



Abstract

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Article:	Authoritarianism and Judicial Efforts for Securing Autonomy: A Case Study of Pakistan
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Abstract

In a democratic system of government, state affairs are divided into legislative, executive, and judiciary. In Pakistan's democratic transition, military role as an additional unavoidable stakeholder cannot be neglected. Pakistan remained under despotic regime for more than three decades with judicial backing by validating extraconstitutional acts. However, this autocratic rule never remained absolute and unchallenged. With qualitative research methodology this article examined how judiciary validated extraconstitutional acts at the expense of civilian governments and compromised its autonomy. How military role in democratic transition is minimized through parliamentary and judicial efforts. The research at hand aimed to investigate how military and its affiliates entrenched its authority during its direct rule and how it transformed and preserved that authority during civilian rule. How judiciary challenged and circumscribed unbridled military rule while securing its autonomy. This paper also explicated potential risk of confrontation between parliament and judiciary where the latter remained absolute autonomous. In order to overcome prospects of potential confrontation, this research suggested judicial realization of self-restraints so as to avoid unnecessary intrusion that could result into interbranch conflicts.

Keywords: Despotic regimes, invalidation of extraconstitutional acts, judiciary role

Introduction

Throughout its constitutional and political history, Pakistan has been oscillated between authoritarianism and democracy. In authoritarian regimes, courts' ambit of authority is expanded so as to validate extraconstitutional acts of the regimes and keep surveillance on the executive. Nonetheless, regimes' despotic authority never remained absolute rather challenged and circumscribed by judiciary. The Superior Courts in Pakistan reinforced despotic regimes at the expense of the civilian rule unless judiciary secured maximum autonomy and thereafter turned around every extraconstitutional act of the regime. In autocratic regimes, courts perform five essential functions that reinforce despotic regimes, but judiciary in Pakistan exceptionally reacted to regime and very smartly challenged and invalidated its very existence. Pakistan's recent move towards democracy offers prospects for enduring democracy and constitutionalism. Despite the fact that these challenges remained significant obstacles in realization of potential threats, there is a need for striking a rational compromise between judicial independence and its constraints considering the judiciary role in the whole transition. Moreover, the representative institutions are required to effectively enhance their governance capabilities to rein in military and devise a mechanism for ensuring judicial autonomy and accountability in order to reinforce and streamline judiciary's role.

This research mainly investigated causes and consequences of judicial empowerment in authoritarian regimes with special emphasis to *Musharraf's* authoritarian regime and how Judiciary secured its autonomy. Judiciary implicated despotic regime very systematically considering every potential risk of interbranch confrontation. In every case, judiciary circumscribed autocratic regime and strengthen itself, which was inversely proportional in nature. A chronological investigation into the cases transforming regime's authority into civilian government is conducted. In Pakistan's democratic transition, judiciary played an exceptional role: it had validated extraconstitutional acts at the cost of civilian rule,

systematically circumscribed unrestricted military control by upholding civilian rule and secured its autonomy, which ended up with another avenue of confrontation between Judiciary and Parliament.

Research Methodology and Operational Framework

With the help of qualitative research methodology, both primary and secondary sources have been consulted, in order to conduct this research. For conceptual understanding of its theoretical framework, this research has been confined to *Musharraf's* regime and judicial response thereto. Operational framework of this work has been divided into the following segments: first, an overview of despotic regime and role of judiciary has been given. Second, how judiciary canalized autocratic regimes by validating its extraconstitutional acts. Third, essential judicial functioning during despotic regimes in light of *Ginsburg and Mustafa's* article has been given, which form theoretical framework for the research at hand. Fourth, how judiciary's pro-regime stance transformed into anti-regime has been examined. Fifth, determinants of judiciary to challenge unbridled military regime has been explicated. Sixth, how *Musharraf's* handpicked judiciary turned to jeopardize regime's very existence. Seventh, outcome of the research has been given. Eighth, concluded with emphasis of how important independent judiciary in a democratic transition could be and what are potential challenges to this democratic transition if judiciary is left uncontrolled.

