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**JUDICIAL ACTIVISM IN PAKISTAN: ANALYSING THE SELECTED REGIMES  
OF BENAZIR BHUTTO AND NAWAZ SHARIF**

**REHMAN AU<sup>1\*</sup>, KHAN TM<sup>1</sup> AND ASHFAQ S<sup>2</sup>**

**1:** Department of Political Science, Faculty of Social Sciences, University of Peshawar, Pakistan

**2:** Department of Politics and International Relations, International Islamic University Islamabad,  
Pakistan

**\*Corresponding Author E Mail:** [rehman.phd@gmail.com](mailto:rehman.phd@gmail.com)

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**ABSTRACT**

There is correlation among the institution of judiciary, political executive, legislatures, a democratic system, superiority of the constitution and the citizens of the state. All these actors of the state are interrelated and inter-twined with each other. History shows that only those nations could survive and develop their countries, which have ensured the rule of law and their courts have functioned with more autonomy and independence. In a democracy, the civilian government also needs to develop a harmonious and friendly relationship with the opposition parties and the non-political state institutions, so that military does not have a chance of interference. There are different schools of thoughts, who differ over the role of superior judiciary in maintaining check and balance on the government. Some believe that non-elected judges shall not exercise the power of judicial review. However, others believe that if the civilian government does not perform their duties in the required manner, the superior court judges are compelled to keep a closer look on their working. This paper focuses how the military in Pakistan had been maintaining a check on the elected governments during second terms of Benazir Bhutto and Nawaz Sharif. The military controlled the government either through the powerful president or with help of the judiciary in the otherwise situation. It also analyses how an apparent judicial activism; struggle for supremacy of parliament and apparent efforts for establishing a check and balance system were mis-used by all the stakeholders for enhancing control over the political affairs rather than strengthening of the state institutions.

**Keywords: Democracy, Judiciary, Supreme Court, President, Prime Minister, Army and  
Judicial Review**

## INTRODUCTION

A thorough study of the history of democracy shows that it has often been characterized by a blatant disregard for the rule of law, both by the political executive and the legislative chambers. These two political institutions often carry out their respective powers and functions in such a manner that it tries to suggest having an unlimited power or are above the law of the land, the constitution. Therefore, to be the safeguard of the democracy, the judiciary must fulfil its constitutional role. The sustenance of a democratic system mainly depends on autonomy and independence of the higher judiciary. The judiciary should interpret the constitution, settle conflicts and disputes arising in the growth of democracy and ensure the rule of law. The judiciary, irrespective of its original jurisdiction ensures a clear separation of powers between the government and the legislature.

Judicial independence does not necessarily mean that the judges can reverse the governmental acts. The decision of a judge to reverse a governmental act can be seen whether the judge can challenge the orders of political executive, and whether the judge wants to challenge the order of political executive. Therefore, reversal of a governmental order not only depends on the political

constraints which the courts usually face. There is also a possibility of political repercussions of the reversal order which means the legislature, and/or the executive may reverse the decision of the court. Besides, the number of judges can be increased in the court and/or a judge or some judges may be impeached. However, the intention of judicial reversal or other measures by a government also depends on the political alignment of the judge(s).

It is not illegitimate for a judiciary, especially in federal systems, to act like a legislature. However, sometimes they lack the required capacity to perform in this regard effectively. Nonetheless, there are many critics who often criticise that the judiciary is not competent enough as an institution to make legislative decisions. But at the same time, it is not necessary that the power of judicial review may be used to deliver judgements which do not have political consequences and should be in accordance with political sentiments of the people [1]. However, the ultimate options lie with the judiciary, if the parliament is unable or do not want to act for correcting an unconstitutional status quo, the judiciary, irrespective of its institutional incapacities, should act to correct such actions [2].

There are different critics who believe that judicial restraint is proposed

on the power of judicial review because it weakens the democratic processes. If the judiciary will be correcting the legal and constitutional errors of the parliament and the political executive, these responsible institutions may start reliance over the courts and may not be fulfilling their responsibilities under the constitution. However, the judiciary has three options in hand: declare it constitutional, declare it unconstitutional, or somehow avoid dealing with the question of its constitutionality. In democratic regimes, if not too much necessary, the judiciary should prefer upholding the law as constitutional and should leave it to be repealed by a more enlightened parliament.

