dissolved the assembly of another elected Prime Minister Muhammed

Nawaz Sharif on different allegation almost the same as he leveled against Benazir. Nawaz Sharif, knowing this fact that there were no such circumstances due to which his government was dissolved, filed a petition in SCP under article 184(3). He prayed the court to restore his government as the order of the president was based on malafied intention. This petition was heard on day to day basis by full bench(H. Khan, 2005, p. 755). On 26<sup>th</sup> of May 1993, the SCP gave its verdict and restored the assembly and government of Nawaz Sharif. This decision was not being expected by the court as Zering says that —This time, however, the jurists decided to challenge the very vice regal tradition that their predecessors were, in major part, responsible for nurturing and institutionalizing.(Ziring, 1997, p. 515)¶

Benazir, who earlier had become the victim of article 58(2) (b) should welcome the decision and must join hands with Nawaz to repeal the said 8<sup>th</sup> amendment. But showing immaturity and promoting the politics of confrontation joined hands with president. Benazir criticized the decision and declared it as the result of —Chamakl (money) but the CJP Naseem Hassan Shah responded and said that his decision was clean and crystal(N. H. Shah, 2002, p. 114). Justice Sajjad Ali Shah wrote dissenting judgement.

### **Role of Military**

In this power politics the army being a powerful institution should come forward and must use its influence for the implementation of the order of the court. But there were already difference between army and Nawaz since Gulf War crises and it did not do what was the requirement of the time. It was the necessary of the time that military play its role for the continuation of the government but it not happened. After a series of meetings between troika (president, Prime Minister and COAS) situation remained tense. A corps commander's emergency meeting was held on 2 July 1993 in which advised was given to Nawaz Sharif to hold fresh elections. Nawaz Sharif agreed on the formula which is also called Kakkar (the then COAS) Formula and advised the president to dissolve the assembly with this condition that he (president) will also stepped down. Assembly was dissolved and then GIK stepped down from the presidency. History is evident that military has influenced the decisions of the judiciary as well. As Aslam Baig disclosing that he did try to influence the Supreme Court of Pakistan in 1988, not to give a verdict for the restoration of Muhammad Khan Junejo's dismissed government(Amin, 1994, p. 193).

In fact anti India stance in foreign policy is a —lifesaving boat¶ for military centered establishment. Military being a well-established and well-disciplined institution is widely respected by the nation. Due to its influence it had ruled the state directly from 1958-1971, 1977-1985 and 1999-2007 by Ayube Khan, Yaha Khan, Zia Ul Haq and Musharraf respectively. But after the sudden death of COAS and president Zia, the army took a grim view to restore democracy. As Hassan Askari Rizvi stated that army started to think that directly running the political institution is a strain on its institution's professionalism(Rizvi, 1989, pp. 256–257). As Koonings and Kruijt has used the term —political Army¶ and stated that —military institutions that consider involvement in – or control over – domestic politics and the business of government to be a central part of their legitimate function(Koonings & Kruijt, 2002)¶.

Military had been involved in making and breaking of political parties and governments to manipulate the political system as it happened in the elections 1988. Islami Jamhoori Ittehad (IJI) was made by military establishment to counter PPP. Although, the military establishment decided to restore democracy yet it did not allow PPP to sweep a victory and to counter PPP it made IJI which was an alliance of different political parties majority of them was right wing parties. The 8<sup>th</sup> amendment which was passed during COAS and President Zia era was used by president with the support of military. The army always wanted to have an individual in authority that could preserve its benefits and did not intrude in its business(Raza, 2001, p. 103). Although it is used by president but as Ayesha Jalal says that these decisions are never taken without the consultation and approval of the army(Bose & Jalal, 2017, p. 234). Hamid Gul an Ex. Chief of ISI later admitted that he made IJI to counter PPP(Shaikh, 2000, p. 199).

Ultra-Constitutional activities of the institutions did not allow the democracy to take its roots. It is the practice of parliamentary system of government that the party which won the elections formed its government. But when Benazir won the election of 1988 she was not allowed to form her government. Before going to form her government she had to give many assurances to the military(Waseem, 1989, p. 453). It shows that powers were shared not transferred. The institution of army and president remained united against Prime Minister. It was once again seen that when president dissolved the government of Benazir in 1996, the army completely backed the president(Malik, 2008, p. 188).

