

# ***Judicial Crisis in Pakistan during Musharraf Regime***

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## **Abstract**

*Historically, judiciary in Pakistan is not known for its independence. Over the years the courts have frequently been frightened to support military coups and other acts contrary to the rule of law. Military governments have then manipulated the courts and introduced legal and constitutional changes to strengthen the military's political hold, also benefiting rightwing political parties. Due to military coup in 1999, judiciary was intervened to pave the way for legitimacy. With the passage of time the situation changed when the judiciary showed independence, challenging government policies. In this connection, Musharraf suspended the Chief Justice of Pakistan Iftikhar Muhammad Chaudhry. In November 2007, he suspended the Constitution, imposed strict restrictions on media, imprisoned lawyers, judges, human rights activists, and removed dozens of senior judges. A countrywide movement was started by lawyers, political parties and human rights activists for the restoration of judiciary and the deposed judges — including the Chief Justice of Pakistan. This paper describes the judicial crisis during the Musharraf regime and the restoration of Chief Justice of Pakistan.*

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## Introduction

In Pakistan the judiciary's role has been complex. It has consistently been treated as an institution apart from the tainted tussles of politics.<sup>1</sup> On October 12, 1999 Chief of the Army Staff, General Pervez Musharraf deposed the Prime Minister, Mian Muhammad Nawaz Sharif. In 2007 judiciary was targeted as Chief Justice Iftikhar Chaudhry was deposed.<sup>2</sup> This was one of the major crises the Musharraf government faced. At root, it was a crisis of legitimacy of the centralized military regime. "Removing a chief justice by order was unthinkable, even in Pakistan. But Chaudhry's courage was the catalyst. For the first time in Pakistan's history a chief justice stared a general in the eye and did not blink. This gave the people the strength to protest in defence of the law and the most basic tenets of democracy."<sup>3</sup>

## Historical Perspective

In Pakistan, the declining trajectory of the judiciary is normally traced back to the judgment of the federal court in the Moulvi Tamizuddin Khan Case, consisting of a triad of three decisions. The first was the judgment in the Tamizuddin Khan Case itself, the second was the judgment in the Usif Patel Case and the third was the decision in the governor general's reference of 1955.<sup>4</sup> Justice Munir justified the unconstitutional act of the then governor general Ghulam Muhammad under the doctrine of necessity. Consequently, dictators like Iskandar Mirza, Ayub Khan, Yahya Khan, Zia ul Haq and Pervez Musharraf became intricately involved in the politics of the country.<sup>5</sup> The principles which guided the

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1 Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (United Kingdom: Cambridge University Press, 1995), 18 & 23.

2 International Crisis Group. "Winding Back Martial Law in Pakistan" Islamabad/Brussels, 2007. (reference incomplete)

3 Graham Usher, "Musharraf's Himalayan Blunder." *Al Ahram Weekly*. Accessed August 20, 2010. <http://Weekly.ahram.org.eg/2007/841/in1.htm>.

4 Khalid Anwar, "The State and Judicial Idealism under the Shadow of 'Doctrine of Necessity.'" *Dawn*, May 7, 2006.

5 Iqbal S. Hussain, *Pakistan: A Proud Nation but a Failing State* (Lahore: Humanity International Publishers and Promoters, 2007), 132.

Supreme Court's verdict in 1955 were later used to lend legitimacy to the first direct military intervention in Pakistan.<sup>6</sup>

On October 7, 1958 President Iskander Mirza abrogated the Constitution of 1956 and dissolved the national and provincial assemblies. During the course of hearing of these routine appeals the court validated the military takeover by holding that a successful *coup d'état* is a valid method of changing a constitution. The leading judgment runs to a mere six pages. The court did not consider it necessary to seek the assistance of senior counsel as *amicus curiae*.<sup>7</sup>

The Begum Nusrat Bhutto Case which validated the seizure of power by General Zia ul Haq was based on the judgment of the federal court in the governor general's reference of 1955. Once again, there was no dissenting judgment. General Zia cited his confidence in the freedom and impartiality of the judiciary, its familiarity "with the demands of justice and with the conditions within the country and dictates of democracy."<sup>8</sup> The court's decision supported the martial law government on the basis of the law of necessity.