When the court avoids judgement on the constitutional merits of a statute, the judiciary gives a chance to the legislature to correct their own constitutional mistakes. Otherwise, it may arise as serious matter for the people to keep relying on the judiciary as a significant force for change in the constitutional issues. If the people and the parliament would be expecting the judiciary to do their work for them, the tradition and the practice would be more worse [3]. No doubt, the legal experts know well that from theoretical aspect, the findings of judiciary on a statute imply nothing about its wisdom. Until the higher judiciary

grants it validity, the arguments of the opposition that the statute is unconstitutional, or simply unnecessary, may compel the people for taking a second look at it. However, when the constitutional court of a state declares the statute valid, the criticism of opposition is undercut [4].

To some critics, the power of judicial review enjoyed by the superior courts in a democratic government is often considered to be an undemocratic, inherently oligarchic and a deviant institution. This is mainly because in a democracy, public policies and laws are framed based on majority vote in the legislature which are carried out based on the principle of political equality and with an intention of the principle of political freedom [5]. However, the superior court judges are given appointment and promotion through a process which is normally carried out by the political executive which is elected either directly or indirectly. Moreover, if the judges are not aware of the political reality in the country, the parliament and the political executive may null and void its judgements through constitutional amendments and thus refuse to execute their decisions [3]. Furthermore, the legitimacy factor of a state institution depends not on its representational

structure, rather on its institutional authorization and acceptance by people. Therefore, the judicial review power of the courts stands as an integral part of the constitutions especially in federal structures [6].

According to this school of thought, the higher judiciary is not a democratic state institution because it consists of personnel having a lifetime appointment and can be removed only through an intricate process of the impeachment. However, this definition also suggests that the process of law making must be through a majority will, therefore, the upper chamber of the parliament in a federal system also do not qualify for policy making. Moreover, once elected, the internal rules and regulations of the parliament makes the popular and the majority will and control even less likely to be ensured. The enormous power enjoyed by the committee system and its chairperson is based on the seniority rule which often does not ensure the suggestions and recommendations of the opposition parties thus decreasing the chances of majority vote and popularity.

#### **CHIEF JUSTICE SAJJAD ALI SHAH COURT VS BENAZIR BHUTTO GOVERNMENT**

The Pakistan Peoples Party (PPP) had developed a soft corner for and

respected Justice Sajjad Ali Shah when President Ghulam Ishaq Khan, using his powers of 58(2)(b) under the Eighth Constitutional Amendment, dismissed the first elected government of Benazir Bhutto in 1990. The order of the president, to dismiss selected government as well as the dissolution of National and four provincial assemblies was challenged in all the four High Courts including in the Sindh High Court. A five-member bench was formed which was headed by Chief Justice Sajjad Ali Shah for hearing the petitions. However, the Governor of Sindh took-off for Saudi Arabia to perform Umrah (a religious pilgrimage). Therefore, Chief Justice was accordingly assigned with the responsibilities of acting Governor of Sindh. In fact, these arrangements were carried out for keeping the Chief Justice out of the bench which was formed to hear the petition challenging the dismissal order of the President. The initially planned visit of Governor of Sindh was three days only. However, the tour was given an extension claiming the reasons of his illness. As a result, the Governor stayed abroad and didn't return until the petitions were disposed-off [7].

Another opportunity, which enhanced the respect of PPP for Justice Sajjad Ali Shah was when Ghulam Ishaq Khan issued order for dismissal of Nawaz

Sharif's first government in 1993. By now the Justice Sajjad Ali was elevated from Sindh High Court to the Supreme Court of Pakistan as a judge. The full bench of the Court, giving almost a unanimous verdict (10:1), held that the President's order to dismiss the government of Nawaz Sharif and dissolve the National Assembly was unlawful and declared it as 'illegal' and 'unconstitutional' [8]. The only dissenting judge of the Supreme Court was Justice Sajjad Ali Shah (from Sindh) who, contrary to other panel members, gave a dissenting verdict. His remarks were more critical, declaring that before this case, two prime ministers from Sindh had been dismissed under the same Article of the 1973 Constitution. However, the Court had declared the decision of the President to be valid and/or did not restore the dismissed government and the dissolved assemblies [9]. However, this time, the tables of the Court had been turned for a Punjabi Prime Minister [10] and the government along with the National Assembly has been restored. Justice Sajjad Ali Shah further added that the Court had indicated that the decision would please the nation, which in accordance with the law should be based on legality only.

