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# **A Critical Analysis of Changing Verdicts of the Supreme Court of Pakistan About The Dissolution of Assemblies From 1990-2000**

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## **ABSTRACT**

*The objective of this article is to inspect the role of the superior judiciary in Pakistan. The main focus is on the provocative role of the judiciary during the period 1988-1999. It is assumed that the judicial system of Pakistan was established keeping in view the United Kingdom's system of judiciary. The independence of the judiciary was guaranteed in all the constitutions of Pakistan in 1956, 1962, and 1973 but by setting the hierarchy of parallel courts like the Federal Shariat Court, Anti-Terrorist Court, and Military Courts the executive always pressurizes the superior judiciary. In the period under study from 1990 to 2000, four assemblies were dissolved almost on the same charges of maladministration, corruption, etc, and these decisions of dissolutions were challenged in the Supreme Court Pakistan. But on every occasion the decision of the Supreme Court was different. Therefore the focus of the study is on the changing verdicts of the Supreme Court.*

**Keywords:** Justice, Supreme Court, impartiality, Benazir Bhutto, Nawaz Sharif  
Dissolution, Decisions

## Introduction

Justice is very important in the life of an individual as well as a nation or state. Through justice happiness, impartiality and truth can exist. It forms the foundation of a civilized society. The history of justice is as old as the history of mankind. Justice is the most important pillar of society. The institution of justice has coexisted with the presence of humanity on Earth. The system of justice is one of the many things that man has learned from nature. Justice has been the main concern of man on earth in all eras and is almost as vast as human intellect itself (Ahmed, 2005, p.1). From the beginning of time, the notion of justice and the role of the judge could not be split from human life. Justice is defined as just behavior, impartiality, the use of power in the safeguarding of rights, and legal processes, and treating others fairly or roughly (Qureshi, 1988, p. 11). In a society, justice plays a very vital role. Justice brings peace, harmony, and equal opportunities for all. Its principles and articles include ethics, human rights, and natural and procedural rights (Ikram, 1966, p. 479). The principle of fair dealing, fair behavior, uprightness, and rectitude (Rama, 2010, p. 19). The necessity for well-defined codes of behavior was realized in the very early phases of human society's evolution, which grew into conventions and eventually became the foundation of law. With the evolution of law, society must have fondled the requisite for unprejudiced application and construal, and so the notion of judiciary arose from the idea of impartial application and interpretation of the law. A civilized society's lifeblood is its laws, and the judiciary is its beating heart which keeps it alive and well. Laws embody a society's fundamental ethical principles. These laws put various limits on the citizens of a society for the sake of the greater good and to make the community a safer place to live. It is against the law to steal, damage someone, drive recklessly, or pollute the environment, to mention a few of the many ways the law is intended to protect us. As a result, the goal of the law is to safeguard humans against the illegal wants of others. Laws are enacted to ensure the well-being of the people.

The first book written in our world was a book of the law, "Code of (Samurai) Hammurabi," which is the most comprehensive and flawless extracted compilation of Babylonian rules (Mannan, 1973, p. 15). The

code is a set of laws that civilized communities have followed for millennia. It is made up of 282 case laws. It deals with economic provisions, family laws, as well as civil and criminal laws. Furthermore, notwithstanding a few primeval endurances such as family camaraderie, district responsibility, trial by ordeal, and the lex talionis (an eye for an eye, a tooth for a tooth), the code advanced well beyond tribal custom and recognized no blood feuds, private retribution, or marriage by capture. As a result, both the law and the court are inseparable truths of existence that have existed since the dawn of time. "Courts do not exist in isolation. Judges are citizens of the community in which they reside.<sup>6</sup> It is clear from this that justice and the enforcement of the law are essential components of a peaceful society.

The law courts uphold the tenet of the law. We are provided a forum to resolve our disputes fairly in court. The courts are a free medium, and it is assumed that judges will perform their duties without any pressure either from the government or the general masses. The court's decisions are based on facts and figures which are presented before the court. Prejudice or discernment has no place here. Because of these unique qualities, justice is frequently denoted as a blindfolded symbol balancing a set of scales, oblivious to anything that could detract from the pursuit of a just and fair outcome.

