

Independence of Judiciary: An Assessment of Lawyer's Movement and its Impact on Civil Society of Pakistan

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Abstract Lawyers are important part of Pakistani society. They actively participated in the movement against the military regimes. Social movement are necessary for the renewal of the society. These movements help to make a society vibrant and prone to democratization. All the fractions of the society took keen interest in this movement. This historic movement gave youth the initial lessons of democracy and students took part in this movement as they were active in the first two decades of Pakistani political history. Students are the educated and informed part of the society and remained on forefront in the movements in the country. In recent years lawyers, media, students' unions, military and ulema played important role in restoring of judiciary and played important role for Lawyers' Movement in Pakistan 2007-09. Rule of law issue educated Pakistani civil society and the society became more vibrant about the democratization in the country.

Introduction

Social movements play their role for social renewal, through the dissemination of social movements, countervailing groups are created. This means the groups

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encourage social movements. This phenomenon creates issue networks, leading to the organization of different groups in the future (Mcfarland, 1992). Lawyers are important part of the society. Legal expertise of the lawyers gave them more access to the government as compare to the other professions. Lawyers remained prominent in the struggle against the British Raj. Muhammad Ali Jinnah represented the Muslims of Subcontinent, Nehru and Gandhi were the representatives of Hindus. In the countries like Pakistan, India and Bangladesh lawyers remained active in solving the national crisis in their countries. Lawyers stood against the military government of General Zia but civil society was not supporting that movement as they were not showering flowers or passing marches in the streets. The movement against the Musharraf is led by lawyers and they used different techniques to fulfil their demands like public meeting, bar association strikes, street protests and sit on in all over the country.

The political history of Pakistan is demonstrating a new trend for the first time that constitutional and legal matters which had been part or domain of only scholarly discussion have now had become part of public discussion. The man in street comments in length on issues related to supreme judiciary. The recent political events, the style of debating on the restoration of judiciary by the media, and the struggle carried out by executive to undermine the on-going struggle for the independence of judiciary have put the values like rule of law and the participation of large number of aggrieved people into the domain of Pakistani power structure. All the segments of society paid keen attention on the historic movements of Pakistan like lawver's movement and the judicial crisis. Moreover, the unique feature of this whole political scenario is that youth took keen interest in those people who were working at the helm of affair. In this way, they were imparted initial lessons of politics. This initial lesson was clear to the few individual belonging to formal institutions on the one hand and a specific group of informal social structure was dominating the state and this class did not bother public interest (RAIS, 2007).

The movement for the restoration of judges no doubt has huge impact on the political map of Pakistan but without the active participation of the political parties it could not be completed Many fractions of the civil society do not take part in the social movements and shows indifference from the movement, whereas some sections of the society take part in the movement at the peak time of the movement. It is not necessary that social movements are against the state and this is also possible that these movements are undemocratic. If these social movements are from the civil society then it must be democratic in nature. Lawyers' movement was self-consciously democratic though it has narrower institutional concerns and objectives. This movement was one of the largest movements in the country and this was the question that how much this movement was successful in democratization the country (Zaidi, 2011).

Independence of Judiciary: An Assessment of Lawyer's Movement and its Impact on Civil Society of Pakistan

When Chief Justice Iftekhar Muhammad Chaudhry was de-functioned in March 2007, the lawyer's community as a whole stood behind the Chief Justice and in a rare development in the history of Pakistan the lawyer's community started a movement for the restoration of Chief Justice. The roads of the country were swarmed with the processions led by the lawyers and joined by the common people. Musharraf government felt such shocks which it had not felt before, the military regime could not stand firmed on his point of view and Chief Justice was restored by the Supreme Court. There were four major mass mobilization, first students protest in 1967-69 which became the mass movement, second Pakistan National Alliance protest in 1977, third the Movement of MRD in 1983-84 and forth the protest of Lawyers in 2007. Shafqat has developed his observation that lawyers protest could not become the political movement despite of all sign of a political movement in 2007(Shafqat, 2014.)

Research Question

- 1. Whether or not the lawyer movemnet make judiciary more independent?
- 2. How the lawyer movement affect the political dynamics of the state?