During second term of Benazir Bhutto government, Justice Sajjad Ali Shah was appointed as the Chief Justice of

Pakistan in 1994. However, the elected government had superseded three senior judges for this appointment [11]. It seems that Benazir Bhutto took this decision due to his dissent notes in previously discussed two cases before the Supreme Court which the PPP took for a support. Hamid Khan quotes an un-named influential PPP member that he saw Justice Sajjad Ali Shah sitting with Asif Ali Zardari in the Supreme Court Rest House Lahore, assuring Asif Ali Zardari that he would do what the PPP government desired him to do [11]. However, the later developments proved that Sajjad Ali Shah as Chief Justice sought independence of the judiciary and challenged the irregularities done by Benazir Bhutto government on several occasions.

According to the critics, the authoritarian style of Benazir Bhutto government led her to develop differences with the superior judiciary. Moreover, Benazir Bhutto started direct confrontation with the Chief Justice who stood for the independence of judiciary. This tussle was coupled with confrontation with President Farooq Ahmad Khan Leghari on several issues like the weak economic and political performance, corruption and unnecessary confrontation with the judiciary [12]. Just to save her government from the adverse judgements of judiciary, Benazir Bhutto

started appointing pro-PPP lawyers and judges in the High Courts and Supreme Court of Pakistan [8]. Benazir Bhutto government was not the only government to appoint or transfer judges without consideration of merit. However, the undue interference and practice of appointment of inexperienced judges at a larger scale undermined the integrity of judiciary with negative implications. Moreover, political appointments and transfers were blamed to have increased over the past few years, thereby compelling the judiciary to take necessary measures.

The PPP government removed the sitting Chief Justices of Lahore and Sindh High Courts by transferring them to the Federal Shariat Court. It was because, they were considered anti-PPP and pro-PML(N) judges. Although humiliating, the Chief Justice of the Sindh High Court agreed with this transfer; however, that of the Lahore High Court preferred an early retirement. Both were replaced by two judges of Supreme Court who were posted there as Acting Chief Justices. The appointment of Justice Abdul Hafiz Memon bypassed all the merits. He was first transferred as a judge of the Sindh High Court and subsequently appointed as an Acting Chief Justice. However, the notification was immediately rescinded,

when the government came to know that his appointment as High Court judge had made him the junior-most judge and thus he could not be appointed as the Acting Chief Justice. Therefore, another notification was issued, notifying him as Supreme Court judge, followed by a third notification appointing him to the Sindh High Court as an Acting Chief Justice. Similarly, in case of Lahore High Court, the government considered Justice Muhammad Ilyas, a retired judge of the Lahore High Court and then serving as a judge of the Federal Shariat Court. He was deeply aggrieved from Nawaz Sharif government on account that he had been denied appointment as Chief Justice of the Lahore High Court. Appointing him as a Supreme Court judge, he was transferred to the Lahore High Court to be appointed as an Acting Chief Justice. The Peshawar High Court was already headed by an Acting Chief Justice [11].

Now Benazir Bhutto government initiated another phase of appointments to fill the four High Courts with likeminded judges. Only in Sindh High Court, nine judges were appointed. Majority of them were appointed either on political basis or were favourites of the PPP leaders. Most of the appointees either did not fulfil the required qualification or were not fit to be appointed as High Court judges because of

their lacking the required experience at the Bar of the High Court [11]. Moreover, ignoring the sanctity of higher judiciary, twenty judges were appointed to the Lahore High Court in August 1994, which created further problems for Benazir Bhutto government. Only two out of them were session judges and the remaining eighteen judges were selected from amongst the bar members. Thirteen of the twenty judges were the activists of PPP and were lacking the required professional experience [13]. Only seven judges were eligible for their appointment as High Court judges on merit.