The term "judiciary" refers to the exercise of power and authority to endorse what is fair, just, or legitimate. Courts/judiciary are a vital cog of society's machinery for maintaining peace; otherwise, all social order would be shattered. It is concerned with the functioning of the judicial department of government. It addresses some of this branch's essential ties with the legislative and executive branches, as well as the roles, structure, and organization of the courts, and, eventually, the prominent figures of the courts; the judges. The principal duty of any judicial system in any country is to aid in the maintenance of internal tranquility. A state exists to ensure life; nevertheless, once established, its goal must be to assure a happy life for all residents (Basu, 1981, p. 17). The judiciary as an institution has existed from the beginning of time. It administers justice to the people following national laws. The judiciary is the government's third branch.

It is just as vital as the executive and legislative branches. It is a crucial criterion in defining a country's place in national discourse "The judiciary is the last arbiter of the constitution and the defender of people's basic rights and civil freedoms. With such an important function in a constitutional framework, the judiciary's independence cannot be overstated (Arif, 2001, p. 319)." The judiciary serves critical duties that are critical to people's lives and happiness. It safeguards citizens' rights and freedoms against the oppressive authority of the government. Without a question, the legal system is the bedrock of any state. For adjudications and the organization of political society, justice is inextricably linked with the states. The judiciary's mission is to dispense justice under the law and the constitution, to preserve human rights, to check the executive, and to guarantee that legislation adopted by the legislature is constitutional. Nothing more nearly affects the welfare and security of the common person than his perceptions that he can rely on the certain and fast administration of justice, and there is no greater test of a government's perfection than the efficiency of its judicial system. However, if the law is deceitfully administered, the salt has lost its savor; if it is inadequately or intermittently implemented, the guarantees of order collapse; and offenses are suppressed more by the certainty of punishment than by the harshness of the punishment. As Basu stated how profound is the darkness if the torch of justice burns out?". Throughout the world, the judiciary serves as the third organ of the state, holding other organs accountable and upholding the rule of law.

The word 'Judiciary' used in the article refers to Pakistan's provincial high courts and the Supreme Court, ignoring lesser courts. As a result, the image of these courts will be evaluated depending on the role they perform. The main topic of this article is the decisions of SCP which were given about the dissolution of governments during 1988-1999. Its role of SCP is discussed in this article.

## **Dissolution of Government**

On 6<sup>th</sup> August 1990, the people of Pakistan were astonished to read the news which was published in an Urdu newspaper Nawa-i-Waqt as the

assemblies would be dissolved by President Ghulam Ishaq Khan. When ministers and other members of the ruling party contacted Benazir, the Prime minister of that time, she took it as a conspiracy of opposition. She was not ready to accept this news. Instead of this belief that this news is a conspiracy, Benazir two persons ie. Hapay Miinwalla (he was very close to President) and US ambassador Robert B. Oakly. Both persons meet with President to know about the news but President rejected all the rumors and they reported back to Benazir about the reply to the President.

In this time of confusion people especially the circle of government got became more confused to hear that a press conference is going to be held in the presidency and the President will address the conference this evening. All eyes were set on the press conference. In the press conference, President announced that by using the power of 58(2) (b) he had dissolved the assemblies and the government of Benazir on the charges of corruption, maladministration, and disrespect for the court of law, etc. (Bashir, 2015). Moving a step forward the President leveled an allegation on the government that it had omitted the provision of articles 240 and 242 which about civil service. President further leveled charges by saying that the Civil services of Pakistan had been undermined by disregarding the provisions of Articles 240 and 242. President further said that the government had repeatedly misused its authority for personal gain and law and it failed to control the order situation in Sindh. Under Article 232(1) emergency was imposed in the state.

