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Changing Facets of Judicial Activism in Pakistan

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ABSTRACT

This paper deals with the troublesome history of Pakistan Judiciary in comparative perspective. The judicial restraint showed by the superior courts despite its independent status in the initial phase of Pakistan's emergence and its failure in the enactment of its required role in the extra-constitutional deeds of Military Generals and executive heads that harshly troubled the smooth political and constitutional progress. The paper throws light on the struggle of the Judiciary for its independent status and an exceptional protest presented in the defiance of the military establishment in 2007 that catapulted the Judiciary as main stakeholder in the governmental power structure of the state. The key role played by Supreme Court in the defense of democratic norms, rule of law, corruption free politics and transparent governance along with the analysis in the performance of these above activities that was overstepping of judiciary and the introduction of a new brand of activism is also the part of this investigation. Nonetheless, for the first time, empowering the public representative to legislate on the matter of the tenure extension of the COAS (Chief of Army Staff) has also been discussed along with the decision of special court and then High court in the treason case of Musharraf that raise various questions over judiciary is the part of this paper.

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1. Introduction

The Judiciary role in Pakistan has been multilayered and spontaneous since its birth as it frequently stemmed either under military rule or civilian administration that furiously disrupt the governmental structure of the state. Throughout each and every Military regime the Judiciary has been alleged of not merely spinning a blind eye to the martial law rule but even sheltering the army autocrats through delivering the legal asylum to them under the "Doctrine of State Necessity" in the verification of martial laws. The Judiciary applauded for its commitment to self-governing position when she

contended against necessity dogma in Asma Jilani case and did not permitted general elections on nonparty basis after the death of Zia in Saifullah case in 1988. The proclamation of Junejo Government eliminated as unconstitutional by Lahore High court and Supreme Court and reinstallation of Nawaz Sharif Government in 1993 stayed the momentous decisions nonetheless the landmark cases that converted Pakistan Judicial landscape conclusively was the Legal Reform Ordinance 1996 which at lower level allocated executive from Judiciary and the 'Judges case' of March 29, 1996. In this case Justice Sajjad Ali Shah brought about "one man Judicial Revolution" by forming a novel committee for the appointment of the Judges of Superior courts. These expansions sealed the doors of traditional legal system and judicial activism stands for acquiring its lawful status.

In the latter half of the 2000 decade the Courts bestowed top priority to the supremacy of the Judiciary that dramatically shifted the political scenario. Musharraf illegal bout against Supreme Court judges, and the unusual and bewildering resistance of Judiciary against his action along with the support of people belonging to different walks of life, political parties, Civil societies, national and international media all ascended their voices for the restoration of those Judges who refused to resign over Musharraf levied allegations and despite the incredible pressure generated by him after imposing emergency in 2007. The movement gained momentum and led to Musharraf resignation, and the people of Pakistan witnessed for the first time in their history that with their support military faced serious challenge in using their extra-constitutional powers. This momentum continued and the Judiciary power grew.

The duration of Ifthikhar Chaudhry as Chief Justice of Pakistan established a novel tendency in the judicial system of the state by taking 'Suo Moto' action in various matters of the state belonging to each sphere of life in the country from high profile cases to minor crimes in the country and then Justice Saqib Nisar tenure had recognized 'Judicial Dictatorship' rather Political Judiciary was manifested in so many cases that put some negative impacts on the judicial posture. Many people and think tanks of the state are asking about the overstepping of judges of superior courts in its rule as they are of the view that the link between judicial activism and judicial coup d'états is very little now. The exposure of executive-cum judicial facet of judiciary commandeered as great challenge for the democratic regimes of Pakistan People's Party (PPP), Pakistan Muslim League (Nawaz) (PML-N) in the last two consecutive terms and now for Pakistan Tehreek-e-Insaf (PTI) democratic government as the judicial proceeding of the courts are continuously pointing out the poor governance and mismanagement of Public and state affairs of these administrations.