The legal basis of the appointments of these twenty judges to Lahore High Court was challenged in the case titled: Al-Jehad Trust vs Federation of Pakistan in the Supreme Court [14]. However, Benazir Bhutto pressurised the Chief Justice Sajjad Ali Shah not to entertain any appeal filed against the legality of these appointments [15]. However, the terms dictated by the prime minister were turned down by the Chief Justice, mainly because it was against the independence of judiciary. The judgment declared by the Supreme Court came as a check on the civilian government, thus curtailing arbitrary use of its powers to appoint judges to the superior judiciary. The detailed judgement of the Supreme Court reduced the power

of the elected government in the appointment or transfer of higher courts judges unilaterally thus binding it to consult the Chief Justice of Pakistan and Chief Justices of High Courts as the case may be. Moreover, the Supreme Court gave the ruling that the Chief Justice of Pakistan and also the Chief Justices of the High Courts will be appointed on the basis of seniority, and to record a strong justification to the contrary. The Court also declared in its verdict that the recommendation of the Chief Justice of Pakistan and Chief Justices of High Courts, as constitutional consultees, was binding on the executive for appointment of judges to the superior judiciary respectively [16]. Moreover, it held that if the government disagreed with their views, it should record strong and cogent reasons to be valid and justiciable.

The landmark judgement also required that all the appointments which had been done without the consent of the Chief Justices should be reviewed [8]. The confrontation between the prime minister and Chief Justice Sajjad Ali Shah increased when the Chief Justices of High Courts refused to confirm the recommendations of the government given in 1994 regarding the appointments of the judges to the High Courts. Chief Justice Sajjad Ali Shah along with the four Chief

Justices of the High Court's gave an order to remove twenty-four (24) judges, which were appointed by Benazir Bhutto government [17]. Benazir Bhutto refused to comply with the judgment due to which a constitutional crisis had emerged. Therefore, the Chief Justice was forced to approach President Farooq Ahmad Khan Leghari to resolve the deadlock who had already suggested to Benazir Bhutto to accept the judgment of the Supreme Court. Farooq Ahmad Khan Leghari moved a reference to the Court to obtain its opinion whether the president had discretionary powers to appoint judges to the higher judiciary or the opinion of the prime minister was binding on him [8].

The judicial activism continued and throughout the year, the decisions of the court embarrassed the elected government. Benazir Bhutto accused the opposition parties for their alleged efforts to use the judiciary for toppling her government. She targeted the Jamat-i-Islami, which had demanded resignation and replacement of Benazir Bhutto with a caretaker government headed by the judiciary [18]. In response, Chief Justice Sajjad Ali Shah issued a public statement that indirectly accused Benazir Bhutto government of its efforts to ridicule the judiciary, defy its judgments, and to unjustly accuse the judges to have aligned itself with

opposition political parties. To him, irresponsible statements have been issued for giving a bad name to the superior judiciary which is only fulfilling its duties as enjoined in the 1973 Constitution. The judiciary does not want to have any confrontation with Benazir Bhutto government [19].

Besides, these major differences, the Supreme Court had also released Sheikh Rasheed, an opposition leader in March 1996. He was sentenced by a lower court on the charges of illegal possession of an AK-47 gun (Kalashnikov) thus remaining behind the bar for more than one and a half year [20]. In June 1996, the Supreme Court of Pakistan restored the local governments in the Punjab. The verdict of Supreme Court was invalidated by Punjab Assembly when it repealed the Local Government Ordinance 1979 [21]. Imposing the Governor Rule in Punjab [22], the provincial assembly was called a week later [23] and Chief Minister Manzoor Watto was asked to seek for a vote of confidence. As he could not secure the required mandate, the next day, Sardar Arif Nakai was elected as Chief Minister of Punjab [24]. Mian Manzoor Watto filed a reference in the Lahore High Court, which reinstated his government in the Punjab [25]. The presidential proclamation, the advice of governor and

appointment of Sardar Arif Nakai were declared as without lawful authority, thus causing considerable embarrassment for Benazir Bhutto government [8]. However, Mian Manzoor Watto, by tendering his resignation thus dissolved the Punjab Provincial Assembly due to the confrontational politics between the centre and Punjab. The situation really contributed to the confrontation between the prime minister and the Chief Justice of Pakistan which was further coupled with the tensions between the prime minister and the president.