Benazir, as it was reported in Dawn newspaper on 7<sup>th</sup> August 1990, declared this dissolution order as a 'constitutional coup'. She rejected all the allegations which were leveled by President and declared the dissolution of her government and assemblies unconstitutional (Ziring, 1991 p 113). COAS General Aslam Baig, while talking to newsmen in the state guest house declared the act of the President as constitutional (Ahmed p, 618). This shows that the army was backing the President. At this juncture, one thing is pertinent to mention the assemblies of Sindh and NWFP (now KPK) were dissolved by the order of the President and the assemblies of Punjab and Balochistan were dissolved by the recommendation of the respective chief Ministers. Benazir, while addressing a press conference at Bilawal House openly said that the

decision of her dismissal is taken by the President under the pressure of the military.

### **Repercussions of the Order of dissolution**

Benazir did not accept the orders of the President and under article 199 of the constitution decided to challenge the orders of dissolution in all four High Courts (Dawood, 1994a). At this point, the federation, under article 186-A requested the SCP to consolidate all the petitions (PLD 1992, SC pp 654). The SCP accepted the request and transferred the pending petition of Balochistan HC to Sindh HC and of Pishawer HC to LHC (Dawood, 1994b). The order of the President got the assent of the LHC and the LHC on the 14<sup>th</sup> of October upheld the order of the President. On this verdict of LHC, the petitioner challenged this order in SCP. A full court bench of SCP heard the petition and dismissed it by 10-02. Out of twelve member bench, Justice Sajjad Ali Shah and Justice Shakoor wrote dissenting judgement (Dawood, 1994 p,103). In SHC the petitions were heard by the full bench consisting of four judges and the CJ and the petition was dismissed by a unanimous order of the Court. the judgment of the court instigated political indecision which substantiated appalling for the future of democratization(Khalid, 2012, p. 06). Later it was revealed by Lt.General (Ret) Aslam Jan that in early 1990, the army had decided to remove Benazir when she was in confrontation with the army over the retirement of Admiral Iftikhar Ahmed Sirohi on the advice of her loyalist Nasirullah Babar (Dawood, 1994b). Although under Article 243(1) of the constitution, the army is under the control of the federal government it did not happen in a true sense. The powers which should have been used by the civil government were repeatedly used by bureaucracy by bypassing the government. The order of the President was only disapproved by Jamiat-e-Ulema-e-Pakistan (Noorani Group).

### **Caretaker Government:**

To run the functions of the state, a caretaker government was made. In this regard, President GIK used his powers according to his wishes. These are the norms that a caretaker setup should be unbiased but this setup which was selected by GIK was not unbiased as the leader of the

opposition in Benazir government Ghulam Mustafa Jatoi was made caretaker PM and CMs especially Sindh were picked from the opposition parties. Even the CM of Punjab Mr. Ghulam Haider Wayne was selected by Nawaz Sharif (H. Khan, 2005). Along with PPP, JUI (F) and Shah Ahmad Noorani also criticized the formation of a caretaker setup. The CM of Punjab openly campaigned for IJI as the elections of National and provincial assemblies were scheduled on the 24 and 27 of October respectively (Shāh, 2001). Even the President, as it was reported in Dawn on 24 October 1990, implored the public to reject the PPP (Dawn, 24 October 1990). On the other hand to control the election activities and to pressurize the PPP, the caretaker PM asked the interior ministry to make special courts to try the ex-government based on allegations of corruption (Shaikh, 2000). Benazir had to appear before the courts regularly along with addressing the election meetings. Even, as it was revealed by the DGISI Asad Durrani that COAS Baig asked him (Durrani) to divide the money among those politicians who were contesting the elections against PPP (Rizvi, 2000 p, 280). Even prominent religious personalities were used against Benazir. Molvi Abdul Qadir Azad, the Imam of Badshahi Mosque Lahore, issued (or taken by him) a Fatwa (religious order) in which he (Molvi) said that any person who voted Benazir would be thrown in hell on the day of judgment. Although this Fatwa was against the elections laws this Molvi was not forbidden from doing such an act against any party contesting the elections (Ali, 2003). The election campaign was generally negative.

## **Elections Results**

Elections of National and provincial assemblies were held on 24 and 27 October as it was announced. IJI won a majority of seats in the National Assembly securing 106 seats out while its political rival party PPP along with its group called PDA could win only 44 seats. The third largest party was MQM which won 15 seats.