General Zia's death in August 1988 and the transfer of power to acting President Ghulam Ishaq Khan, and court's decision to conduct party-based elections changed the political landscape. Nonetheless, the administrative powers of the state required clarification, and the courts were asked to pave the way for a smooth bureaucratic transition. Ishaq Khan implicated the judiciary in its efforts to eliminate opposition in the references filed against the Pakistan People's Party government.<sup>9</sup>

Another period of military rule began with the take over of Musharraf in October 1999 which was result of

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6 Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge, Cambridge University Press, 1995), 53.

7 Anwar, "The State and Judicial Idealism," May 7, 2006

8 Anwar, "The State and Judicial Idealism," May 7, 2006.

9 Newberg, *Judging the State*, 229.

controversies and difference of opinion between the Prime Minister Nawaz Sharif and Musharraf.<sup>10</sup> After the take over, Musharraf was in search of legitimacy through political leadership. He brought constitutional arrangements to ensure check and balances in the key institutions and the bureaucracy as well as to create an institutional framework for military's formal participation in decision making.<sup>11</sup>

### **Validating Military Government**

Immediately, after the military's takeover, Pakistan began to experience the unfolding of a blueprint developed by the earlier military regimes and ratified by the superior courts. As proclamation of emergency was declared; the constitution was put in abeyance, PCO was issued to provide a temporary governing framework, and Musharraf assumed the office of the Chief Executive. In January 2000, when the Supreme Court entertained the military coup, the judges of the superior courts were compelled to take fresh oath of office pledging to serve under the PCO. Six out of a total of thirteen judges of the Supreme Court refused to take the oath and resigned from the bench including the then Chief Justice Saeduzzaman Siddiqui and Justice Wajih-ud-Din Ahmad, who later contested the presidential elections in 2007.<sup>12</sup>

Pakistan's higher judiciary repeatedly validated military interventions and sanctioned constitutional amendments that have fundamentally altered the legal and political system. Protecting the constitution through the 'doctrine of state necessity', the judiciary has relied on the weak argument that the army's intervention could be justified because of the pressing need for political stability. This doctrine was first developed in three cases in 1955 in the Federal Court to

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10 Owen Bennett Jones, *Pakistan: Eye of the Storm* (Lahore: Vanguard Books, 2002), 55.

11 Hassan Askari Rizvi, *Military, State and Society in Pakistan* (Lahore: Sang-e-Meel Publications, 2003), xix.

12 Richard Blue and Richard Hoffman, "Pakistan Rule of Law Assessment - Final Report, Management Systems International Corporate Offices." Washington, 2008.

justify the extra-constitutional dismissal of the legislature by a titular head of state. Drawing on the precedent of those decisions, the Supreme Court validated General Ayub Khan's 1958 declaration of martial law, General Zia ul Haq's 1977 coup and General Pervez Musharraf's 1999 coup. While these Supreme Court judgments gave military regimes the trappings of legality, repeated military interventions have hampered the growth of civilian institutions and moderate political parties and forces.<sup>13</sup>

A reconstituted Supreme Court decided the case of Zafar Ali Shah v Pervez Musharraf (2000) and validated the coup on the grounds of the doctrine of state necessity. The Court granted unlimited powers to the military regime, including the power to amend the constitution. The court, however, suggested the military regime to hold general elections no later than three years from the date of the coup.<sup>14</sup> The Supreme Court in the Zafar Ali Shah case held in part:

That the 1973 constitution still remains the supreme law of the land subject to the condition that certain thereof have been held in abeyance on account of state necessity...[and] that the supreme court continue to function under the constitution. The mere fact that the judges of the superior courts have taken the new oath under the Oath of Office (judges) Order No. 1 of 2000, does not in any manner derogate from this position, as the courts had been originally established under the 1973 constitution, and have continued in their functions in spite of the proclamation of emergency and PCO No. 1 of 1999 and other legislative instructions issued by the chief executive from time to time.<sup>15</sup>