#### **CONFRONTATION OF NAWAZ SHARIF WITH CHIEF JUSTICE SAJJAD ALI SHAH COURT**

Due to the deteriorating law and order situation, Nawaz Sharif government passed the Anti-Terrorism Act (ATA) on August 13, 1997 which established special courts [8]. It empowered the law enforcing agencies, to search the houses and arrest the suspects without warrant. Chuadhry Shujaat Hussain (the then Federal Minister for Interior) promised that the military would exercise no power in civilian affairs beyond the military courts [26]. The Army Chief had already announced that the Army will not involve itself in political affairs and none of the political parties will be targeted [27]. Though, special military courts were established under ATA, but

the cases decided by these courts revealed that they took more time than specified in the ATA. This limitation of the military courts was severely criticized by different circles in the public. Hearing petitions against the judgement of ATA, the Supreme Court declared that the 1973 Constitution allows no parallel judicial system [28]. The Court also declared that twelve of the provisions of ATA are controversial and invalid [29]. Those section of ATA that empowered the law enforcing agencies to enter any place for search and operations, were declared unconstitutional [30]. Earlier in August 1997, when the ATA was challenged in the Lahore High Court, it gave two-month time to the elected government for bringing the ATA in conformity with the 1973 Constitution [31].

Nawaz Sharif was apprehensive about Chief Justice Sajjad Ali Shah because of the judgement given in favour of the dismissal of his first term by President Ghulam Ishaq Khan. Having forestalled the perceived threats of dismissal of his government and losing majority in the parliament through constitutional amendments, the prime minister turned towards the third pillar of the state, namely the judiciary. Nawaz Sharif tried to override the superior judiciary in the appointment of Supreme

Court judges. The Chief Justice recommended filling all the five vacant posts of the Supreme Court with elevation of three of the Chief Justices of High Courts along with two senior judges of the Punjab High Court. However, Nawaz Sharif disagreed to promote two of the judges proposed by Justice Sajjad Ali Shah. The main reason was that they had also passed a judgement against the government of Prime Minister Nawaz Sharif during his first term. To counter the Chief Justice, Nawaz Sharif tried to reduce the powers of the former indirectly when a presidential order was issued thus reducing Supreme Court judges from seventeen (17) to twelve (12) members.

A petition, challenging the Presidential Order was filed in the Supreme Court, because of which the Chief Justice Sajjad Ali Shah issued a stay order [8]. The order was also protested throughout the country by the courts and the Bar Associations alike. Nawaz Sharif was forced for reconsideration of his action and reverse the presidential order. However, Prime Minister Nawaz Sharif was continuously exerting pressure, due to which the differences between the elected government and the higher judiciary increased manifold. However, the arbitration of President Farooq Khan Leghari and Army Chief Jahangir Karamat

worked, due to which Nawaz Sharif agreed to the appointment of the judges recommended by Sajjad Ali Shah. This arbitration had been, in fact, a coercive force which the military has been able to use for decades. The role of mediator at the top level of the state institutions revealed the kind of influence which the Army Chief had been enjoying in the decision-making process of the state of Pakistan.

The opposition parties especially the PPP realised that it was a right time for taking advantage of the situation and filed several petitions in the Supreme Court against the constitutional amendments and legal acts initiated by Nawaz Sharif government thus seeking disqualification of his government. Meanwhile, the government of Nawaz Sharif was successful in creating rifts within the Supreme Court judges. The judges sent a letter to President Farooq Khan Leghari which was signed by 9 out of 12 Supreme Court judges, declaring that the original appointment order of Justice Sajjad Ali Shah, elevating him as Chief Justice of Pakistan was not based on principle of seniority [8]. In fact, Justice Sajjad Ali Shah was appointed by Benazir Bhutto government as Chief Justice of Pakistan by superseding three senior judges i.e., Justice

Saad Saud Jan, Justice Ajmal Mian and Justice Abdul Qadeer Chaudhry [11].