**Table 3.2: General Elections 1990**

<b>Party/Alliance</b>	<b>Elected candidates</b>
Pakistan Democratic Alliance/PDA	44
Islami Jamhoori Ittehad/IJI	106
ANP	06
MQM	15
JUI(F)	6
Other small parties/ independents	30

Source: ECP report on general elections 1990, vol.1 Islamabad

The results of the elections were rejected by PDA(Jaffrelot, 2004). Although PDA and other parties rejected the results of the blame of rigging but could not produce any proof.

### **Formation of Federal Government:**

Gohar Ayub and Nawaz Khokhar of IJI became speaker and deputy speaker of the National Assembly respectively on the 4<sup>th</sup> of November 1990 and two days later on the 6<sup>th</sup> of November 1990, Nawaz Sharif became PM by securing 153 votes against 39 of his contesters Afzal Khan (Munir, 1975).

Nawaz Sharif made his government not only in the center but in all four provinces as well. He also had the advantage that he had very good relations with President and army (Kukreja, V. 1991 p,665). After assuming office, Nawaz Sharif promised to make Pakistan prosperous. President always remained in a friendly mood but this cooperation did not remain longer and soon turned into conflicts which not proved only harmful for Nawaz Sharif and GIK but for the political system as well.



## **Problems for Nawaz Sharif**

PM Sharif had to face some problems which caused his dissolution. When the PM wished to reverse the 8<sup>th</sup> amendment and President showed his unwillingness then a rift within the party emerged and they leveled charges on Nawaz Sharif that not consulting policy matters with political leadership. To oppose Nawaz, this group supported President. Another matter which created problems for Nawaz Sharif was the death of PML's President Junejo who died in the USA on 19 March 1993. Nawaz Sharif called a meeting of the party and became the head of the party which was criticized by senior members and some of them resigned as a protest. The opposition was waiting for this opportunity and it joined hands with President and gave air to this conflict that was going on between the PM and President. Even the MNAs of FATA joined the camp of the President (Khan, 1997. P, 132).

On the 17<sup>th</sup> of April 1993, Nawaz Sharif addressed the nation and said that the presidency is being involved in destabilizing his government and that President is behind all conspiracies. He categorically stated that he will resign but will not take any dictation. He further said that his brother Shehbaz Sharif is being offered prime ministership to create a split in his party. He said that his party is united but this proved wrong as on the same night, the party was divided into two groups.

## **Dissolution of Nawaz's Government:**

People and political circles were expecting that GIK will respond politely as he (GIK) is a seasoned politician but President surprised everyone with his decision when on 18<sup>th</sup> of April 1993 after getting the support of the army, he dissolved the government by using his power under article 58(2)(b)(H.-A. Rizvi, 1998). GIK leveled many charges on Nawaz Sharif's government almost like earlier he leveled against Benazir. The political leadership was so immature that Benazir whose government was dissolved by the same President under the same power should condemn the decision of the President but instead of this she stood with President and appreciated the decision. On the other hand, Nawaz Sharif declared this decision illegal and unconstitutional (Ziring, 1997).

## **Petition against the order of Dissolution:**

The order of the President was challenged by the Speaker of the NA Gohar Ayub Khan in LHC in Rawalpindi bench under article 199 and requested the court to reinstate the assembly (G. A. Khan, 2007). This petition of Gohar Ayub Khan was still pending in the court and Nawaz Sharif filed a direct petition in SCP under article 184(3) and challenged the order of the President. Headed by CJ Naseem Hassan Shah, a full bench of SCP heard this petition on day to day basis. The SCP gave its historic verdict which was not expected by anyone on the 26th of May 1993 and restored the government of Nawaz Sharif(Ziring, 1997). It is also argued that this decision of the court was the reaction to the statement of COAS Baig in which he (Baig) stated that he did try to approach the SP to not restore the government of Junejo (Amin, 1994a). Benazir did not accept the decision and criticized it and declared it the result of “Chamak” (money) but JCP defended his verdict and said that his decision is very much clear and crystal(Shah, 2002, p. 114). Only Justice Sajjad Ali Shah penned a discordant verdict. Although President leveled charges almost the same at the time of the dissolution of the Benazir and Nawaz governments the decision of the court was different in 1990 and 1993.