The piece of paper has evaluate the judicial performances which she delivered to the country in various perspectives that is from its pro-executive and military carriage by providing an opportunity to seizure the governmental outfit of the state that shattered democratic course to bounding of governments to perform in the allotted constitutional spaces, than the ups and downs of Judiciary in different perceptions has also been explored, more importantly the new dimension in the Judicial set up after 2009 has also been conversed and the current judicial activism in the matter of the extension of the tenure of Chief of Army Staff General Qamar Javed Bajwa has also been focused in which the

democratic government has been questioned that why we connected Army to the services of one individual instead of a professional and capable institution. The verdict of death sentence of Musharraf by Special Court and then its declaration as null and void by the High Court of Lahore has also changed the scenario in the state.

2. The role of judiciary in Pakistan in its historical perspective

The tentative curving character of the Judiciary in Pakistan is sketched back to mid-1950 in the Judgment of Moulvi Tamizudin Case, when Governor General Glulam Muhammad Act of dissolution of Constituent Assembly was challenged in the Sind chief Court. The controversial decision of this case set strange trends and damage to the neutrality, integrity, prestige and credibility of Judiciary as forty six Acts on the Statute books became invalid. After (khalid, 2012) . The FC presided by CJ Munir declared in the significant Constitutional Case 'Usif Patel and two others VS The Crown PLD 1955' that Governor General had no authority to make endowment to the constitutions by means of ordinance, this judgment produced greater constitutional disturbance than the dissolution of Assembly. A reference was sent to the court so as to come out from this legal tragedy and the FC bend to the Executive and validated the laws listed in the 1955 emergency ordinance list. (Khan, 2017) The Decision relied on the "Doctrine of state necessity" drawing on the 'law of necessity' from Braxton's Maxim that stated "That which is otherwise not lawful is made lawful by necessity" and the Roman statement, "the well-being of the people is the supreme law" (Gul, 2017)

In Lora Lai District of Baluchistan a murder took place by a person name Dosso and was arrested by the Council of Elders (Loya Jirga) who under Frontier crimes Regulations (FCR) 1901 alleged him but a writ petition was filled in the High court of Lahore who give the decision in favor of the Dosso under 1956 constitution and proclaimed FCR as illegitimate. The verdict questioned the judgment of all those cases which were decided under FCR since 1956 constitution hence the Central government challenged the decision in SC. 13th October 1958 was decided for hearing the case but imposition of Martial Law by Ayub Khan took place on 7th October. The SC reversed the decision of LHC and held that 1956 constitution was abolished now so FCR 1901 are still in force. (Malik, 2007) The decision was a retrogressive one as it recognized Martial Law legal and valid action that opened the gate for encouraging the army chiefs to enforce martial laws and suspend democratic process.

The detention of Malik Ghulam Jilani father of Asma Jilani and Altaf Gohar husband of Zarina Gohar under Martial Law regulation No.78 of 1971 was challenged in Punjab High Court and Sindh High Court .The Court held that Pakistan had not been attacked by a foreign country nor it was an alien territory that has been occupied by the army. The country possesses legal doctrine- the Quran and the Objective Resolution and that Martial Law is not superior to the constitution. The Court declared Yahya actions extra-constitutional by stating that he is neither a victor nor occupied territory rather "Usurper". Although the decision of the court did not favor Asma Jilani yet the case put broader impacts as main consolidated issues were raised like questions of annulment and abrogation of constitution by military intervention that were legalized by Doctrine of Western "Legal Positivism" State Necessity. It was argued that state necessity cannot be used to fracas a constitution or to abolish a part. In Asma

Jilani case the court overruled the basic autocratic principle of placing power over law. Bhutto removed Martial Law and a trend was set by the SC for the freedom of self-expression and restoration of democracy. (Khan, 2017)

Zia-ul-Haq declared Martial in 1977 by dismissing Zulfiqar Ali Bhutto and suspended 1973 constitution. The Prime Minister, leading cabinet members were arrested and placed under “protective study”. The president was allowed to continue his services and the Judges of Provincial High courts were appointed as Acting Governors of the provinces. (Rizvi, 1987) A petition under Article 184(3) was filled by Bhutto wife Nusrat Bhutto against Chief Martial Law Administrator (CMLA) in the SC that ten leaders along with PM Bhutto were arrested and are detained in different prison of the country. But the court dismissed the petition on Nov, 10 1977 that it was not justifiable. (Aziz, 2014). In Nusrat Bhutto case the judicial interpretation clarified the long-range meaning of the necessity doctrine. “Once an extra constitutional action or intervention is validated on ground of state or civil necessity, he averred,” than as logical corollary it follows that the new regime and administration must interpret and be permitted, in the public interest, not only to run the day to day affairs of the country, but also to work according to the achievement of the objectives or the basis on which the validation” the case give greater authority to Zia and recognized comfortable guidelines for judging future regime actions. (Newberg, 1995)