Judiciary – A Catalyst of Military Regimes

A sequential constitutional change creates prospects of transformation from authoritarianism to a democratic system having rule of law and constitutionalism (Kalhan, 2013). In the authoritarian regimes, scholars have significantly contributed literature regarding courts' role and considered their existence in transition of a gray zone between the regime and civilian rule. Within this gray zone, focus has been made on judicial impartiality and constitutional developments (Kalhan, 2013, p. 5). Despite this fact, Pakistan has been

oscillating for decades between military regimes and fragile democracy. Recent events, however, created a more complex image.

In 2007, judiciary asserted an unprecedented autonomy from the regime during lawyers' movement against *Musharraf's* efforts to remove the Chief Justice. In the constitutional development of Pakistan, these efforts turned out to be a movement for democracy and constitutionalism. However, after restoration of democracy in 2008, consequential conflicts among Parliament, Judiciary and Military raised concerns that judiciary which was broadly celebrated for challenging *Musharraf's* regime is undermining civilian government while evoking the notion of judicial autonomy. In order to have an adequate approach to judicial impartiality, both in descriptive as well as normative context, there is a need of deeper contextualized approach to its impartiality in contrast to its typically invoked principles (Burbank, 1998). Judicial impartiality neither entails maximum autonomy nor an end in itself rather it arises from its relationship and interdependencies (Burbank, & Friedman, 2002). In the given context, judicial autonomy requires to strike a rational compromise between judicial impartiality and judicial constraints (Kalhan, 2013, p.8).

A deeper understanding of the judicial impartiality also necessitates consideration to shifting regimes and how laws, institutions, and associated interests developed eventually (Fiss, 1993). These issues need further critical analysis as the existing scholarship has not fully addressed Pakistan's issues of constitutionalism and role of judiciary. In the broader context, a significant literature contributes how military has utilized judiciary in order to entrench its authority (Mahmud, 1993). Furthermore, a considerable aspect of judiciary's role in the representative governments has also been discussed (Khan, & Siddique, 2007; Lau, 2005). Nevertheless, the recent literature in Pakistan has not significantly taken into account the implication of the relationship between the regimes and representative rule for judicial impartiality and constitutionalism.

The evolution of alternative governance between military and civilian rule resulted in institutional disparity among state institutions that consequently strengthened Pakistan's unelected institutions at the expense of elected ones. Due to this institutional imbalance, constitutional development and apprehension of democratic consolidation has been hindered. The military and its affiliates have expanded authority into periods of representative governments where law and courts played a key role. The courts legalized military interventions and permitted constitutional changes which helped military preserve its control. Even after restoration of the representative government, judiciary has equally facilitated military's continued political influence, which turned out to be an institutional imbalance. Periodically, judiciary has been able to assert its independence from fragile representative institution, but remained vulnerable to military and its associated interests. In 1990s, the period of civilian rule was described as "military rule by other means" (Haqqani, 2010). This institutional relationship led to confrontation between Parliament and judiciary, which leaved adverse affects on both the institutions, and enabled military intervention in 1999. Nevertheless, the entrenchment process has never remained unchallenged.

In 2005, the Supreme Court asserted exceptional autonomy from *Musharraf's* regime. The regime tried to keep control of the Court, however, achieved little success. Nevertheless, an *anti-Musharraf* movement was successfully triggered. The struggle towards judicial independence encompassed efforts for restoration of democracy, supremacy of civilian rule, and constitutionalism. The efforts for rolling back the legacy of military's governance also created confrontation between Judiciary and Parliament. The court not only repudiated its long standing role of legitimizing the regime, but asserted its autonomy from Parliament. A unanimously adopted 18th amendment to the Constitution brought forth more than 100 constitutional changes including scope of Article 6, which has been widened and repudiated the military's rule, restore Parliamentary supremacy, provincial autonomy, and reforms in