A caretaker government was installed to run the functions of the state. Moeen Qureshi who was serving in the world bank became PM and Waseem Sajjad the then chairman senate assumed the office of the President as GIK also resigned when there emerged a confrontation between GIK and Nawaz after the verdict of SCP. With the interference of COAS General Waheed Kakar, both Nawaz and GIK resigned. The office of the governors and CMs were filled by civil and military retired officers. This shows how civil and military bureaucracy is powerful (Waseem, 1994). Even as Khan wrote that the formation of a caretaker government in Pakistan was decided by the army(Khan, 2005 p,766). These elections of national and provincial assemblies which were scheduled on the 6<sup>th</sup> and 9<sup>th</sup> of October 1993 respectively were monitored by the army on the advice of PM Moeen Qureshi.

The PPP made some demands to Chief Election Commission before the elections such as dissolving local bodies to stop them to put their

influencing the election process. This demand was accepted. PPP made another demand that elections of national and provincial assemblies must be held on the same day but this demand was rejected. PPP also requested the CEC that the condition to show the card to cast the vote should be waived but CEC did not accept the request. (Waseem, 1994).

Elections were held on the scheduled date and no party could win a two-thirds majority. PPP stood first as the single largest party and secured 86 seats while its closest party was PML (N) with 72 seats. Here one thing is pertinent to mention PML (N) was created after grouping in IJI. In these elections MQM boycotted and PPP took complete benefit of it (Abbasi, 1997 p,98).

### **Formation of Government:**

On 17<sup>th</sup> of October, 1993 Yousaf Raza Gilani and Zafar Ali Shah of PPP were elected as speaker and deputy speaker of the National Assembly and got 106 and 115 votes respectively. The PML(N) candidates Gohar Ayub and Nawaz Khokhar could get only 90 and 81 respectively (Zafar & Hussain, 1994 p,3). Benazir Bhutto was elected as PM on October 19, 1993, by securing 121 votes against Nawaz Sharif who got 72 votes. Having a thin majority, Benazir had to form a coalition government (Amin, 1994b).

### **End of Benazir's Government:**

When Benazir started her tenure second time as PM everyone was sure that she would complete her tenure of five years as her loyalist Farooq Ahmed Khan Leghari was her handpicked President and she was sure that he (Leghari) will not create any problem for her. But soon this harmonious period came to an end and politics changed its cards and her loyalist turned his back. Once again conspiracy was at its peak. Even once President Leghari told Benazir that the military want to dissolve her government. On the other hand, as Khan stated that COAS informed Benazir that President Leghari want to dissolve her government (Khan, 1996). Once again politicians showed political immaturity and the political system once again become vulnerable in the hands of political leadership. Benazir could not complete her five-year constitutional term and on the 5<sup>th</sup> of November 1996, the President by using the power of

58(2) (b) dissolved her government and assemblies by leveling different charges of corruption, maladministration, etc.

### **Supreme Court and Dissolution Case:**

Yousaf Raza Gilani, the speaker of the National Assembly challenged the order of the President before SCP under article 184 and requested the court to restore his assembly as running the affairs of the state according to the provisions of the constitution and that allegations of the President are merely assumed based allegations. The order of the President was minified. Benazir also filed a petition in SCP two days after the petition of Gillani which he filed under article 184(3) of the constitution of Pakistan on 11<sup>th</sup> November 1996 and challenged the order of dissolution of her government. She stated in her petition that an allegation leveled against her by the President that she had ridiculed the order of the court is baseless. She had tried her best to implement the order of the court and in this regard, she meet again and again with CJP and President to seek their support. She further stated that even CJP was satisfied with the process of separation of the judiciary from the executive. So there was no sufficient ground to use 58(2) (2b) to dissolve her government. She also stated that the petitioner still had the majority in the assembly.