Research Methodology

The research is qualitative and based on the secondary resources. The existing data was collected from secondary resources including books, newspapers, journals, and electronic media. The collected secondary data was critically analyzed to get the answers of the designated questions. To make the research more authenticated, some notable lawyers, politicians and media persons were interviewed.

Significance of the Study

In the heterogeneous developing society, the institutions are even bound to have their limits constitutionally but their implementation in real is not as sophisticated as theory. Institutional encroachment is very common and the race of dominance prevails. However the societal evolution is overcoming the issues. Institutional evolution is becoming on the board and their jurisdictions are being formulated. The current study will leash out the institutional evolution factors and how it will affect the societal norms and values. The study will make a productive contribution to the existing knowledge.

Linkage of Bar and Bench

The lawyers' profession is highly recognized. It is considered that lawyers protect the fundamental and legal rights of their clients. Through national and international law the human freedom and fundamental basic rights of the people are protected by promoting the cause of justice. This profession demands to act freely all the times in accordance with the really and recognized standard of law and morality. It is viewed that to uphold the professional standard and respect of lawyers, the associations of lawyers have accorded an important part. These associations provide the legal assistance and help to uplift the cause of justice to its all members without any discrimination. Lawyers associations' also cooperate with the state institutions' according to the constitutional legislations to meet the standard of justice and also in the large public interest. The role of judges, lawyers, prosecutors must be according to the real standard of justice and must work within the framework of legislation (United Nations, 1990)

Advocate

A person is called and advocate who presents and argues the case of other person. The person, who gives legal advice to the clients, pleads the case of other in front of courts or tribunals. A person who adopts the profession of law and recognized by the legal organization such as bar councils is called a lawyer. Advocate gives advice to his clients and argues the case of the other persons and pleads their cases(Law, 2005).

According to the French rule of 1345 lawyers were prohibited to take case of persons whom they found unjust (KIM, 2004). People have no knowledge about their legal rights due to high rate of illiteracy and do not know their responsibilities in the structural frame work of justice system in Pakistan. The Pakistan Bar Council supervises and controls the Provincial Bar Councils. It also is the responsibility to issue the licences to lawyers for entering into legal profession(Pakistan Bar Council, 2016).

Independence of Judiciary

Article 175 of constitution deals with the separation of judiciary and further explained PLD 2008 SC 522. Complete separation means judiciary should be separated in any matter even on pay and pensions. Supreme Court observed that all the financial matters related to judges including pay and pensions are under the direct control of executive and they without recognizing the independence of judiciary, treat it as their subordinate department. In these matters executive should not interfere in the matters of judiciary (PLD, 1993). Fundamental right to access to justice cannot be completed without independence of judiciary. Separation of judiciary is cornerstone for independence of judiciary (PLD, 2000)

In 1999 General Musharraf ousted the elected government of Nawaz Shareef in a military coup. At that time Chief Justice Iftikhar Muhammad Chaudhray was a member of that bench that validated the Musharraf's action of military takeover. He also took oath under the Musharraf's provisional constitutional order. (Raza, 2012)Pakistan Muslim League Quaid-e-Azam (PML-Q) made alliance with

Islamic party *MuttahidaMajlis-i Amal* (MMA) after elections of October 2002. President Musharraf got success systematically by contrast with his civilian predecessors' Political system. Impression of stability changed for the worse during 2007. Apparently it looks that Pakistani civil society is not active, since 2007 it looks that Pakistan politics revolves among the civil society. After nine years Musharraf was considering Suo Moto of IftekharChaudhry as a threat for his Rule. Musharraf as the President of Pakistan called Chief Justice of Pakistan to meet him in President Office. Musharraf met with Chaudhry in army uniform and talked about the allegations against the Chief Justice of Pakistan and compelled him to resign. Chief Justice refused to resign and faced the consequences and removed from the office and suspended. He was detained in his house and cut off with the facilities of telephone and television. His children were stopped to go to Schools.