judicial appointments. Over its autonomy, judiciary started confrontation with Parliament, and both have strived to attain a “*Modus Vivendi*¹” that enhances a shared compromise to constitutionalism. The Supreme Court invalidated provisions of 18th amendment due to its incompatibility with the basic structure of the Constitution, without expressly establishing the same. On the motivation of military and opposition, the Supreme Court privileged national security matters over fundamental rights, while upholding military courts. Keeping in view institutional disequilibrium, a reasonable rebalancing of judicial autonomy is required. Besides this, a mechanism for judicial accountability is required that would enable representative government, in order to strengthen its governance capabilities and authority to rein in military and its associated interests.

Authoritarian Regimes and Judicial Functioning

Generally speaking, courts are expected to independently and impartially perform its functions with the limits prescribed by the Constitution. In certain exceptional circumstances, such as military regimes, courts are required to expand its jurisdictional sphere. Despite the independent status of judiciary, the political regime holds control on it by various means such as judicial appointments, financial incentives, and in the matters of legal and constitutional changes. The courts are, therefore, considered to be the agents of political regimes (Dahl, 1957; Shapiro, 2013). Nevertheless, in authoritarian regimes, focus is made on the expansion of courts’ power and their independence (Ginsburg, & Moustafa, 2008; Helmke, & Rosenbluth, 2009). *Ginsburg and Mustafa* articulated five essential functions of courts in dictatorial regimes: firstly, administrative control over executive for addressing low-level corruption. Judges allow investigation into bureaucratic misdeeds that otherwise cannot be discovered by the regime (Shapiro, 2013).

¹ *Modus Vivendi* is a Latin phrase which means mode of living and referred to an arrangement that allows conflicting parties to coexist in peace.

Secondly, application of controversial policy measures, especially in the economic realm. Thirdly, for the economic survival of the authoritarian regime, foreign and domestic investments are encouraged, but due to fluctuation in property rights investors rarely take risk of investment. Fourthly, courts are being used in the authoritarian regimes in order to regulate a social control over the political opponents. Fifthly, courts are employed for providing legal cover to the extra-legal activities of the regime. In order to provide justification to the regime, courts develop justifications for constitutional deviations (Mahmud, 1994).

In Pakistan's perspective, this segment of the research paper examined the extent to which courts followed the above mentioned functions and to which extent the courts diverged from them while expanding judicial powers, how courts challenged and diminished unbridled despotic regimes while upholding its constitutional authority. The Supreme Court, in exercise of its *suo motu* jurisdiction, cancelled the agreements and process of privatization of public enterprises instead of endorsing them (Root, & May, 2006). The Court directed investigation of missing persons instead of supporting and upholding the regime. Once the Court assumed maximum power, jeopardizes the legitimacy of the regime instead of its reinforcement (Ghias, 2010). The SC has constitutional authority to review matters of public importance concerning the protection of fundamental rights. The Parliament determines numbers of the Supreme Court judges. In Musharraf reign, it was set to be seventeen.

Before 18th amendment to the Constitution, judges of the Supreme Court were appointed by the President on recommendations of the Chief Justice (*Al-Jehad Trus v. Federation of Pakistan*, 1996). Whereas, the most senior judge among the Supreme Court judges was elevated to the office of the Chief Justice (*Asad Ali v. Federation of Pakistan*, 1998). The President had constitutional authority to remove a judge either on account of misconduct or where a judge was otherwise incompetent to continue his duty. Nonetheless, the President has not been expressly empowered by the Constitution to suspend a judge

before the conclusion of the inquiry. The Chief Justice plays a significant role in the Court's jurisprudential development and approves *suo motu* actions (Ghias, 2010, p. 988).