### **Musharraf Confrontation with Chaudhry Iftikhar**

Iftikhar Chaudhry became the Chief Justice of the Supreme Court in June 2005. Earlier, in 1999 he was a PCO judge. However, over the time, he changed his stance. Courts

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13 International Crisis Group, "Reforming the Judiciary in Pakistan," Asia Report N°160, 2008. (please complete the reference)

14 Azmat Abbas and Saima Jasam, *A Ray of Hope: The Case of Lawyers' Movement in Pakistan* (Pakistan: Heinrich-Boll-Stiftung, 2009), 8.

15 Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2010), 461-62.

developed doctrinal and ideological justification for constitutional deviations in order to lend national and international legitimacy to the regime. Chaudhry's Court diverged from them while expanding judicial power.<sup>16</sup>

He took *suo motu* actions, requiring the government to explain and even take back certain measures that in the court's view affected the general public's interest.<sup>17</sup> Chaudhry took the loyalty oath and was one of the two remaining judges of the bench who granted General Musharraf the right to govern for three years.<sup>18</sup> After Musharraf appointed him, however, Chaudhry instituted changes at the Court. He began concerted efforts to improve the Court's efficiency and reduce its case backlog. From 2005 to 2007, Chaudhry greatly expanded the amount of 'public interest litigation' before the Court — petitions and *suo motu* actions that the Court hears in order to check the abuse of power or misuse of authority or arbitrary or mala fide acts and decisions of the authorities — including large-scale investigations in politically contentious cases.<sup>19</sup>

The government decided to privatize the Pakistan Steel Mills Corporation (PSMC) and issued a letter of acceptance to the consortium comprising Arif Habib Group of Companies, Al-Tauwaiqi Group of Companies and Magnitogorsk Iron and Steel Works, Russia. This consortium was declared successful bidder at the rate of Rs. 16.80 per share. The privatization was challenged in a number of petitions before the Supreme Court of Pakistan. After detailed hearing, a nine member bench of the Supreme Court set aside the privatization of PSMC. It was for the first time that the judiciary set aside a major decision taken by

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16 Shoaib A. Ghias, "Miscarriages of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf," *Law and Social Inquiry, Journal of the American Bar Foundation* 35, no. 4 (Fall 2010): 985-1022.

17 Murtaza Razvi, *Musharraf the Years in Power* (New Delhi: Harper Collins Publisher, 2009), 94.

18 Qazi Faez Isa, "The Judiciary at the Receiving End," *Dawn*, Islamabad: March 17, 2007.

19 Supreme Court. "Report of Golden Jubilee Edition," Islamabad, 2006, 60.

the Musharraf government. It prevented the sale of a vital national asset for small sum.<sup>20</sup>

During 2005-6, there were certain major scandals. The sugar scandal was caused by hoarding of sugar by the owners of sugar mills, which included a chief minister and a number of federal ministers, who made billions of rupees. This scandal initially prompted National Accountability Bureau to launch an investigation, but it was soon abandoned on the ground that it is likely to destabilize the industry. Similarly, when the government demanded the foreign oil companies should return excess profits running into billions of Rupees on account of failure to pass on the benefits on international oil price reduction to consumers, it fell silent after the companies threatened to withdraw from operation in the country.<sup>21</sup> The Supreme Court stepped in to scrutinize the deal thoroughly.<sup>22</sup>

The Supreme Court may also have been inspired by its Indian counterpart, which has a long-standing tradition of public interest litigation. The Pakistani petitioners were pushing the scope of jurisprudence by using Indian case law in public interest litigation. The use of Indian precedents, for example, S. P. Gupta in the PSM case, points towards this development. During this period, the two governments were also taking a series of confidence-building measures in an effort to resolve tensions. Exchange programs from various levels of government, including the judiciary, were under way. In 2005, delegations of high court judges from Pakistan visited India and met with Chief Justice Y. K. Sabharwal of the Indian Supreme Court. These exchange programs may have fostered an epistemic community<sup>23</sup> and provided an

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20 Supreme Court, "Watan Party Vs. The Federation of Pakistan," Islamabad: 2006. S.C. 669.