CJP formed a bench of seven judges out of fourteen to hear this petition. It is stated that CJP intentionally kept senior judges out of the bench. On the first hearing of this petition, the senior council of Benazir Etzaz Ehsan requested the court that this is a matter of public importance and a full bench of the court should hear this case but his request was not entertained. This case was delayed and only four days before the elections, the SCP dismissed the petition and upheld the order of the President. Only one judge Zia Mahmood Mirza wrote the dissenting judgment. The SCP held that there was sufficient material to uphold the order of the President.

Ex-speaker of the National Assembly, Malik Miraj Khalid was made caretaker PM to run the functions of the state. Elections were scheduled on February 3, 1997. First time in the electoral history of Pakistan, elections of National and provincial assemblies were going to be held on the same day. The people of the Federal administrative tribal Area

(FATA) were also given the right to vote. The army was deployed to maintain law and order in the elections and extra-judicial powers were given to the army. The EU gave the certification of validity. (Dawn. 18 February 1997). In these elections, people showed little interest and this was because of earlier premature dissolutions of the assemblies it was reported in Dawn on 14<sup>th</sup> February 1997 that was only 35.92%.

In this election, Jamat-e-Islami boycotted with this demand that without pure accountability of politicians, the process of elections would be a mockery. Although, in the elections of 1993, it campaigned impressively. The PPP could not start its election campaign timely as the petition it filed against the dissolution of the government which was dissolved by President Farooq Ahmad Leghari was still pending in the court and the supporters of the PPP were confused as they were hoping that SCP will store its (PPP) government as it did in 1993 at the time of Nawaz Sharif Government. But it did not happen and just before the elections the SCP dismissed the petition and validated the order of the President.

### **Election Results:**

Elections were held on schedule and surprisingly the PML (N) won the elections overwhelmingly. PML (N) won 135 seats while its rival could get only 18 seats in National Assembly. This shows that PML (N) stood single largest party in the elections of 1997. The number of independent members who won was 21. A well-known writer Bahadur stated that it was not that Nawaz Sharif won but rather that Benazir had lost the elections(Bahadur, 1998).

### **Mian Muhammad Nawaz Sharif 2nd Term in Office and Crises:**

After getting an overwhelming majority in the elections Nawaz Sharif formed his government not only in the center but also in four provinces as well. He was enjoying his majority but later history proved that his overwhelming majority become an obstacle in the way of a pure form of democracy(Chadda, 2000). His clear majority and government in the center and all four provinces showed that he did not want primacy rather he wished for supremacy(Syed. A, 2005).

## Legislation and Parliament

Because of a clear majority, this parliament under PM Nawaz Sharif made some important changes in the constitution. On the first of April 1997, due to his majority, he amended the constitution and passed the 13<sup>th</sup> amendment which made the PM more powerful. This amendment curtailed the powers of the President to dissolve the assembly and amended article 58(2) (b) which was used by the President in 1988, 1990, 1993, and 1996 by Zia, Ghulam Ishaq twice, and Leghari respectively. This amendment also amended article 112(2) which empowered the governor to dissolve the provincial assembly. The discretionary powers of the President to appoint the services of armed forces were also taken away after this amendment, Nawaz Sharif said he had revived the democratic model. Military leadership also accepted the decision(H.-A. Rizvi, 1998 p,107). Parliament also passed Accountability Act on 31 May 1997. The 14<sup>th</sup> amendment was also made in the constitution on 1<sup>st</sup> July 1997 which made it compulsory for the members of respective parties to follow the discipline of the party otherwise the member will lose his/her seat as punishment(Aziz, 2009 p,173). The fifteenth amendment was also passed.

With his majority, Nawaz had a chance to strengthen the institution but it did not happen. He could not make his relationship harmonious with the opposition and remained in confrontation. Even after the 13<sup>th</sup> amendment his relations with President also become worse and because of his overwhelming majority, he forced President to resign. On the appointment of judges in SCP he locked himself in confrontation with the judiciary. The end of this was another resignation and this time CJP Sajjad Ali Sha resigned. Even the most powerful institution had to face his (Nawaz) wrath when he forced COAS General Jahangir Karamat to resign because of his (COAS) proposal for the formation of the National Security Council (NSC) which he (COAS) gave while addressing the navy officers at Naval War College Lahore. The major political parties appreciated this proposal(Aziz, 2009 p,200).