After the Military takeover in 1999, *Iftikhar Muhammad Chaudhry* was among the handpicked judges of Musharraf by replacing six judges who refused to take oath under the PCO. *Iftikhar Muhammad Chaudhry* was one of the twelve judges who validated the coup on the ground of necessity (*Zafar Ali Shah v. General Pervez Musharraf*, 2000). He was one of the nine members bench upholding *Musharraf's* extra-constitutional referendum, in order to become a President (*Qazi Hussain Ahmad v. General Pervez Musharraf*, 2002). He was a member of the bench upholding Musharraf's amendment to the Constitution (*Watan Party v. Chief Executive of Pakistan*, 2003). He was also among five members bench whereby Musharraf was allowed to hold office of the Army Chief in his first Presidential term (*Pakistan Lawyers Forum v. Federation of Pakistan*, 2005). In June 2005, *Iftikhar Chaudhry* was promoted as the Chief Justice of Pakistan who performed functions in authoritarian context.

Judicialization of Governance

The first and foremost question that how did a pro-regime judiciary expanded authority that led to the confrontation with the regime. Typically, as discussed, in authoritarian situations the Supreme Court legitimized military regimes. In the present context, the economic liberalization and privatization created room for public interest litigations. The Supreme Court enhanced its jurisdictional circle of authority and impartiality that consequently created backlash to Musharraf's interests. Invoking original jurisdiction in matters of public interest litigations was not a novel concept, but the Court provided some additional measures, in order to make some unprecedented developments towards its autonomy. By expanding its authority, the Human Rights Cell was also established in the SC.

A chronological analysis of public interest litigations helps understand how the Supreme Court diverged from the anticipated judicial role in dictatorial regimes.

In Musharraf's era, economic growth was evident that required high rise office space and housing. Nonetheless, urban planning and safety measures had not been advanced accordingly. After catastrophic earthquake of October 2005, the inhabitants of a collapsed building, which was located in Islamabad, filed a petition against the construction company and the CDA. The applicants contended that the CDA could not protect their lives and properties despite repeated complains about material defect in the tower. The CDA was directed by the Court to investigate the responsible persons for defective construction and further directed to provide accommodation to the concerned residents (*Saad Mazhar v. Capital Development Authority, 2005*).

After two months, the Court while converting the same petition into a high level of judicial investigation directed the Provincial officials to submit a report regarding damage to the schools, colleges, and universities due to earthquake. The authorities were further directed to provide details of any action so far taken against the responsible persons for defective construction. In another case, the Supreme Court, in April 2006, heard an appeal against the order of the Lahore High Court, which had forbear the LDA for permitting construction of buildings without meeting the required safety standards. The Court unveiled that the LDA had no structural engineer for ensuring structural safety.

Similarly in February 2006, the Court took a petition against the CDA. The Petition moved the Court to prevent the CDA from making a lease agreement for golf course that was to be constructed in a public park. The Court observed that the proposed agreement violated fundamental right of access to public places as guaranteed by Article 26 of the Constitution of Pakistan, 1973 (*Moulvi Iqbal Haider v. Capital Development Authority, 2006*) On the same grounds, the SC took *suo motu* in number of cases with reference to commercial

projects and public spaces in Lahore and Karachi. These were some of the examples that how the Court kept surveillance and control over high level corruption that created room for the judicial intervention, while expanding its authority in the context of fundamental rights.

After urban planning, the Court expanded its jurisdictional circle in deregulation of price control. The Court intervened in price control of oil and sugar. In order to set price of petroleum, the Ministry of Petroleum had authorized a group of oil companies, which was termed as the Oil Companies Advisory Committee (OCAC), without any parliamentary oversight. With the escalation of oil price to US\$70/ per barrel in international market, the OCAC increased the prices accordingly. However, when the oil price decreased to US \$62 the OCAC didn't reduce the prices correspondingly. In May 2006, the Supreme Court took the petition and directed the National Accountability Bureau to probe into the matter (Goraya, 2006). After initial hearing, this case was referred to a larger bench to investigate the involvement of officers from the Ministry of Petroleum for having collaboration with the OCAC in order to fix an unfair rate (Ghias, 2010, p. 993).