On 9th March 2007 when General Pervaiz Musharraf the President of Pakistan dismissed the Chief Justice of Pakistan, the lawyers came out to protest in the streets, they want restoration of judiciary and they came out for rule of law. This was an organic movement with broader objects as its agenda was democratic and motivated the civil society to work for democracy. It gave democratic results but still it was not a political movement rather it was a social movement. In a political system of Pakistan where compromise and collusion are the key features, popular Lawyer's movement gave birth to activism in the society (Zaidi, 2011, p. 210). Analysis of the following incidents are necessary to see how the confrontation started between the judiciary and the president Musharraf.

Case of Missing persons

Supreme Court started hearing of the case of missing people under the supervision of Chief Justice. It was blamed that missing persons were in the custody of agencies. Charge against these persons was that these missing people have been involved in terrorism. More over Chief Justice further suspended some projects of government which were not in large interest of the nation and has environmental issues (Hassan, 2013). In the important case of missing persons and relative of missing persons filed a petition in the Supreme Court through renowned lawyers Asma Jahangir and Fakhruddin G. Ebrahim. Human Rights Commission of Pakistan was backing this important case. Chief Justice Iftekhar Muhammad Chaudhry was presiding the bench. Privatization of Steel Mill was the first case in 2007 where government wanted to privatize the Mill but Chief Justice gave verdict against the privatization. It was said that selling a national property to a group Arif Habib who was earlier a client of Prime Minister Shoukat Aziz, was done in indecent haste. When Nawaz Sharif (three time remained Prime Minister) filed a case of to revoke his exile, the decision was given that he can come back to his country. The most important case was of Pervaiz Musharraf that he wanted to

remain in Presidential Office for the next term. Decision was given against him, which was a major judgement that raised confrontation between them(Iqbal, 2011).

Judicial crises erupted on 9 March 2007. Lawyers started demonstrations against the removal of Chief Justice all over in Pakistan. This protest was for rule of law and for independence of judiciary. The lawyers were against the controlled democracy and managed judiciary so they raised their voice for independence of judiciary and rule of law. The lawyers awakened general conscience of the people. They were demanding that survival of the independent judicial system was necessary to provide justice to the people. Lawyers' movement for the reinstatement of Chief Justice and for the rule of law mayremained unsuccessful without the active participation of the political parties. (Zaidi, 201).

In November 2007 President Pervaiz Musharraf imposed emergency that revealed the truth about Musharraf's enlightened moderation. The liberal elite were playing their role as collaborationists. Pakistan People's Party was blamed of making a deal with Musharraf at that situation. Lawyers' movement was on peak and the Musharraf's government was almost on knees when people's party made a deal with Musharraf to save his assets through reconciliation ordinance. Lawyers' movement would have been more successful in mending the political norms of the Pakistani society if Pakistan people's party gave this movement full support (Zaidi, 2011). Nawaz Shareef returned home from exile on 25th November Main Political Parties and Pressure Groups like Lawyers compelled Musharraf to resign from presidential office on August 18, 2008. Asif Ali Zardari became the strongest civilian leader after getting 482 votes out of 702 from the parliamentarians. He had been in prison for several years in corruption charges. Asif Ali Zardari was elected as president on September 6, 2008. A tussle remained between the Chief Justice IftikharChaudhry and the government of PPP throughout five years of this government. Musharrf's party PML Q faced a significant loss in the vote bank after the assassination of Benazir. FazlurRehman'sJamiatUlema-e-Islam (JUI-F), MuttahidaQuami Movement's (MQM and the Awami National Party (ANP) was active political parties at that time. Nawaz Sharif's Pakistan Muslim League-N (PML-N) was struggling to regain their vote bank.

In Pakistan the leaders of lawyer's community were able to draw the attention of the public with the help vibrant media. The media did a lot of help in building the public opinion in the form of news stories, songs and interviews of the leaders of the lawyers. Media arranged special programmes on the struggle of lawyers against the government the whole structure of military government of Pervaiz Musharraf came under attack in the media campaign. The public opinion formed through these media campaign altogether shaped the regime. The media was successful to such an extent that government has to ban a number of channels including Geo, ARY, and Express. Ultimately the regime has to declare an emergency under which the whole media was threatened to stop making public

opinion against the regime. Notwithstanding that media could not be stopped altogether it continued marring the image of regime in the eyes of people. At last the democratic forces were able to assume the power from military ruler.