After the military coup in 1977 Bhutto along with four other Federal Security Officers was alleged for the murder of Nawab Ahmed Kasuri Pakistan People Party Leader. The LHC sentenced them to death on March 18, 1978. Bhutto appeal in SC had also been rejected in four to three judges verdict and he was hanged on April 4, 1979. (Abbas, 2005) The most controversial and embarrassing decision from the Judiciary of Pakistan was the unfair trial and judgment of ZAB case which was subject to criticism, debates and speculation within and outside Pakistan. Zia dissolved Junejo Government on May 29, 1988 and he died on August 17, in the same year, he did not appoint caretaker PM so at the time of Zia’s death Pakistan was deprived of President, PM and Provincial Assemblies until the vacuum was filled when Benazir took the Oath of PM after elections in 1988. But the act of dissolution was challenged after President Death. In Saifullah case the termination of the assembly by Zia was declared unconstitutional move but the court did not cancel the orders as the whole country was already geared up for the elections. Although in Saifullah case the question was about the legal status of the government actions taken during this period including the appointment of thirty judges. So the PPP government issued a notice in which she suspended the appointments. The Judiciary responded to the notice and order to withdraw it. The government insisted on removing the three judges and the judges were restored in petitioned review. (Azeem, 2017)

The implementation of Suo Moto Authority in PIL cases in Pakistan are traced in Darshan Masih case when the CJP took notice on telegram message about unconfirmed forced labor and illegal imprisonment by their owners in brick kilns. The applicant requested to the Judges of SC to release them. The CJ heard the matter according to Article 184 (3) and provide relief to the victim. Likewise the attention of CJP was drawn in a letter through the construction of a power House on health of public at

large and the court considered the matter by extending relief to the people. These judicial actions produced great deal of hope and expectation in the delivery of justice for which other state organs were failed to yield. (Awan, 2014) Similarly in the Quetta declaration the number of PIL cases was reached to thirty five who later reached to six hundred. Prominent cases in the PIL during this era were students Politics case, the Amir Bano case, Rashid Ahmed Khan case and Shirin Munir etc.

The Benazir Bhutto elected government was dissolved by the President Ghulam Ishaq Khan dissolved the National Assembly on August 6, 1990 under Article 58(2) (b) of the constitution on the charges of not functioning according to the constitution. The LHC and then the SC upheld the decision and justified President Act. (Khan, 2017). In the general elections of 1990 president of Islamic Jamhuri Ittehad (IJI) Nawaz Sharif came into power but his administration was too dissolved by the President Ghulam Ishaq Khan under the article 58(2)(b) which was challenged in the court. The SC not only restored the National assembly but pointed out that the circumstances was not as critical that might be resolved through dissolution only rather it could be resolute through remediable measures. The verdict of SC was the pivotal and landmark precedent as it raised a hope for the revival of democracy and check on the powers of the Head of State to dissolve the government on solid grounds. But the circumstances of the time compel both President and PM to resign and democratization once again derail. (Khalid, 2012)

3. Judiciary and Musharraf

Resentment between Musharraf and judiciary commented with his military takeover from 12th October 1999 when the Martial law was challenged in a number of petitions filed before SC but the matter came to head when the judges of the SC were forced to take oath under the Provisional constitutional Order (PCO). The CJ Saeed -uz- Zaman Siddique along with seven other judges were put under house arrest because they refused from taking oath under PCO and as a result they resign. After installing pro-Musharraf judges in the courts Musharraf became successful not only in legitimizing his regime through doctrine of state necessity but also giving legal cover to his unconstitutional election of president in 2002 through referendum despites of number of petitions filed against such controversies. (Khan, 2017) Here the Judges once again performed as an instrument of the state establishing the validity for the extra judicial activities and in turn weakening its own integrity, authority and credibility.