Likewise, the Court took cognizance of sugar price hike, which was recorded double in less than a year. The Supreme Court directed the NAB to investigate the matter properly. In its report, after conclusion of the investigation, the NAB implicated the involvement of eight Ministers and further declared that governmental soft policy was claimed to be the reason for sugar crisis. These price control cases targeted high level corruption that further exposed the despotic regime. This initiative of price control got motivation from media and the NAB's compliance to the orders gave confidence to the Supreme Court for expansion of its authority.

After price control, the Court took an account of privatization of public enterprises. In 2005, keeping in view the economic liberalization policy, the government privatized public enterprises mainly with the support of Citibank. These enterprises included Pakistan State Oil

(PSO), Pakistan Telecommunication Ltd. (PTCL), and Pakistan Steel Mills (PSM). The Labor Union threatened to destroy the telecom facility when their demands were not considered by the government. Consequently, Army had to be involved for security of infrastructure. Likewise, in April 2006, the PSM was privatized on the same political grounds. The opposition and the Labor Union leveled corruption charges against the Privatization Commission. In August 2007, the Court while reversing the sale agreement annulled the agreement regarding share purchase and acceptance of the deal (*Watan Party v. Federation of Pakistan*, 2006) Subsequently, the Court took an account of the PTCL and the PSO despite its accepted position. Considering the vitality of the nature of the cases, the PSM case is considered to be the turning point and principal factor of regime conflict with the Court. The Supreme Court was expanding its ambit of authority by terminating the contracts on the ground of corruption charges instead of enforcing the contracts and supporting the FDI.

After taking an account of privatization of public enterprises, the Supreme Court took *suo motu* against missing persons. In November 2006, the Court while taking notice of the forty-one disappearances directed the Ministry of Interior to produce them. After a month, the Supreme Court was informed by the officials that twenty persons have been recovered. The Court gave directions to trace rest of the missing persons. In November 2007, the Human Rights Commission of Pakistan provided another list of 148 missing persons to the Supreme Court and alleged that the agencies are behind those disappearances. A Bench of the Supreme Court, headed by the Chief Justice, took the petition and sent notices thereof to Federal and Provincial Governments. Nevertheless, by very next day Chief Justice was suspended from his office. Conceivably, the Court had gone too far by expanding its ambit of authority to intelligence agencies. The Court was enhancing its authority by taking an account of disappearances. Civil society and media were encouraging the Court.

The most challenging task for the Supreme Court was regarding eligibility of *Musharraf* for contesting the Presidential election while serving the military (Ghias, 2010, p. 955). For dual office, *Musharraf* has already got one time exception in 2002 by amending the Constitution, which was upheld by the Supreme Court. Keeping in view activist posture of the Supreme Court, *Musharraf* could hardly rely on the Court for making constitutional arrangements so that to legitimize his ability for contesting presidential election of October 2007. The Supreme Court had evidently confronted essential regime policies and thereby challenged the high officers of the regime in every consecutive case. Also, there were reports regarding the Court moving ahead as per anticipations of civil society and media, in order to decide *Musharraf's* eligibility. On this apprehension, the Chief Justice was suspended on March 9, 2007 on the corruption charges and was manhandled by police officials. These incidents created an extraordinary mobilization of the legal fraternity to reinstate the deposed Chief Justice to his office. After struggle of four months, *Iftikhar Chaudhry* was reinstated. In October 2007, when *Musharraf* stood for Presidential elections, the Court withheld the results to review the fact of his being a Presidential contestant while serving the army. Nevertheless, the Constitution was suspended prior to the decision and emergency was proclaimed.