Public Perceptions of Judicial Crisis

Charges of "misconduct" and "misuse of authority" were viewed on Iftikar Mohammad Chaudhary, Chief Justice of Pakistan, by Musharraf on 9th March 2007. A reference was made against Chief Justice and was sent to the Supreme Judicial Council for investigation of the matter. Bhagwandas, the senior- most justice was out of country so Justice JavaidIqbal was sworn in as acting chief justice. President Musharraf tried to justify all these steps against Chief Justice under the Article 209 of the Constitution. This action of President Musharraf was condemned after a few hours of event by the opposition leaders, members of bar councils and commentators. Civil community has condemned this decision of Musharraf and raised voice in the favour of Chief Justice. Musharraf action against Chief justice was counted similar to the Case of MaulviTamiz-ud-Din when constitutional assembly was dissolved unlawfully in political history of Pakistan by a former bureaucrat Malik Ghulam Muhammad. NaeemBokhari, Supreme Court Advocate and a TV personality wrote a letter on February 16, 2007 and charged him for misuse of his powers. In this letter, NaeemBokhari indicated the decisions of Chief Justice and counted these decisions not according to the principles of justice. NaeemBokhari blamed that son of Chief Justice was using protocol, expensive cars and airplanes and was enjoying the undue status in bureaucracy. The publication of this letter in the press caused bad effects on the reputation of Chief Justice. The SuoMotu action was taken by Chief Justice against the disappearances of the citizens built a gap between civil and military establishment and also put question marks over the steps taken by military establishment in particular and on justice system of Pakistan in general (Rahman. 2007)

On 9th March Musharraf called the chief justice and asked him to resign from his office. Chief Justice responded with denial and declared to defend the charges. Supreme Court declared removal of the Chief Justice of Pakistan as assault on independence of Judiciary. Prime Minister Shaukat Aziz at that time was also against the Chief Justice of Pakistan as the Court gave its verdict against the privatization of the steel mill. Missing persons case was also prominent and the government was in puzzle that how to produce the missing persons before the court. Chief Justice of Pakistan was also taking SUO MOTO case of human rights violations and gender exploitations were annoying the public officials. A new leadership emerged in the shape of AitizazAhsan, Ali Ahmad Kurd, Munir A Malik, Justice (Retired) Wajihuddin Ahmad and Justice Retired Tariq Mehmood

in the lawyer's community. There was a civil unrest in the country so Chief Justice of Pakistan decided to fight legally in the Supreme Court of Pakistan.

Save the Judiciary movement was famous and was applauded by the people. AitizazAhsan with other leader of the movement visited different bar associations of Pakistan to gain support. IftikharChaudhry was also addressing the lawyers. An act of brutality was observed when chief justice Iftikhar Muhammad Chaudhry was going to address in Sahiwall. A torch bearer rally of the lawyers were beaten charged by the police, dozens of lawyers were injured and suffered from burns.

On the pressure of the civil society chief Justice was reinstated on 20th July 2007 and cleared from all allegations. It was first time in the history of Pakistan that civil society played its role with legal community for the great cause rule of law. For independence of judiciary and rule of law civil society with the support of workers of the political parties did not leave any stone unturned. It was the first time in the constitutional history of Pakistan we observed spate of resignations from the law officers. Additional Attorney Journal of Punjab along with other several judges resigned for the supremacy of constitution. Apparently restoration of chief justice showed a victory of the legal community but in reality rank and file were the ultimate winner in this battle against the military ruler. (QAISER, 2008)

Proclamation of Emergency

Lawyers were still on their stance that Musharraf was usurper and unconstitutionally enjoying two offices. Lawyers' community challenged Musharraf eligibility of having two offices at the same time before the Presidential elections of 6 October 2007. On 3 November 2007 Musharraf imposed emergency in the country and sacked 60 judges from Supreme Court and from the High Courts. Chief justices of the all courts were also included in the dismissed judges. Emergency Order came with the Provincial Constitutional Order 3 November 2007 and on the same date Oath of Judges Order was also issued. This emergency was in fact a Martial Law in the Country. When the sacked judges tried to enter the courts they were stopped by the police. Lawyers showered petals of flowers in front of the doors of sacked judges' Court Rooms.