Musharraf rewarded the judges by extending the term of their service up to three years which was severely condemn through various protests that was curbed by the government but Musharraf skip it at the result of deal with Muthahida Majlis-e-Amal (MMA). Due to its withdrawal the number of judges including Riaz Ahmed retired hurriedly and he was replaced by Nazim Siddique. He gave a disappointing judgment in the 'Pakistan Lawyers Forum v/s Federation of Pakistan' by upholding seventeenth Amendment and the 'president to hold another office Act of 2004 as valid. (P.L.D, 2005)

IMC became the twentieth CJP on May 7, 2005 and came into the limelight of using his Suo Moto powers in the matters where he believed that injustice had occurred. (Khan, 2017) He originated to

allow hearings and to rule contrary to the regime of Musharraf on subjects that the Courts would conventionally either discharged on the technicality or overlooked as politically non-justiciable. The tussle begun when IMC annulled the privatization of national steel industry Pakistan steel Mills decision on June 23, 2006. Chaudhry embarrassed the government by putting entire blame on the then PM Shaukat Aziz for the approval of under-priced auction of a most important national asset. The sedition sustained till 2007 when SC decided to begin hearing on the charges of the Human Rights Commission who levied on government by disappearing the suspected terrorist. With these attempts of Chaudhry Musharraf tried to put him on “compulsory leave” for the “misuse of office” but Chaudhry resisted and refused to resign. (Qureshi, 2010)

After the refusal Musharraf restraint the Chaudhry from acting as chief justice by blaming that he is unable to perform the functions of his office and he filled a reference in the supreme judicial council by levying various charges over CJ the proceeding continued till April 18, 2007 and the matter reached to the SC and in the historic order of the Court the Chief justice was restored in the thirteen judges Bench. Ten out of thirteen called for the reinstatement of the CJ. The event commenced comprehensive media coverage in which President Musharraf was severely condemn over his unconstitutional act. (Khan, 2017)

To became president of Pakistan for another term, Musharraf had to face certain challenges as so many technical difficulties were there in the constitution that were hindering Musharraf from becoming president. On September 28, 2007 the issue was taken to the SC but she dismissed the petition over persistent political pressure that was created by Musharraf with establishment branch but it was once again challenged over certain technical grounds in October. This time SC decided that elections would be held on fixed date but certification of the election Commission would be did after the court decided about the petition. Musharraf easily sweep the polls as all the Opposition Parties have boycotted the election. The verdict of the court was expected till 2 November but before that Musharraf Proclaimed emergency and substituted the constitution with PCO. (Qureshi, 2010)

This emergency was diverse from all the previous emergencies in Pakistan from many angles as it first targeted the judiciary only and did not get rid of the government and secondly with the exclusion of sixty superior judiciary judges along with CJ resulted in a judicial elimination and purge and for its restoration the battle was initiated by the lawyers which was joined by the people from all walks of life. This was the finale of the political career of Musharraf as he did not perceive that the scenario of 1999 was not that in November 2007.

4. The lawyer’s movement of 2009 and Judicial Activism after 2009

The lawyers launched a movement along with opposition political parties for the return of constitutional order and for the restoration of judiciary that led to Musharraf resignation from his post of chief of army staff and lifting of emergency rule in 2007. And after that 2008 elections and transition of civilian rule did not ensure independence of judiciary in the country the newly formed government was not ready to restore the Judges for so many reasons as speculations and rumors were surrounding

that before elections Musharraf and PPP had made a secret deal or that Zardari government has certain fears from Chaudhry over their previous corruption charges of their prominent leaders. So a movement was once again launched by the lawyers fully backed by Pakistan Muslim league Nawaz and all other prominent political parties of the country for the restoration of the judges and it was decided that a long March would be observed. Due to such persistent pressure the PM Yousaf Raza Gillani declared the restoration of judges. (Omar, 2013)