1. The Determinants of Judicial Power

The economic liberalization and its discontents are considered to be the primary factor that allowed the Court to expand its authority by challenging the economic policies of the regime. After September 11, 2001, Pakistan underwent a rapid economic growth mainly due to Foreign Direct Investment and the US military funding (Shah, 2006). In order to get the economic goals, the economic liberalization policies were aggressively implemented (Musharraf, 2006). These policies have consequently created new avenues and techniques for corruption that created new governance challenges. The privatization of public enterprises such as the PSO, the PTCL, and the PSM were creating corruption scandals. This economic

growth, which was coupled with corruption, ultimately provided an opportunity to the Court for expansion of its authority since impartial courts are meaningful for combating ground-level corruption. The Court working on the same line, kept a check on the investors, cancelled their contracts, and unveiled the regime for its unexpected financial outcomes. Initially, the Court was tolerated by the regime for its political functions in favor of the latter. On the contrary, once the Court empowered itself, it began to dismantle social control of the regime and created a threat for the legitimization of the regime.

Supportive media was another factor for confrontation with the regime. Throughout the political and constitutional history of Pakistan, the Supreme Court has mostly legitimized political authority of the military regime that resultantly failed to repose a positive public image in judiciary. With the expanding scope of *suo motu cases*, people and media started trusting judiciary. The Chief justice also showed deep concerns in this regard. In 2006, the Court incorporated a section named as “Supreme Court and Media”, comprising eighteen reports on the Court’s achievements (Shah, 2006, p. 998). Nevertheless, the critics to such judicial activism considered this tactics as a “*Media Circus*” by alleging that the Chief Justice is utilizing *suo motu* action for self-aggrandizement.

Strategic judge and regional influence are other important factors. For materialization of public interest litigation cases, the role of the Chief Justice was perhaps necessary condition in this regard. In India, public interest litigations have a long standing tradition that might have inspired the Supreme Court of Pakistan as well. Additionally, petitioners were referring to Indian case law in the domain of public interest litigation to further scope of its jurisprudence. In 2005, *Y.K. Sabharwal*, the Chief Justice of India, also hosted a delegation of the High Court judges from Pakistan. Pakistani media also reported superior judiciary’s role in urban issues and Pakistan print media also started comparison of India and Pakistan in the domain of public interest litigation (Cawasjee, 2006).

Regime compliance is one of the significant factors in expanding judicial powers. Despite the fact, primary function of the Court during the authoritarian regime is to provide legality to the ruling regime. Nevertheless, in this process of legalism, the Courts also crave out some judicial powers (Lau, 2005; Newberg, 2002). Furthermore, the regime was not oblivious of the fact that the Court validating everything legalizes nothing. For enhancing credibility of the Court and reposing public trust in the regime as well as in judiciary, the regime complies with the Orders of the Court. Moreover, judicial credibility was significantly important for *Musharraf*, in order to get license for the upcoming Presidential election. Most importantly, *Musharraf* couldn't realize this threat of judicial activism until implication of his Prime Minister in the PSM case and involvement of the director of intelligence in missing persons' case. *Musharraf* was overly confident to the extent that he could compel the Chief Justice to resign from his office (Ghias, 2010).

The Virtuous Cycle of Judicial Power

This segment investigates that how a handpicked court of *Musharraf* that served with loyalty till 2005 in legalizing every extra-constitutional measure, turned into a threat to the very existence of the regime. The judicial empowerment that resulted in confrontation with the regime can be analyzed with the sequential examination of the Supreme Court cases and persons implicated therein. The Court encountered the authoritarian regime in a very systematic way. In late 2005, the Court started with implication of Provincial Officers in the urban planning cases. Subsequently, in early 2006 Federal Ministers were implicated in price regulation cases. Another blow was given to the regime in privatization cases whereby the sitting Prime Minister, *Shaukat Aziz*, was implicated in the mid of 2006. Likewise, in the missing persons and illegal detention cases the army and the intelligence agencies were implicated in late 2006. Finally, *Musharraf* was implicated in the issue with reference to Presidential elections that came to fore in 2007. In every case, the Court was deciding

against the more powerful officer than the previous case. The Court strategically moved from Provincial Officers to Federal Ministers, then Pak Army as well as Intelligence Agencies and finally challenged Office of the President. With each step, the Court was encouraged by media and civil society.