General Musharraf Chief of Army Staff was taking the petition of WajihuddinAhamd before the Supreme for his eligibility to take part in the election of President as a threat. That petition may make him ineligible to contest the election of President of Pakistan. The Emergency of 3rd November, 2007 and declaration of Provisional Constitution Order (PCO) was step by Musharraf to debar the bench for hearing the petition case of Wajihuddin. Twelve grounds were narrated to justify in implantation of Emergency but it was action taken by Musharraf to get rid of the bench of judges including Chief Justice Iftikhar Muhammad Chaudhry whom he thought against his dictatorship. Under the Article 270 AAA and Article 270 (C) (2) constitutional amendments were established to

get the favourable results in the election. It was also established through the amendments that no group or political party would get the 2/3rd majority in in both houses of parliament. (Bashir, 2008)

Many of the lawyers were kept house arrest for several month. Asma Jahangir remained under house arrest; Mr.Muneer A Malik a renowned lawyer suffered from health complications and remained ill during house arrest. On 5 November 2007 police beaten charged the lawyers entered in Lahore court and arrested hundreds of lawyers. Same kind of Act was repeated in Sindh High Court Building. This was the first time the police entered the buildings of the courts to arrest the protesters.

Emergency was lifted on 15 December 2007 and chief justice was ceased to be as chief of army staff. International pressure was mounted on Musharraf to restore the judiciary after the emergency was over. Musharraf was not ready to restore chief justice and other judges who refused to take oath under the emergency. On 8 August 2008 Mr. Nawaz Shareef and AsifZardari were agreed to restore the judiciary but when Musharraf gave his resignation on 18th of August 2008 and Zardari swore in as new President later on. Lawyer's community was happy on the resignation of Musharraf and was celebrating it as their victory. Zardari was reluctant to restore the judiciary again and was being criticised by the civil society. It seems that both the parties PML (N) and PPP were hesitating to restore the judiciary. Changing circumstances suggested a way for lawyers to arrange themselves again and started a movement with a new name as Lawyer's Movement previously movement's name was 'Save the Judiciary'. On 28th October 2008 Ali Ahmad Kurd was elected as President of Supreme Court Bar Association. There was tense situation in Punjab after imposing governor rule by Zardari government. There was division among lawyers at that time Hamid Khan was leader of a group that was in support of restoring Judiciary whereas the lawyers who had affiliation with PPP were not so active in this cause except AitizazAhsan. In January 2009 a signature campaign in favour of restoration of Judiciary was started named as 10 million signature campaign. On 12th of March 2009 civil society, lawyers and students started a long March towards Islamabad. AitizazAhsan and Nawaz Shareef were kept on house arrests. Atrocities of police were on its peak, hundreds of people were arrested to stop this long march.

Political Situation in the country During Lawyer's Movement

The peaceful protest movement turned into bloody when Chief Justice Iftikhar Chaudhry and sacked judges tried to address the Sindh High Court Bar Association on 12 May, 2007. (MQM) MuttahidaQaumi Movement an ethnic based party in Sindh announced a rally in Karachi at that day. MuttahidaQaumi Movement was a strong ally of Musharraf and tried to show its power in Karachi. Musharraf was also presiding a public rally in Rawalpindi a city of Punjab province. 45 people

were killed at that day due to violence. Much of public and media believed that MuttahidaQaumi Movement was responsible for violence at that day. Though Musharraf did not accept the allegation of this violence. According to some cables of US Consulate; Dr FarooqSattar leader of MuttahidaQaumi Movement (MQM) blamed Musharraf and Army for this act (Chishti, 2012).