The Supreme Court Bench presided over by Sajjad Ali Shah and two adhoc judges, nullified and declared the Fourteenth Amendment as unconstitutional. This amendment consisted of anti-defection laws especially for curtailment of the independence of elected representatives during voting in the Parliament against the party interests. The tussle continued as the prime minister publicly criticized decision of the Court in the Parliament which prompted the Supreme Court to take serious notice. A contempt of Court petition was filed against the prime minister in the Supreme Court and another petition was also filed for the annulment of the thirteenth amendment [8]. A three-member bench comprising of Chief Justice Sajjad Ali Shah, Justice Bashir Jahangiri and Justice Chaudhry Mohammad Arif summoned Nawaz Sharif along with eleven others to appear before the Court for defence in the contempt of court case [32]. Nawaz Sharif sought a one-month relief from the Court for a written response. However, Supreme Court refused and ordered him to appear in person before the Supreme Court on November 17, 1997. Nawaz Sharif also requested the Court for mercy, but the response of Chief Justice Sajjad Ali Shah

was that they are not supposed to provide mercy but justice [33].

Prime Minister Nawaz Sharif, instead of complying with the Court orders attempted to persuade President Farooq Khan Leghari for replacement of the Chief Justice. President Farooq Khan Leghari refused in the same way as he had done during Benazir Bhutto government. However, unlike Benazir Bhutto's period, the Supreme Court judges were now divided and could be easily dealt with. President Farooq Khan Leghari warned Nawaz Sharif against the consequences of such manoeuvres but Nawaz Sharif did not abandon his efforts [34]. Meanwhile, the government of Nawaz Sharif passed an amendment to the Contempt of Court Act from National Assembly and the next day from Senate. The amendment gave the affected person the right to file an inter-court appeal for hearing of his case by judges other than those admitted or heard the contempt petition. However, the Supreme Court bench headed by Sajjad Ali Shah ordered the President not to sign bill [8].

The President could retain a bill for 30 days to sign, which he did and later returned it to the parliament for review. However, the Constitution did not allow the parliamentary review in such cases until permitted by the Court. The

government of Nawaz Sharif decided for the impeachment of President Farooq Khan Leghari through the parliament along with the removal of Justice Sajjad Ali Shah alleging that the former had also abused his powers by retaining the bill pending for 30 days [35]. As usual, the Army Chief General Jahangir Karamat along with DG, ISI General Nasim Rana intervened in the crisis as an arbitrator. A meeting between the Chief Justice of Pakistan, the President of Pakistan and the Prime Minister was arranged, and Justice Sajjad Ali Shah was asked to withdraw the contempt of court case. Considering it as an insult of his office, the Chief Justice even refused to continue any discussion on the matter. President Farooq Ahmad Leghari made efforts for normalization of the crisis with reference to the prevailing critical conditions of the country which demanded political stability. Upon request, Justice Sajjad Ali Shah agreed for, at least two weeks delay in the proceedings of the contempt of court case [33].

It was a typical and personal war in which 'individual characters' played a key role. The heads of the state institutions strived for superiority over one another and no one was interested to safeguard the state institutions. Nawaz Sharif took advantage of the two weeks relief to make a counter attack against the Chief Justice

Sajjad Ali Shah. PML-N government filed a writ petition against the original appointment of Chief Justice Sajjad Ali Shah in Quetta Circuit Bench and a week later in Peshawar Circuit Bench of the Supreme Court of Pakistan [36]. The Quetta Circuit Bench suspended the notification of his original appointment as Chief Justice of Pakistan [37]. The government of Nawaz Sharif sent a summary to President Farooq Ahmad Khan Leghari for signing the removal orders thus recommending Justice Ajmal Mian, the next senior judge as acting Chief Justice of Pakistan. This decision of Quetta Circuit Bench was suspended by a larger bench of Supreme Court with 4 to 1 decision which was headed by Justice Sajjad Ali Shah [8].