Constitutionally, as envisaged through the trichotomy of powers, judiciary is expected to exercise its authority within its jurisdictional sphere and not to intervene in the affairs of other organs. The Court in a case (*Dr. Mubashar Hussain v. Federation*, 2010) observed that the Constitution provides trichotomy of powers. The legislature is conferred with the authority to enact laws. The execution and interpretation of these laws have been assigned to the executive and the judiciary respectively. Further, no state organ is expected to transgress in the others' field. Particularly, the courts have been reluctant to interfere in the matters relevant to structure and organization of the political institutions. The Court further held that courts should strictly comply with the limits imposed on them by the Constitution as envisaged by Article 175 of the Constitution: establishment of the courts, its jurisdiction, and its separation from the executive. The Judges are considered to be the custodians of the Constitution.

A constitutional judge must ensure that the Court does not assume political authority and must show regard to the modern trends of welfare state. A constitutional judge must restrain himself as illustrated by *Mr. Justice Stone* that the only control on our authority is our own sense of self-restraint. *Mr. Justice Frank* elucidated that the indispensable judicial requisite is intellectual humility (Nova, 1976). Moreover, the Supreme Court (*Fazlul Qadir Cahduhary v. Abdul Haq*, 1963) elaborated that judges of the Superior Courts declare in their oath that they shall preserve, protect, and defend the Constitution. The same view was reiterated in the case of *State v. Zia ur Rahman*, 1973). The Court observed that the SC is created by the Constitution. It is neither above the Constitution nor can invalidate or

challenge any of its provisions. The Court obtained its jurisdictional authority from the Constitution so it will circumscribe itself to its defined limits. Further, the judges while taking oath, undertake to protect, preserve, and interpret the Constitution so as to elaborate what does or what does not a particular provision means even if it oust jurisdiction of this Court. The ultimate purpose of judiciary is to resolve disputes not to create disputes. Hence, the line between use and misuse of power must be kept widened and much cleared.

2. Results

This intensive research resulted that judicial empowerment in authoritarian states is a common phenomenon, which generally exists in gray zone areas and deep state wherein Pakistan stands with no exception. However, judiciary in Pakistan exceptionally responded to despotic regimes and secured its autonomy: systematically circumscribed unbridled authoritarian regimes and strengthen civilian rule, invalidated all its previous actions whereby extraconstitutional actions were validated, and secured its autonomy, which created prospects for confrontation with Parliament. This research suggested the US pattern of judicial realization of self-restraints, which are passive virtues, for identification of judicial bounds and a realistic mechanism for avoiding interbranch conflicts.

Conclusion

Despite independent status of judiciary, political regimes hold control on judiciary by various means such as appointment and financial interests so judiciary is considered to be the agent of the political regime. In like circumstances, judiciary may tend to work in the authoritarian context because in regime control judicial authority is expanded and relatively more impartial. After military takeover of 1999, *Iftikhar Chaudhry* was one of Musharraf's favorite judges who validated every extra-constitutional act of the regime until June 2000 when he assumed office of the Chief Justice. By judicialization of governance, a pro-authoritarian regime started confrontation with the regime. The Court challenged authority of

the regime and finally implicated *Musharraf* for contesting presidential election while serving the Army. However, the Chief Justice, *Iftikhar Chaudhry*, was suspended in March 2007. In October 2007, the Court withheld results of the Presidential election so that to review fate of *Musharraf* for the presidential election, but emergency was imposed before the decision of the Court. To all this transformation of authority from regime legitimization to political liberalization, there were so many contributing determinants that helped judiciary challenge military regime and its affiliated interests.

With the recent wave of judicial autonomy, the Court repudiated its long standing role of legitimizing the regime and asserted its autonomy from Parliament, which could potentially open a new avenue of confrontation between judiciary and Parliament. This potential confrontation can be avoided if state organs realize their bounds and impose reasonable restrictions on use of their respective authority. With help of self-restrictions, state organs, including judiciary, may work more efficiently and effectively. The sooner state organs realize their jurisdiction, the more successful consolidation of democracy and transition of constitutionalism would be.

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