21 Supreme Court, "Watan Party Vs. The Federation of Pakistan," Islamabad: 2006. S.C. 669.

22 Ayaz Amir, "Comrade Stalin and the Sugar Question," *Dawn*, May 26, 2006 //Opinion <http://www.dawn.com.pk/weekly/ayaz/20060526.htm>

23 An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area. See Peter M.

impetus for or affirmation of public interest litigation in Pakistan. In addition, the role of the Indian Supreme Court in urban issues was reported in the Pakistani media. On the issue of public interest litigation, a columnist stated in the cultural context of Pakistan's obsession with comparison to India, "What India can do, perhaps Pakistan now, with enlightenment and moderation to the fore, can do even better" Criticizing the Supreme Court's backlog of cases, another commentator stated, "India, with seven times the population, no less criminal or litigious than ours, has only 26 [justices] but the cases on its roster are fewer".<sup>24</sup>

In another case, the Supreme Court of Pakistan asked the government to provide information about the missing persons who have been allegedly taken by the security agencies. Justice Javed Iqbal, heading a three-member Supreme Court Bench, asserted that "If they (security agencies) are not answerable to any ministry, they are certainly and surely answerable to this court". According to Human Rights Commission of Pakistan (HRCP), at least 400 persons have disappeared since Pakistan joined the US-led war on terrorism in 2001. Though the government officials repeatedly denied government's hand in disappearances, many 'disappeared' persons have been released from the State's custody. Majority of the victims are said to be from Baluchistan and Sindh. According to HRCP, out of 242 persons who were still missing as of December 12, 2006, 170 were from Baluchistan and 70 were from Sindh.<sup>25</sup>

The situation turned volatile when Musharraf intended to get himself re-elected as the president in uniform for the next term. On November 3, 2007 he suspended sixty judges of the higher courts in Pakistan, including Chief Justice Iftikhar Chaudhry again. The pre-November 3 judiciary had made no

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Haas, "Introduction: Epistemic Communities and International Policy Coordination" *International Organization* 46, no.1. (Winter 1992): 1-85.

24 Ghias, "Miscarriages of Chief Justice," 985-1022.

25 "Pakistan: A Land of Systematic Disappearances," *Asia Centre for Human Rights Weekly Review*, 2007, see <http://www.achrweb.org/Review/2007/160-07.htm>.



judgment on the dual office issue. It had rejected as non-maintainable on technical grounds the petitions challenging General Musharraf's right to contest the presidential election.<sup>26</sup> Aitzaz Ahsan, a prominent lawyer who was one of three lawyers acting as constitutional advisers to the Supreme Court, argued that "Being an army chief, General Musharraf cannot contest presidential elections; he cannot file the nomination papers."<sup>27</sup> He sought to pre-empt a negative Supreme Court verdict on petitions challenging his candidacy for another presidential term.<sup>28</sup>

### Removal of Chief Justice

Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, was deposed by Musharraf on the charges of corruption. Justice Javed Iqbal was appointed as the acting Chief Justice. Although at that time Justice Bhagwandas was the senior-most judge, but he was out of the country. All these actions were justified under Article 209 of the Constitution.<sup>29</sup> However, opposition leaders, members of the bar, the lawyers and the public condemned this act of president Musharraf. This was similar to the Maulvi Tamizuddin Khan Case which laid the foundations for the erosion of democracy in Pakistan. Primarily, the charges against Justice Chaudhry were based on a letter by advocate Naeem Bokhari. In his letter of February 16, 2007, Bokhari accused 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. He also

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26 "Lift the Emergency," *Dawn*, November, 15, 2007.

27 Carlotta Gall and Salman Masood, "Musharraf Files Papers for Election in Pakistan," *New York Times*, September 28, 2007. <http://www.nytimes.com/2007/09/28/world/asia/28pakistan.html>.