Big demonstrations, protests and rallies were observed by civil and legal community throughout the country from 2007 to 2009. Everyone actively took part in these protects within and outside Pakistan. Lawyer's Movement for restoration of IftikharChaudhry impressed the general public and created hate for military dictator. Movement established some fundamental changes in the relationship of state and society. Was it a movement? Some scholars did not count it a movement. According to them it has not movement because historical comparison taught them that in 1960 all walks of life came together and protest against military dictator Ayub Khan. The factory worker, students, farm labour, civil society, traders, journals were involved in the protest against Ayub Khan (Siddiqa, 2012).

On one side there was a growth in the extremist activities and on the other side issue of deposed Chief Justice Iftikhar Muhammad Chaudhry led to a domestic political crisis. At last Musharraf gave its resignation on the issue of Judges and country returned to democracy. Dismissal of Chief Justice was not accepted by the masses and a huge wave of protest started in the country. Media and other sections of the society were also stood beside the Judiciary. Supreme Court reinstated all the sacked judges, Musharraf reacted on it and re-elected himself again as President on October 2007 in accordance with the provisions of constitution by the Provincial and National Parliament. He proclaimed emergency in the country in November 2007. International pressure was so intense that he lifted the emergency after six weeks. He announced elections and also resigned from the Chief of Army Staff. Benazir Bhutto who returned from the exile was assassinated and overshadowed the Campaign of the elections. PPPP got most of the seats in the elections and made its government in the country(Wolff, Spanger, & Puhle, 200).

The upheavals in the political system resulted into more societal demands and debates on rights of citizens and their participation in political system of the state the development of social groups was hampered by opportunist groups within the social and political milieu. The effective mobilization development of groups has been shackled by adverse nature of systemic environment in Pakistan. (Stanely, 1983)

It is necessary to note a few points in this section. We can state that the civil society has different meanings theoretically and conceptually. We can conclude that the civil society and the political parties had different aims and agendas. This can be stated from the fact that political parties were absent during March 2007 to January 2008 elections in the lawyers movement raised a question either political parties are part of civil society or not? Last but not the least it is important to note that even a highly popular movement that could lead to the formation of democracy

could not lay a firm base due to ambiguity along with desires of personal and professional fulfillments rather that democratic ones(Zaidi, 2011).

During the period of our study the Pressure Groups of lawyers affected the political system in two ways. One was the direct role of lawyer's community and other was indirect effects of verdicts of judiciary. As far as first way is concerned role of lawyers can be studied in two different phases namely pre Lawyer's movement period and post lawyers' movement period. In the first and longer phase, the Bar Councils and lawyers community as a whole did not appear as a resistant force. This Pressure Group did not work for democratization of country. Democracy remained an element to be practiced by the bar councils through annual elections. Resolutions of bar councils to some extent raised and supported the issues of democratization. However, these resolutions did not leave considerable effects.

Conclusion

Lawyer's movement mobilized the civil society as Supreme Court gave verdict against the extra constitutional verdict of Musharraf and reinstated the Chief Justice of Pakistan. Civil society was in effective coordination with the legal community. The success of restoration of Chief Justice showed the force of lawyers' community not only before the people and military rulers but also on the lawyers themselves. They became bold enough to resist the military regime for the easy Presidential elections under the pressure of lawyer's movement joined with the political forces. General Musharraf had to leave the office of the Chief of Pakistan Army. He had to hand over the power to Ashfaq Pervaiz Kyani. The role of lawyers was so evident that all contestants against General Musharraf in Presidential elections were lawyers, Justice retired Wajihuddin Ahmad and Saeed -uz- Zaman Siddiqui. This period was very much important for restoration of democracy in the country. Lawyers Pressure Group was on forefront in all of the moves against the dictatorial setup. This movement established fundamental change in the relation of state and society. This organic movement set an agenda for democracy and motivated civil society to give its contribution to democratization process.

In sum, the lawyer movement succeeded to mobilise the society and succeeded to get what they want. Media, political parties, civil society actively participated the movement only for the independence of the judiciary. In addition judiciary also played a positive role in this regard. Now it depends how judiciary will perform in future and how it will as institution deliver the justice and protect the basic rights of individuals. The movement also made a productive impact over the political dynamics of the state. Political parties actively became the part of the movement and succeeded to develop a soft image among the masses.

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