### **Institutional Confrontation and Implications**

Institutional confrontation once again emerged during the second term of Benazir about two issue; separation of judiciary from the executive and appointments of judges. In this institutional confrontation government transferred Judges from high courts to Federal Shariat Court such as Nasar Aslam Zahid, Mehboob Ahmed and Justice Muhammad Ilyas. This policy was applied to sideline those judges who not suited to government. Because government wanted to see its favorite judges in the courts. On the issue of separation of judiciary from executive the SCP ruled to act till 23<sup>rd</sup> of March 1994 but when the time approached the government and all four provinces filled petitions to extend the time which was given till 23<sup>rd</sup> march 1996. The government allegedly put pressure to get the decision by different tactics even it suspended the son in law of Chief Justice from government service(Waseem, 1998 p.5). On the issue of appointments of judges there emerged a deadlock between executive and judiciary. The SCP gave its verdict in Al.Jihad Trust vs Federation of Pakistan case to appoint permanent Chief Justice of High Courts and also declared that the appointments made by acting Chief justices should be dropped. The government locked itself in confrontation with SCP and not comply the orders. After a delay of six months and 10 days it implemented the decision. This created a rift between judiciary (CJP) and government.

In this confrontational situation Benazir on the floor of the house ridiculed the judgement of SCP(PLD, 2000. P, 1217). President also asked her to implement the orders but in vain. President filed references to take the opinion of SCP. In this confrontation executive, judiciary and president were indulged. Moving a step forward the president dissolved the assembly of Benazir On 4<sup>th</sup> of November 1996 on the charges of corruption, mal practice, misuse of public funds etc(Bhutto, 2007, pp. 140–150). When Benazir and Sajjad Ali Shah was in the state of confrontation at that time assembly was dissolved and Benazir challenged the order in SCP and denied all the allegations which were leveled against her by president. The CJP formed a seven member bench to decide the matter. It is pertinent to mention that all the matters of dissolution are heard by full court bench but in this case only seven members bench was formed out of total 14 members. The SCP gave its decision on 29<sup>th</sup> of January 1996 and upheld the order of the president. Out of seven judges one Judge Justice Zia Mahmood Mirza gave dissenting judgement. The impact of this decision was again resulted into uncertainty/instability of democratic institutions. Benazir criticized the decision and said it was not unexpected decision while on the other hand opposition showed political immaturity and admired the decision which validated the order of the president..

It is a sorry situation that when our politicians are in opposition they always talked about democracy and demand from the government to practice democratic norms but when they get power they practice autocratically. They always offer themselves to topple the other's government. History is evident that in 1990 Nawaz Sharif, in 1993 Benazir joined hands with president respectively. When Leghari was in conflict with Benazir at that time Nawaz was happy with turmoil situation and when Nawaz locked himself in conflict with army than Benazir was pleased with the unstable position of government.

In a parliamentary form of government, political parties also had a very vital position in strengthening the political system. Along with other institutions, opposition has also its vital position in democratic setup. In democracy majority is given the right to govern and minority

plays its role as opposition. The purpose of this role is to keep a check on the performance and functioning of the government. Opposition always keeps an eye on the interests of the society. As Thomas in 'the politics of the developing nations' says that resolute and active government and a liable opposition are vital components for a democracy (Thomas, 1964) it is considered that opposition is a group of people who will challenge the policies of the government (Wilding & Laundry, 1961, p. 498). But this challenge is assumed for the benefits of the state and nation not for personal goals. The importance of opposition could be seen by the statement of Sir Ivor Jennings —if there is no opposition there is no democracy (Gulag, 2007, p. 30). No society can be free of conflicts and disagreements, their names and conditions can be varied (Diamond & Plattner, 1996, p. 40). In every system of government power struggle is a continued process. The party or parties which are not in power try to get power by ousting/overthrowing those who are in power. But to get in power there are different methods like elections and vote of no confidence. Democratic system insures the right of opposition by using the forum of parliament.

In the politic of confrontation the role of opposition in Pakistan during the era under study had not been up to the mark of democratic norms. It had not worked for the strengthening the institution of parliament rather to weaken it through its undemocratic acts through its policies of long marches, dharnas (sit in) and conspiracies against the government. Thus they threatened the system. History of Pakistan is evident that whenever government-opposition are locked in conflict the nonpolitical forces got benefits as it happened in 1977 when opposition and government could not reach on an agreement then military took over. Even due to the confrontations Pakistan had to face the debacle of East Pakistan. At that time political parties did not accept the other's right to form the government and at the end had to face the parting of one part of the country.