After the resignation of President Leghari, he (Nawaz) made his family loyalist and Ex-Judge Rafiq Tarar President, and to fill the post of COAS he made General Pervez Musharraf as COAS by superseding

some senior generals. The motive to make Musharraf COAS was that he (Musharraf) was muhajir (migrator) and he (Nawaz) assumed that in Punjabi dominated army he (Musharraf) will remain in a weak position (Rizvi, 1999 p,183) but his (Nawaz) dream could not come true and he had to face the wrath of COAS which ended his government latter in 1999.

### **Issue of Kargil and the Difference between the Army and Nawaz Sharif:**

In May 1999, in the absence of the Indian Army, the Mujahiddine and others got the control of mountain peaks of Kargil. In this act, the Indian government adopted aggressive diplomacy against Pakistan. The purpose of this aggression was to isolate Pakistan in the international political arena by blaming Pakistan had violated international law. Nawaz Sharif tried to convince India to resolve the issue through dialogue but in vain. at last with the mediation of USA President Bill Clinton, this issue was resolved and Nawaz Sharif declared that Pakistan will withdraw its troops from the peaks(H. Khan, 2005 p,932). This failure of the Kargil operation widened the gulf between Nawaz Sharif and COAS as both were blaming each other for the failure. Musharraf himself wrote in his book that this issue damaged his and PM's relations badly(Musharraf, 2006 p,136).

Mian Nawaz Sharif blamed the army for keeping him ignorant about this matter(Sattar, 2007 p,259). Nawaz blamed only Musharraf's mind behind Kargil's plan(Ziring, 2003 p,255). During this time of mistrust, Musharraf transferred all those top-ranked army officers from one place to those who were considered close to Nawaz Sharif. On the other side, Nawaz was waiting for an opportunity to remove Musharraf from the post of COAS (G. A. Khan, 2007). As Saddiqa stated that Musharraf was in this fear that Nawaz will hold an inquiry about the Kargil issue(Siddiqa, 2017 p,97). The army spoke person Brigadier Rashid Qureshi said that after the withdrawal of troops from the Kargil, the army officers were annoyed with the government(Constable, 1999).

### **End of Democratic Era:**

When Musharraf was in Sri Lanka to attend the 50<sup>th</sup>-anniversary parade on 12<sup>th</sup> October 1999, Nawaz Sharif appointed Lt. General Ziauddin as COAS in place of Musharraf who was earlier working as DG ISI. On this move, the loyalist Generals of Musharraf reacted and kick out his (Nawaz) government curtly on 12<sup>th</sup> Oct 1999(Kukreja, 2003 p,255-257). Under PCO, on the 14<sup>th</sup> of October 1999, Musharraf assumed the charge of Chief Executive of the state and put the constitution in abeyance. In this way, a democratic era came to an end which was in operation since 1988 and the country once again had to face martial law. Once again, 'Khaki shadows' hung huge over the scene of Pakistan(Arif, 2001, p. 443). Musharraf declared that President will remain in his office and the courts will continue to operate and they execute their power but there would be one restriction on the courts no order will be issued against the Chief Executive or anybody who is exercising his powers under the authority of chief executive(PLD 1999, Central Statutes, Vol Li, P.446).

### **The Dissolution of the Government and SCP**

After the dissolution of the government, several petitions were filed by Nawaz Sharif and other PML (N) leaders against the imposition of martial law. The restoration of the assemblies was prayed in the petitions(PLD 2000, SC, p.869,917). All the petitions were entertained by the SCP and fixed a date of 31<sup>st</sup> of January 2000 for a hearing which created a panic in the sitting government's circles. It was assumed that SCP might accept all the petitions and may order to restore the government of Nawaz Sharif(H. Khan, 2005, p. 935). The government tackled the situation by declaring on 25<sup>th</sup> of January 2000 that the judges of superior courts will have to take oath under the proclamation of emergency of 14<sup>th</sup> October 1999. It was also declared that if a judge refused to take oath under this law he would cease to hold office(The Muslim 26<sup>th</sup> January 2000). Out of 13, only 6 judges including CJP refused to take oath under PCO.