28 Syed Mudassir Ali Shah, "Ramifications of Emergency," *Dawn*, November 6, 2007.

29 Article 209 of the 1973 constitution says that if a judge is incapable to perform his duty of his office or has been guilty of misconduct, the president may remove him from his office. *Dawn*, March 12, 2007.

compelled appointing authorities to select his son in the bureaucracy without due merit.<sup>30</sup>

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 provided to a Chief Justice. It is also alleged that he frequently demanded the use of the aircraft of governors or chief ministers.<sup>31</sup>

### **Lawyers Movement and its Social Roots**

The lawyers' movement unfolded in two phases. First, the Supreme Court asserted its independence and gained credibility while lawyers began to protest in the streets. Second, a broader coalition of lawyers, political parties and other groups responded to executive over-reaching through nationwide protests. This part addresses each of these phases in turn and then discusses important role of the media in facilitating protest over the course of the movement in its entirety. The lawyers eventually began branching out and accepting the support of other civil society groups. For example, lawyers in Lahore started meeting every week at the Lahore High Court with representatives from professional trade organizations, labour unions and representatives from political parties after March 9, 2007 to plan protest.

Ghazala Minallah explained how a protest group known simply as 'Civil Society' grew out of a letter to a newspaper editor she sent shortly after the sacking of the Chief Justice.<sup>32</sup> During these early months of the lawyers'

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30 Naeem Bokhari, "Open Letter to Chief Justice Iftikhar Muhammad Chaudhry," *The News*, February 16, 2007.

31 Supreme Court. "Arshad Mehmood vs the Government of Punjab" Islamabad, 2005 SC 193.

32 "The Pakistani Lawyers Movement and the Popular Currency of Judicial Power," *Harvard Law Review*, [www.harvardlawreview.org/vol123\\_pakistani\\_lawyers\\_movement.pdf](http://www.harvardlawreview.org/vol123_pakistani_lawyers_movement.pdf)

movement, then, Chaudhry convinced many Pakistanis that at least one prominent jurist was willing, if not yet able, to serve as a watchdog against governmental abuses.<sup>33</sup>

After the removal of the Chief Justice, a nationwide movement was started for judicial independence. The most important was the lawyers' movement. The Supreme Court lawyers such as Munir Malik, Tariq Mehmood, Aitzaz Ahsan and Ali Ahmed Kurd started the movement on March 9, 2007, after the removal of chief Justice Iftikhar Chaudhry from his office. They took active part in the movement and united the lawyers.<sup>34</sup> An editorial in a newspaper argued:

the legal system has almost ground to a halt in the face of [the judges issue], and the lawyers of the lower courts have been engaged for eighteen months concerning the matters related to people at least importance. The lawyers' street demonstration was also exploited by some Islamist political forces. They joined the lawyers movement and struggling for acquiring popular legitimacy and thus to promote their own agenda. Different religious groups such as members of the *Jamia Hafsa Madrasa* and other religious groups joined the 'long march' of the lawyers from Karachi to Islamabad in June 2008. The suggestion by the All Pakistan High Court Bar Association to lock courtrooms was not actually proposed by the bar leadership but by the rightist religious party, Jamaat-e-Islami.<sup>35</sup>

The restoration of the Chief Justice was certainly the immediate goal but not an end in itself. His restoration was sought by the lawyers, not as a personal victory for him but as a vindication of other greater objectives. These were the rule of law, independence of the judiciary, restoration of the democratic process, subordination of military to elected civilian authority, the protection of fundamental rights of the people and holding the government accountable. They succeeded on July 20, 2007 when the chief justice was

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33 Somini Sengupta, "Musharraf Loses Fight over Judge," *New York Times*, July 21, 2007.

34 Human Rights Watch, "Pakistan Destroying Legality, Pakistan Cracks down on Lawyers and Judges." Volume 19, No. 19 (C), (New York: 2007). Also see [www.hrw.org](http://www.hrw.org).