Parliament is an institution and opposition is an important part of this institution. In developing countries, the opposition provides procedures for political stability (Hofstadter, 1969). No doubt that there are certain types of conflicts between ruling party and opposition but these conflicts should remain within the boundaries of system (Hofstadter, 1969). As democracy cannot function properly without the opposing forces (Madan, 1986, p. 163). Opposition is a compulsory part of parliamentary democracy (Jennings, 1947, p. 484). But it should work according to the norms of democracy. Opposition in Pakistan always tried to criticize on all the policies of the government. The 8<sup>th</sup> amendment of the Constitution due to which three governments were dissolved When Benazir tried to repeal it in her first tenure then Nawaz Sharif did not give her support and when Nawaz wished to repeal the amendment in first tenure then Benazir did not support him and joined hands with president. The non-cooperative attitude of the opposition has put in danger the future of democracy in the state. Opposition plays a vital role in the survival of parliamentary control. it is considered that opposition is vital for the viability of a democratic system (Coxall, 2014, p. 165). In Pakistan, for its personal interests, the opposition has always undermined the democratic system.

Democratic experience of Pakistan does not characterize the normative ideals connected with government-opposition links as it has to function in the background structure of neo-viceregalism. In Pakistani situation of neo-viceregalism could be explained as a political system controlled by civil-military bureaucracy, reinforced by feudal lords, industrialists and religious classes with some resemblance of democracy. In such operational framework, the norms and traditions of ideal democracy cannot be thoroughly ensured. Linz while describing the factors which influence the democracy states that a loyal opposition that it is dedicated to attain power only by democratic means, and it discards vehemence or undemocratic pleas to the military as a way to gain power (Stepan & Linz, 1978, pp. 16–17).

During the decade under study 1988-1999 the opposition's role in politics had been insufficient and unproductive which is the most important reason for the failure of democratic experience and institutional confrontation in the country. The revival of democracy under the 8th

Constitutional amendment was the result of a great struggle of the democratic forces, but it could not continue in the power game between the opposing centers of power. In fact the opposition could not adjust itself between ruling party and vice regal centre of power. In fact this struggle of power was between the representative and non-representative, democratic and non-democratic forces in which, the opposition was supposed to play a counter complementary role to endorse the pre-dominance of democratic ideals over the traditions of absolutism and dictatorship. But the opposition did not strengthen the democratic government and to quest its lust for power oppositions again brought itself in line with the non-democratic vice regal centres of power.

On the other hand government or ruling party involved itself in so called conflicts with the opposition. Throughout this decade the attitude of Intolerance, repression and high handedness on the part of the governments towards the opposition had remained a common practice. Bigoted dealing with the opposition parties and the use of autocratic steps with intolerant approaches on the part of government remained continuous as a method of dealing with those who expressed protest against the policies of the government. During this era all the governments tried their level best to harass the opposition by registering false case against them.

In parliamentary form of government, the difference of arguments/opinion is considered very fruitful and constructive. These differences could be on different matters like foreign policy, internal policy etc. There are division of thoughts in all the nations. The government and opposition are projected to preserve positive measures of understanding and harmony on the basic necessities of democratic order to certify the continuation of the course by all means. But in Pakistani politics the opposition is always viewed as an ignored political stake holder by virtue of certain flaws and has often been used by the traditional vice regal establishment as a tool to manipulate against the party in power.

Throughout the democratic history of Pakistan every deadlock in government-opposition relationship has resulted in the fatal forfeits/penalties/results for democratic process in the country. It is understood reality that the ruling/majority party and the opposition are the real participants in democratic setup. Their peaceful existence with sense of compromise, tolerance, mutual respect and cooperation is vital for suave working of democracy. They need to learn lesson from the repeated and recurrent mistakes on their part, which have most of the time pushed the situation to the ultimate deadlock and standoff that always resulted in the deadly termination of democratic experience. They are expected to promote a culture of harmony and understanding by avoiding needless opposition.

In the presence of politicians having lust of power the military establishment and its intelligence agencies had also played its part in undermining the democratic traditions. Being a powerful institution it is the duty of this institution to safeguard the boundaries but since the creation of Pakistan it is very active in politics especially after 1958. The civil-military establishment has also been active in the process of organising opposition alliances through its overt and covert activities, often against the ruling party. The opposition always remained ready to get the support from the hidden hands of military. Such form of affiliation certainly weakened ideals of democracy.