After recuperating the power in September 2009 the incumbent CJ IMC had provided new breadth and horizon to Judiciary. The Superior Courts appeared as integrated institutions having separate identity of as an autonomous branch of the state. The matters of public importance and human rights are now frequently and promptly deal by the CJ as compared to his previous term. A huge sum of SUO MOTO actions were taken by the SC along with a lot of constitutional petitions involving the public importance and national issues like extra judicial killings, rape cases, misuse of governmental funds, damage of national purse, child marriages, disappeared persons, private torture cells, unlawful appointments and promotion, illegitimate constructions, mismanagement in the allotment of state-lands, bank loans even every corner and angle of Societal problems were brought before the court. An unusual thing was the establishment of Human Rights cell that function under the direct supervision of the CJ where people public complaints were processed. People were now getting relief without going into the traditional prolonged process of rule in Pakistan. The people were now looking forward to Judiciary for the solution of their problems and it could be analyzed easily through the figures received to judiciary in only thirteen months after the restoration of judges. The SC received 54935 cases out of which 53082 were decided. (Shabbir, 2013)

The prominent case of that time in which landmark judgment was announced on July 31, 2009 was the Sind High court Bar association or simply known as PCO judges case. The issue was raised when after restoration of deposed judges and Oath taking under Musharraf PCO judges numbers became a problem. The CJ presented very comprehensive and coherent interpretation of it unlike Justice Munir in the 1950s and bluntly acknowledged that in the past such type of unconstitutional emergencies had been wrongly validated that firmly confirmed military rule directly or indirectly but these should be avoided now forever. So the SC declared the 2007 PCO order unconstitutional and those judges who took oath under the PCO had been deprived from their offices. The implementation of this judicial review designed a new judiciary in Pakistan that brought unconstitutional measure in the court of law by directing the government to incorporate solid measure to prohibit those who used unlawful measures for overthrowing the legitimate governments and played with the constitutions. (Khan, 2017)

Another main development in the judicial activism in Pakistan during Chaudhry tenure was the striking down of the National Reconciliation Order (NRO). The court declared that NRO is unconstitutional on the grounds that it violated, among others, the right to equal protection of law. NRO was a political deal between Benazir and Musharraf in the last month of the Musharraf military regime according to which 8000 persons accused over corruption and other malpractices mostly ministers, landlords, civil servants and prominent politicians and parliamentarian etc were protected.

Among these people protection were expressed to late Benazir and her husband Asif Ali Zardari (in the money laundering case in Switzerland) who were president of Pakistan at that time. The SC bound the government to reinstate country position in the money laundering proceeding in Switzerland against Zardari that became an issue of contention between SC and government and eventually PM Gillani was disqualified over the convention of contempt of court by not obeying the orders. (Omar, 2013) The important SUO MOTO are:

- The import of Liquefied Natural Gas (LNG) with French company that nullified the court by accusing Ministry of Petroleum who had not followed the required process and made it non transparent.
- The 'Rental Power Plant agreement in 2012 was also struck down over lack of transparency and notify that government officials specially minister of water and power Raja Pervez Ashraf is indulged in the corruption. (Omar, 2013)
- The court took part in the investigative process of National insurance company limited (NICL) in which high profile political figures were involved in misappropriation and in relation to Hajj Corruption scam including the then religious minister Syed Hamid Saeed Kazmi, were associated. The court ordered that 700 Saudi Riyal must be pay to 26000 Pilgrims.
- The importation of poultry feedstuff in which pig meat was contain, was another important Suo Moto in which the court ordered to destroy all consignment and ordered for taking actions against the those who are responsible for it.
- The project that were banned and ordered for cancellation under Suo Moto was Margalla Housing society that was considered fatal for environment.
- Another scheme that was forbidden by the SC was Islamabad chalet and Pir Sohawa valley scheme. The issue was cutting of tress in the vast area.
- Community Development Association (CDA) leased out a plot in the park for Macdonald Restaurant the lease was cancel by the court in Suo Moto action (Munir, 2018)
- In June 2012 CJ son Arsalan Iftikhar was charged that he has utilized his father position for acquiring a favor from business tycoon Malik Riaz. After so many hearings it became clear that CJ was not implicated in the accusations. The matter was handover to NAB and then a Commission was formed for its investigation. Before the commission Arsalan admitted that he had availed himself of two of the three foreign visits alleged by Malik Riaz. The commission report also incriminated Malik Riaz for tax evasion of 1.2 million US Dollars.
- In the Ephedrine Quota case Hanif Abbasi was sentenced to life in the illegal smuggling of Ephedrine in the Suo Moto action of the SC. (Omar, 2013)
- In the Suo Moto jurisdiction the case that became controversial in the use of Article 184 (3) was **Memogate' case 2012** in which it appeared that the court enlarge the concept of the right to life in an unparalleled way that is irregular and inconsistent with human rights law. On October 10, 2011 an article of Mansoor Ijaz was published in which he referred to a secret Memo, prepared and drafted by him allegedly on the direction of Mr Hussian Haqqani the then ambassador of Pakistan to the USA for the purpose of delivering the same to the chairman of the US Joint chief of staff, Admiral Mike Mullen through Gen. (Retd) James Logan Jones, former US National Security officer. The petition were filled to the court and CJ accepted the jurisdiction under said