Irshad Hassan Khan, who was the senior among the rest of the judges, was made CJP. Two, three, and two judges of Lahore HC, Sindh HC, and Peshawar HC were not given the oath and they had to stop their



duties. One thing that is pertinent to mention is that not a single judge of HCs refused to take an oath(the Muslim 27th January 2000).

A full bench of twelve judges, led by CJP Irshad Hassan Khan, heard the petition of Syed Zafar Ali Shah, an ex-MNA from the PML-N. The decision was issued on May 12, 2000, and the petition was unanimously dismissed. In its decision, the Supreme Court validated the military coup on October 12, 1999, and granted the military three years to complete its seven-point program before transitioning to the democratic road. The SCP also affirmed the CE, General Pervez Musharraf (COAS), had the authority to modify the constitution, raising the threat of such misuse once more(PLD 2000, SC. pp.1219. 1220). It was sad that the Supreme Court neglected a terrible truth of the past when Zia used the court's power to make numerous revisions to the overwhelmingly enacted constitution.

The court declared, "Constitutional deviation made by the Chief of Army Staff, General Pervez Musharraf for the welfare of the people rather than abrogating the constitution or imposing the Martial Law using extra-constitutional measure is validated for a transitional period on the ground of State necessity and on the principle that it is in the public interest to accord legal recognition to the present regime to achieve his declared objectives and that is in the interest of the community that order be preserved"(PLD 2000, SC, p.1218). "All state institutions were being systemically destroyed, and the economy was in a state of collapse as a result of the previous government's self-serving policies, which had threatened Pakistan's existence, security, economic life, financial stability, and credit; where a situation had arisen in which democratic institutions were not functioning by the provisions of the constitution"(PLD 2000, SC, p.1217).

The SCP gave a legal umbrella to the military take and it further granted the power to President to amend the constitution to run the function of the state to implement his (Musharraf) agenda. The SCP further declared that those parties who argued that SCP had no authority to give the right to Chief Executive to amend the constitution can approach the SCP for clarification(Mian, 2004, p. 218). One thing is pertinent to mention that

it was not requested by the government to SCP for such powers during the hearing of Seyed Zafar Ali Shah's case.

## **Conclusion**

Pakistan's political system has been tormented by the conspiracies of political leadership since its inception; politicians use power as a tool to dominate the people without regard for ethics, which has resulted in political and constitutional dishonesty. Pakistan's government was unable to offer the stable climate required for people to become conscious of democracy. The democratic leadership disrupted the political system in the early stages of constitutional construction by engaging in undemocratic practices. It was a plot of the ruling elite, namely the feudal class, and their paradigm was that the reigning group's interests must be protected and secure. In 1954, these intriguers challenged the democratic system, causing the constituent assembly to be dissolved by an unlawful act of the Governor General. The primary attack on Pakistan's constitutional and political systems was successful because the judiciary interpreted the law in favor of the GG by confirming his behavior. The judiciary opened a backdoor for future constitutional violators. Our country's history is littered with military incursions and the justification of their authority by the judiciary under the law of necessity. Under the 8th amendment to the Pakistani constitution of 1973, which was passed in 1985 in response to CMLA demand, the President was given the authority to dissolve the NA; however, the President's judgment should be objective and based on facts, rather than supposition or fancy. From 1988 through 1999, five assemblies were dissolved nearly entirely based on the same claims. These dissolutions were challenged in court as unconstitutional, with the petitioners pleading for the reinstatement of the legislature and cabinet. The petitions were decided by the judiciary, and each petition received a different verdict; just one petition was approved, and the assembly was reconstituted. These cases were determined by the judiciary under duress or by constitutional principles. The dissolutions were political, and the sustaining of these dissolution rulings became political as well. Pakistan's judiciary is still on trial in front of its people.

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