35 *The Daily News*, August 11, 2008.

restored by military government. But after July 20, 2007 demonstrations further continued for desired objectives. The restoration of the chief justice of Pakistan was not a single objective of the lawyers but it was a long struggle in which they required sacrifice, patience and persistence.<sup>36</sup> Now their main target was Musharraf's removal and the restoration of a democratic government. The lawyers wanted sacking of PCO judges and restoration of deposed judges.<sup>37</sup>

The military government passed a financial bill in June 2008, according to which the strength of the bench was increased from 18 to 29 aimed at accommodating the sitting judges as well. This decision of the government was also criticized by the lawyers. As the government restored the sacked judges gradually, even as it retained the PCO judges. The bar associations were split as several lawyers argued that removal of the PCO judges by executive order would be illegal, and that their presence on the bench would be more appropriately addressed by a restored Supreme Court. The bar associations found it difficult to retain unity and popular support, particularly since several sacked judges had rejoined the bench after accepting the government's chosen mechanism of restoration.<sup>38</sup>

The Director of Human Rights Commission of Pakistan I.A. Rehman stated that the leaders were not able to decide whether their protest was in the style of a trade union strike or a political movement for change. If the former one is the true situation then the risk in continuing the struggle of the judges and lawyers should not be ignored. In such struggles, it is highly important to evaluate that the protest should be ended and rigidity replaced with pragmatism. If the protest was in the second category, then such plan should be adopted which is recommended for long-term political movements. There were also financial problems faced by the

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36 Khalid Jawed Khan, "What Lawyers Want," *Dawn*, October 11, 2007.

37 Khan, "What Lawyers Want".

38 International Crisis Group, "Reforming the Judiciary in Pakistan Asia Report No. 160," 2008, 26. Also available on [www.crisisweb.org](http://www.crisisweb.org).

lawyers' movement. With the imposition of martial law, members of the movement boycotted the courts, their practice suffered, especially in small cities. However, it was not possible to sustain a complete boycott due to financial and other problems. According to an analyst, "The constant agitation in the streets along with innumerable bar meetings and occasional hunger strikes and general strikes have virtually destroyed the practices of many lawyers. The public has become so weary of litigation that it has stopped opting for lawsuits in many cases".<sup>39</sup>

Lawyers and journalists were beaten up and arrested in the clashes. The lawyers' protest paved the way for Musharraf's re-election as president. They tried to pressurize the Election Commission, which was scrutinizing nomination papers for the presidential election. The lawyers campaigned for months against the dismissal of the chief justice in March 2007, came out in force on the streets again. As the march started, from the Supreme Court towards the Election Commission, police 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. Many lawyers and journalists were injured. A number of lawyers were arrested. They argued Musharraf had no right to contest presidential elections.<sup>40</sup>

In some districts of the Punjab, courts were locked in September 2007. This spoiled the credibility and support of the movement. The movement faced controversies and disagreements. The leadership of the movement such as the SCBA (Supreme Court Bar Association) and the Pakistan Bar Council (PBC) was divided 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

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39 International Crisis Group, "Reforming the Judiciary in Pakistan Asia Report No. 160," 2008, 26. Also available on [www.crisisweb.org](http://www.crisisweb.org).

40 Carlotta Gall, "Lawyers Battle Police over Election Ruling in Pakistan," *New York Times*, September 30, 2007  
<http://www.nytimes.com/2007/09/30/world/asia/30pakistan.html>.

issue at the moment. My main issue is the restoration of the 1973 constitution and the removal of all accretions made under Musharraf". Some lawyers criticized for demanding the ouster of the elected government and illegal actions such as locking down the courts and thus undermined both the rule of law and the democratic transition rather than bolster them. In November 2007, President Musharraf made a plan to squash the Supreme Court's *suo motu* powers through a constitutional amendment under the PCO. However, the Supreme Court of Pakistan and the High Courts continued to exercise their power.<sup>41</sup>