Article by holding that the memo has created “threat to security, sovereignty and independence of the state compromised the collective dignity of the people of Pakistan, who deserve an honourable existence in the country of the nations”. A commission was appointed to ascertain the origin, authenticity, purpose of drafting the memo. (Khan, 2017)

The regular invoke of the Suo Moto notices by Ifthikhar Chaudhry raises a lot of questions and concern in the minds of the people, Jurists and researchers at national and international level at that time. They all were of the view that such extreme use of judicial review would be dangerous to Pakistan as it will create political friction and gaps in the society which is already divided into so many lines. The cases that relates to Public importance in which Suo Moto are taken comes in the jurisdiction of apex court but the interference in those matters that are the prerogatives of legislature and executive is not acceptable. So the policy of self- restrains and non-involvement in those affairs that are related to governance should be adopted by the judiciary.

5. Judicial restraint from judicial activism 2014-16

During the period of 2009-2013 frequent confrontations were occurred among various departments of the state with judiciary as Chaudhry was actively involved in judicial activism but his successors Tassaudaq Hussain Jillani and Nasirul Mulk curved a new leaf by refusing to interfere in politics, governance and administration and policy making of state. They dedicated their attention on clearance of those cases that were postponed frequently in the handling of high profile cases during Chaudhry tenure. The role of judiciary was also appreciable during PTI sit-in in Islamabad. Some of the verdicts of the courts of previous era were also reversed like PM discretionary funds case. The protection of minorities and appointment of permanent Chief election Commission were the other landmark judgment of this time. (Malik , 2014)

Another period that saw the introduction of a new and even expensive brand of judicial activism was Justice Saqib Nisar aggressive actions and active judgments. He validated that with slight invention or imagination any subject can be twisted into a matter of public importance and violation of fundamental rights. He invoked the passage of continuous and unnecessarily exercise of Article 184(3) and exceeded Chaudhry by dealing over seventy Suo Moto's up to September 2018. His strange and innovative actions that had never been exercised by a CJ in the history are:

- His sudden visits to the hospitals, addressing people directly on T.V and asking for donations for the construction of dams to save the future generations.
- Issuance of harsh instructions to the holders of private health care institutions.
- Infamous Sunday court routine.
- Issues of private land disputes among the family members
- The rapidly increasing fees of medical colleges etc. (Chaudhry, 2019)
- Direction to the minerals water companies to pay for the water as they are extracting it from the ground.
- Regular visits on hospitals to understand and investigate how under trial politicians were being kept. (Ahmed, 2019)

- Blocked of roads for VVIP
- Police encounters in Punjab and Sind
- Extra Judicial killings
- Axact fake degree scan
- A lot of contempt of courts proceeding over various politicians, journalists and others (Malik, 2018)

In short he presumed the tasks and duties of other state organizations from head of a institution to a prime minister and overthrow them without a trial. Instead of managing those cases that were previously pending in the court SC focused on undermining the role of legislature and exeutive in the country. The parliamentary supermacy, soverignty in the law making process dependent on the courts and notions of judges rather judiciary became a party in weakening the positions of lawmakers in the country. The targetting of ruling party parliamentarians gave the impression that the courts were annoying to demoralize their ability to gain a clear majority in the next election. (Jamal, 2018)