Institutional confrontation touched to its peak when Mian Muhammad Nawaz Sharif won the election with overwhelming majority in 1997 and finished the powers of president to dissolve the assembly by 13<sup>th</sup> amendment than he indulged in conflicts with president, judiciary, military and opposition. Prime Minister Sharif was gaining displeasure on many fronts, for he was alleged to be power hungry. He had forced out the chief justice of the Supreme Court and the army chief soon after the 8<sup>th</sup> amendment was revised, he was cracking down on the press as well. Even president had to resign when he came to know about the motion of impeachment which was assumed to be tabled against him by ruling party. But when he indulged in conflict with New Chief of Army Staff General Pervez Musharraf he had to face the wrath of the army. On 12<sup>th</sup> October 1999 General Musharraf overthrew his government and declared emergency in the country. The Constitution was put in abeyance and Provisional Constitutional Order (PCO) was

issued to provide a provisional governing framework. With this arrangement General Musharraf assumed the office of the Chief Executive (Ahmed, 2010, pp. 1–6). Judges were forced to take new oath of the office under PCO. Only six judges refused to take oath under PCO.

Once again matter was brought to SCP when A petition was filed by Zafar Ali Shah which is known as Zafar Ali Shah vs General Pervez Musharraf Chief Executive (PLD 2000, SC 869). A full court bench headed by CJP Irshad Hassan Khan announced its decision on 12<sup>th</sup> May 2000 and validated the military takeover. This shows how the judiciary supported the dictators and putting down their guns on the shoulder of tyrants under the doctrine of —law of necessity— like CJP Muneeb Ahmed. As Dr. Irum says that —Army has always been in quest of legitimacy and judiciary has fulfilled this requirement very often (Khalid, 2012, p. 02). In the presence of institutional confrontation the military being a powerful institution had used its embargo power through the 8<sup>th</sup> Amendment of the Constitution and informal power-sharing agreements, which restricted the *de facto* authority of the representative institutions. The military did not dither to use its authority on the means of compulsion to defend its position was obvious from the 1999 military coup, which was carried out in spite of extensive international criticism. Thus it is clear that the military would agree a limited political impact only through its own inventiveness.

It is obvious that the political process which returned in Pakistan after a long military rule in 1988 did not meet the criteria of true democratic norms and traditions. During this era the governments were weak and remained in vulnerable position in the presence of strong establishment and president. The governments also shared power with the President *de jure* and the military *de facto*. The Prime Ministers remained in the state of confrontation and could not make any agreement or compromise.

No democracy can serve the people if it is not ready to ensure justice. On the one side the Constitution provides enough powers to the judiciary but on the other hand, the *de facto* power of the military threatened the institution to get the decisions by force. (Statement of COAS Aslam Baig has been discussed in chapter 3) Thus came about a fundamental conflict among these state institutes. But this contradiction existed with the intrinsic weakness of a judiciary that how it surrendered before the dictators both military and civil. —As a matter of fact, no judiciary can play its effective role towards democratization in the absence of judicial independences. A strong institution of judiciary is inevitable for democratization (Khalid, 2012, p. 11).

## **Conclusion**

Since its creation Pakistan has faced the problem of institutional confrontation and imbalance of power tilted in favor of the president and COAS. Strengthening the military and the bureaucracy also strengthened Pakistan's structural disparity. Democratic institutions such as the Legislature, political parties, social organisations and the media were weak, and the civil-military bureaucracy was powerful. This disparity has been reinforced over time because Pakistan has been under extreme security pressure from India and Afghanistan. It also had issues with domestic law and order, prompting the government to assign the top priority to protection against external threats and internal chaos. Moreover politicians used all means to get power and invited the non-democratic forces to interfere in political matters. As Aqil Shah says —once out of power, political leaders have never hesitated to cut a power-sharing deal with the military, even if that has meant legitimating its institutionalized political role (A. Shah, 2003, p. 34). This strengthened the military and political institutions were ignored. This era may also be believed to be the same as our past, with the characteristics of poor political parties, with egotistical leadership, confrontation between the state institutions and finally non democratic actions (Javaid & Latif, 2017, p. 07).

The moral authority of institutions and of law over entities and institutions is an important principle of democracy. These institutions must regard one another because each institution prefers authority but does not perform in a vacuum; each institution must cooperate with the other. If an institution seeks to increase its sphere at the cost of others, or tends to control others, or develops a self-ascribed mission to correct all other institutes, there will be a sharp institutional disparity and turmoil that does not help democracy.



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