Former prime ministers Benazir Bhutto and Nawaz Sharif tried to visit Chaudhry but in vain. Bhutto attempted a visit on November 11, 2007. Security forces blocked her way. Similarly, police prevented Nawaz Sharif from meeting Chaudhry on December 5, 2007. A heavy contingent of police besieged the Judges Colony and blocked all entry points with barbed wire and concrete barricades to prevent the meeting.<sup>42</sup>

The lawyers' movement was also supported by Human Rights Organizations all over the world. The pressure was increased on the military government as the leading lawyers and the Bar Associations demanded the restoration of the deposed Chief Justice. The deposed Chief Justice Chaudhry Iftikhar became the third man in history who has been awarded with the prestigious 'Medal of Freedom' at the Harvard Law School, for his efforts to maintain the basic commitment of the legal system towards freedom, justice and equality.<sup>43</sup> The New York City Bar Association granted the Justice Chaudhry, honorary membership as a symbol of

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41 The Daily *Times*, October 19, 2006.

42 *Dawn*, December 6, 2008. Also see Human Rights Watch, "Pakistan Destroying Legality: Pakistan Cracks down on Lawyers and Judges," Volume 19, No. 19 (C), (New York: 2007) and [www.hrw.org](http://www.hrw.org).

43 One of the early recipients of the award is Nelson Mandela a legendary anti-apartheid leader and also the team of litigants that contested *Brown versus the Board of Education*, which results in the end of racial discrimination at educational institutions in the United States of America.

the movement for the independence of judiciary in Pakistan. *The National Law Journal* in New York also awarded the Chief Justice Chaudhry with the award 'Lawyer of the Year' for the year 2007.<sup>44</sup> A number of international institutions recognized the independence of the judiciary, such as Article 10 and Article 14 of the Universal Declaration of Human Rights of the International Covenant on Civil and Political Rights (ICCPR).<sup>45</sup>

Media played a significant role in that movement and proved to be resistant to the crack downs of government. Several TV channels were banned during the emergency rule. The activists started agitation and used substitutes such as social media for presenting videos, pictures and stories of protests and police crackdowns such as YouTube, Flickr, homemade blogs, and other websites, and communicating details and descriptions via cell phone text messages.<sup>46</sup>

The civil society was also active. The reality was quite contrary as demonstrated by the protests for the anniversary of March 9, 2008 and the popular success of the 'Long March' on June 1, 2008. The basic and unrevealing demand of the civil society was the restoration of Chief Justice Chaudry Iftikhar and other deposed judges and the departure of the 'PCO judges'. The independence of judiciary is indispensable because it guarantees the protection of human rights, civil and political rights as well as social and economic rights. A former president of Supreme Court Bar Council disclosed that more than 1.5 million procedures were pending before the courts in Pakistan. The lawyers engaged themselves in strikes and boycotted the 'PCO justice' which proved harmful for them on economic

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44 Abbas and Jasam, *A Ray of Hope*, 11-12

45 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," London, 2009. 31. Also see <http://www.factfindingguidelines.org>

46 Human Rights Watch, *Pakistan Destroying Legality*, 2007.

grounds but their courageous commitment was part of a substantive claim of a state right for Pakistan.<sup>47</sup>

### **Conclusion**

The present study explains that the judiciary was under the control of dictators throughout the history of Pakistan. For the very first time, Chaudhry Iftikhar stood against the forces of status quo and struggled for judicial independence. The struggle for the independence of judiciary and the restoration of Chief Justice Iftikhar Chaudhry was a turning point in the judicial history of Pakistan. There were a number of challenges on the road ahead but two years struggle of the legal community, human rights activists, the media and the civil society played a key role for a viberant and impartial judiciary. The lawyers' movement in 2007 and 2008 were socially transformative for strengthening the judicial machinery. In the end, it gifted legal developments and widespread legitimacy of judicial institutions. The reinstatement of the Chief Justice Chaudhry in March 2009 presents an important opportunity for Pakistan's judiciary marks a new journey towards judicial independence.

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47 International Federation for Human Rights. "A Long March for Democracy and the Rule of Law, 2007-2008." France, 2009, also see <http://www.fidh.org>