6. Current wave of judicial activism

In the Parliamentary elections of 2018 PTI under the leadership of Imran Khan acquired the governmental power. But all the opposition parties are accusing him that military intelligence agencies were working behind the scene for khan government and they are still backing him for running the administration, as many loyalists of military dictator Musharraf are members of the Khan cabinet. Nonetheless, a conflict arose between Judicial and executive branches at the moment when the government granted extension of tenure to COAS General Qamar Javed Bajwa by fantasizing regional security environment with India and Afghanistan and SC challenged Bajwa's tenure extension by raising key questions regarding the matter and government became embarrassed in the court by not following proper legal process and many procedural errors in the notification order of Bajwa. (Kaura, 2019) The Judiciary kicked the ball into the court of parliamentarians to craft proper legislation and sort out the matter forever in order to remove the uncertainties regarding the extensions which the different army chiefs had acquired either by themselves or did by the government of that time. Although the government in its counter strategy Amended Army Act with unconditional support of opposition but this layer of judicial independence became a great debate in national and international level that for the first time the insignificant and outrageous role of army has been questioned by the court and empowered the elected representatives of the people to decide the fortune of army chiefs.

The other verdict that shock not only PTI administration but almost the entire nation was the decision of special court on December 17, 2019 when she announced death sentence to General Pervez Musharraf for suspending the constitution by imposing state emergency in 2007 in the high treason case under article 6 of the constitution. The decision was controversial on many grounds as the trail was occurred in Musharraf absentia, the article 6 that deals with high treason cases, added to the constitution in 2010 and the event occurred in 2007 and more importantly the matter was resolved in a hurry just two days before the CJ Asif Saeed Khosa retirement who suspended Bajwa extension. Pakistan army has perceived the judgment against the army institution and protested against the

verdict in harsh words by saying that the decision is “transgresses humanity, religion, culture and any other value” and Khan government characterized the trial ‘void’ and the verdict ‘unfair’. The two verdicts were the tentative attack over military by the judiciary unlike the past but this time another institution that is the executive became a rubber stamp for the military support (Afzal, 2019)

Despite the harsh decision of the Special Court it was expected that it may not be carried as both Army and the Khan government showed their sever concerns over the verdict and in the appeal made by Musharraf, the Lahore High Court suspended the verdict by declaring it unconstitutional that put a lot of questions on the posture of judiciary in this era.

7. Conclusion

The version of judicial activism that is operated in Pakistan is excessive impudent than implied in the developing states. The verification of state necessity tenet by the superior courts in the initial phase of Pakistan afterward its independence desperately spoiled the posture of autonomous judiciary in the country exclusively at the time of various military upheavals. Even though in 1972 the court put certain questions over the legitimization of extra-constitutional deeds for state necessity but its reflexive and deliberate part did not ensured the prevention of unconstitutional deeds in the coming decades of 70's and 90's. The Pakistan Judiciary progressed through a number of phases during 1990s and 2000s, as she asked for its separation from the executive branch in 1989-90 than focused towards its independence during 1990-1994 along with appointment of judges and after 2000struggled for the construction of the supremacy of the constitution. The commencement of an assertive higher judiciary developed subsequently in 2007 that shifted balance of power to support rule of law in the country and check the traditional power structure that assisted a lot in installing fear among the stakeholders of the country to perform in their allotted constitutional slots but it became politicizes very soon as it overstepped and intervened in the executive and governance matters through ‘Suo Moto’ actions that introduced an innovative posture of Judiciary and presented a ridiculous look. The current verdict of judiciary in the matter of COAS extension seemed to be moving towards greater development for superior and independent judiciary who can question the overstepping of army but again in Musharraf death penalty case by Special court and then its suspension by Lahore High Court manifested that still the Judiciary of Pakistan is unpredictable. What are those factors that have made judiciary unpredictable? Whether there are flaws in Pakistani law and it is incongruous to handle the extraordinary situation, either this institutions of the state is not capable to perform its due role, or other major and powerful institutions of the state are not ready to authorize judiciary as an independent and supreme organ of the state? More importantly what will be the repercussion of such unpredictable decision for the future of Pakistan as Pakistan Judiciary has hence far-flung in the establishment of publics focused justice dispensation and in its supremacy?

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