The larger bench gave technical grounds that the Quetta Circuit Bench cannot suspend a permanent judge of the Supreme Court. However, if necessary, such cases could be referred to Supreme Judicial Council for consideration. It further held that a Circuit Bench is not empowered to hear a case against the Chief Justice of Pakistan and could hear the cases assigned by Supreme Court of Pakistan only [38]. The crisis further deepened when Peshawar Circuit Bench presided over by Justice Saeed-uz-Zaman Siddiqui held that being party to the case,

the Chief Justice is not empowered to hear or issue suspension order of the decision of Quetta Circuit Bench [38]. However, it is noteworthy to mention here that Supreme Court in Jamal Shah Case in 1966 and later in 1988 had declared that the judges of the same court cannot hear cases against each other [39]. However, with the tactics employed by Nawaz Sharif government, the Supreme Court judges, for the first time, got divided into two groups [40]. The grouping resulted in a tug of war among the Supreme Court judges and the battle ground was the press [41].

Farooq Khan Leghari and Sajjad Ali Shah, once met three times on the same day in which the latter was advised to resign because of losing the support of fellow judges [38]. The Army Chief General Jahangir Karamat, DG (ISI) General Nasim Rana, Prime Minister Nawaz Sharif, Wasim Sajjad (Chairman Senate), Khalid Anwar (Law Minister) and Illahi Bukhsh Soomro (Deputy Chairman Senate) visited the President House at midnight. The prime minister and his law minister presented judgement of Quetta Circuit Bench against Chief Justice Sajjad Ali Shah. Nawaz Sharif insisted on Farooq Ahmad Khan Leghari to sign the order for dismissal of the Chief Justice and the summary for Justice Ajmal Mian to be appointed as Acting Chief Justice [38].

President Farooq Khan Leghari refused signing of the orders because he had obtained some information that suitcases of money have been used by the government for obtaining this judgement. The bribery issue badly damaged the image of higher judiciary for which PML-N government was equally responsible thus resulting in weakening of one of the state institutions.

Chairman Senate Wasim Sajjad, as a constitutional lawyer, declared that the dismissal of the Chief Justice in this case was justified on legal grounds. However, President Farooq Leghari, showing his disapproval, opted to give resignation with a suggestion that the next day Wasim Sajjad as acting President of Pakistan would sign the dismissal order of Chief Justice Sajjad Ali Shah. The Army Chief, DG ISI and Deputy Chairman Senate opposed this arrangement. The Army Chief arranged another meeting in the President House, in which Sajjad Ali Shah advised Farooq Khan Leghari that he should not give resignation and that he would also prefer to fight his battle. President Farooq Khan Leghari expected the restoration of Eighth Constitutional Amendment by Chief Justice Sajjad Ali Shah which would empower him with 58(2)(b) to be able to dismiss Nawaz

Sharif government. The Chief Justice, literally did as expected.

Nawaz Sharif appeared before the Supreme Court on November 28, 1997 in contempt of court case. On this occasion, the PML (N) supporters invaded the Supreme Court building in which the senior ministers were also involved [42]. The attack was a tragic incident in the history of Pakistan. The coverage of the media throughout the world became a witness that the PML-N members attacked the Supreme Court building with the backing of the elected government. Chief Justice Sajjad Ali Shah requested the President and Army Chief through different letters to deploy Army and provide security to the Supreme Court of Pakistan. The president while endorsing the demand, forwarded the letter to the prime minister for necessary action. Moreover, the Army Chief also forwarded the letter to the Defence Ministry for appropriate action [8]. Thus, General Jahangir Karamat detached himself to be neutral and let the matter resolve by civilian institutions, mainly because his own interests were not at stake. The Army Chief did not provide protection because that would have given a signal of taking sides. To him, the president and the chief justice were playing the game for personal interest [43]. The government released the

letter to the press along with the response of prime minister that there is no need for calling military to protect the Supreme Court. It really exposed the controversy between the two high offices of the state regarding the issue of judiciary [44].

As they were free from stress of non-intervention of the military, the prime minister, the president and the Chief Justice of Pakistan publicly challenged each other as rivals to maintain their superiority. Nawaz Sharif decided to seek impeachment of Farooq Khan Leghari through the parliament. However, the same day, the Chief Justice had also restored 58(2)(b) in a three members bench that empowered the president with the powers to dismiss the elected government and dissolve the National Assembly. The same day, a ten members full court upheld the decision of Quetta Bench and suspended the suspension order of 13<sup>th</sup> Amendment taken by the three-member bench under Sajjad Ali Shah [8]. Although, the president knew that he could be impeached and was having the powers to dismiss the elected government and dissolve the National Assembly, Farooq Khan Leghari preferred to give resignation, one year prior to the end of his term in office. This is noteworthy to mention that resignation of the President occurred on the same day

when session of the National Assembly was called for his impeachment.

It was surprising in the post Ziaul Haq era that instead of dismissing the government under 58(2)(b), the president chose to resign. The Army Chief knew that Nawaz Sharif will deteriorate the political and economic situation of the country. Therefore, he tried to convince Farooq Khan Leghari not to resign, but also wanted the government to continue [33]. It shows that President Farooq Leghari knew that the Army Chief would not stand by his side that is why he resigned. Chairman Senate Wasim Sajjad took oath as acting President of Pakistan. Being a loyal member of the PML-N, he signed the order for the dismissal of Chief Justice of Pakistan [8]. Therefore, Chief Justice Sajjad Ali Shah was sent home without a reference in his honour. The dissenting judges were also successful mainly due to the support of the government of Nawaz Sharif, to remove their own peer judge in such a disgracing and humiliating manner.

Justice (retd) Rafiq Tarar, who was a family friend of the prime minister and former legal advisor to Sharif Industries was elected as the President of Pakistan. Having no opposition from all sides, Nawaz Sharif became more confident and defeated all his opponents one by one. He made himself quite secure and thus the

office of prime minister virtually became all powerful. Arbitrariness was seen in the exercise of power when Justice Rashid Aziz, the Chief Justice of Lahore High Court went on Ex-Pakistan leave in June 1999. The Chief Justice of Pakistan had recommended Justice Falak Sher, the senior most judge of Lahore High Court for appointment as acting Chief Justice. In clear violation of the judgement of Supreme Court in the case titled: Al-Jehad Trust vs Federation of Pakistan and against the recommendations of the Chief Justice of Pakistan, Nawaz Sharif appointed the next senior judge as acting Chief Justice of Lahore High Court [11].

## CONCLUSION

No doubt, the ultimate destination of Pakistan's politicians should be democracy irrespective of the fact that whatever they do, and the illegal ways they adopt to archive their self-interests. They should restore the role of the state institutions. This is the ultimate way and they should adopt this way. However, the controversial role of civilian governments during 1990s in dealing with the judiciary had further weakened the civilian institutions. Thus, it increased the opportunities for the military to takeover directly and/or indirectly in political affairs through the powerful president. However, the office of the president was considered

virtually ineffective when Benazir Bhutto government elected Farooq Khan Leghari (a party loyalist) as the President of Pakistan. As a result, the Chief Justice of Pakistan having support of the president was forced to maintain a check on the working of the elected government. Similarly, there was no check on the government of Nawaz Sharif, when the president was deprived of all major powers including Article 58(2B) through 13<sup>th</sup> Constitutional Amendment. Furthermore, the interference of the government resulted in a tussle between the Chief Justice of Pakistan and the Prime Minister. As the government was successful in creating a rift among the Supreme Court judges, the symbolic head of the state sided with the chief justice. However, this time, the military decided to remain neutral, due to which the president was forced by the civilian government to resign, and the chief justice was removed from the office in a humiliating manner. The government's strategy to use its parliamentary majority to strengthen the position of Prime Minister was the main reason to cause the executive-judiciary conflict. It led to confrontation between the judiciary and the executive i.e. Chief Justice and the President, on the one side, and the premier, on the other, thereby

further aggravating the polity with serious political crisis.

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- [16] Supreme Court declared that consultation with the Chief Justice of Pakistan enjoined in Article 177 and 193, relating to the appointment of the judges of Supreme Court and High Courts should be meaningful, effective, purposeful and consensus oriented, and was worth to be accepted in the absence of very strong and cogent reasons to be recorded by the appointing authority. See, Hamid Khan (2009), *op. cit.*, p.236.
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- [18] The accusation of Benazir Bhutto came on 29<sup>th</sup> June 1996. See, *The News International*, June 30, 1996.
- [19] *Far Eastern Economic Review* (FEER), July 18, 1996, p.22.
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