



**International Journal of Biology, Pharmacy
and Allied Sciences (IJBPAS)**
'A Bridge Between Laboratory and Reader'

www.ijbpas.com

**DISMISSAL OF ELECTED GOVERNMENTS UNDER EIGHTH AMENDMENT
AND THE ROLE OF JUDICIARY**

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Received 30th May 2017; Revised 25th June 2017; Accepted 28th Sep. 2017; Available online 1st Jan. 2018

ABSTRACT

Judiciary plays a significant role in a political and constitutional development of the states, where a federal system exists. In such countries, the sustenance of democracy depends mainly on the independence of judiciary. The 8th Constitutional Amendment shifted the power balance into the office of the President in Pakistan. Due to the lack of power balance in a parliamentary system, the president and the prime minister did not work together to safeguard the national interest. Instead to serve as a check on the elected government and provide stability to the democratic, the President of Pakistan always used this power to dismantle the elected setup. The opposition always asked the President to dismiss the elected governments. In such cases, the judiciary, having the power of judicial review, has been asked to play its role, however, the judgements of judiciary in such cases had far reaching effects on the stability of political system. The judiciary while passing the judgement, looked at a powerful President and the demand of the people than the principle of merit and justice. The judiciary upheld three out of four dismissals of the elected governments, mainly due to the nexus between the military leadership and President of that time, which shows its weakness vis-à-vis other state institutions.

This paper focuses on the role of judiciary played to complement the dictatorial moves made by the presidents against the elected governments, which were often supported by the military establishment.

Keywords: Democracy, Opposition, Military, Prime Minister and Supreme Court

INTRODUCTION

Keeping in view the history of superior judiciary in Pakistan, it is evident that most of the times, the judiciary has not been consistent in their decisions and often followed the political power trends of the time. Ever since the first decade, the judges in Pakistan have tried to match their constitutional ideals and legal language to the exigencies of current politics. The judgments of judiciary have often supported the existing regimes, presumably to retain a degree of future institutional autonomy [1]. Although, the 1973 Constitution provided the parliamentary system, the 8th Constitutional Amendment during the reign of General Ziaul Haq shifted all the powers in the office of the president. Though the military rule ended in 1988, it left behind a new pattern of civil-military relations so devised by the architect of 8th Constitutional Amendment. To ensure its dominance over politics, the military adopted a two-fold strategy i.e., get a political set-up dismantled through the exercise of power under 58(2)(b) by the president and, alternatively, to topple the government directly as

happened in October 1999 [2]. Both the civilians and the military have dealt with the judiciary in such a way that it could not develop into an independent institution. Therefore, whenever the military backed president dismissed the elected government, the judiciary could not resist their influence. In majority cases, the decision of Supreme Court came in favour of the president and prime minister as well as the legislature had to suffer. No doubt, the opposition did not play a positive role, always asked the president to dismantle the elected government, and filed petitions in the courts against the setting or dismantled government. All these factors undermined the prospects for growth and development of a democratic political system.

DISMISSAL OF JUNEJO GOVERNMENT AND SUPREME COURT DECISION

The government of Muhammad Khan Junejo came into power after the party less elections in January 1985. General Ziaul Haq lifted martial law only after the parliament validated his Revised Constitutional Order 1985 with minor

changes as Eighth Constitutional Amendment. No doubt, the amended constitution transferred extensive powers in the office of the president including the power to dismiss the government and dissolve the assembly. However, differences between the elected government of Muhammad Khan Junejo and the military establishment soon emerged. It provided uncomfortable signs to President Ziaul Haq that the former's assertions of independence would lead to weaken the control of the latter. General Ziaul Haq appeared to have not only calculated the danger from the Prime Minister, but also his possible removal from the post of Army Chief, thereby leading to punishment of the latter. Therefore, exercising his powers under Article 58(2)(b), General Ziaul Haq dismissed the elected government of Muhammad Khan Junejo and dissolved the National and Provincial Assemblies on May 29, 1988 [3].

In sacking the premier, President Ziaul Haq stressed the main reason as delay in the implementation of Islamization program in the country. A caretaker cabinet was constituted without any prime minister. Realising the mood of the masses well, General Zia ul Haq announced on July 16, 1988 the new elections to be held on

November 16, 1988, although, once again on non-party basis [4]. By the time, General Ziaul Haq passed away in 1988, his political system was in shambles, therefore, he was defensive and on the retreat once again. The populace was not amused, and it was quite clear that a phasing strategy of democratisation was not the main agenda of General Ziaul Haq and had mala-fide intentions. It was largely assumed that the General-cum-President was pulling the strings of quasi-civilian setup and had been planning for his personal appearance on the stage once again. After the death of General Ziaul Haq, a high-level meeting was held in Islamabad, attended by the civil and military leadership to take a decision on the issue of succession. The problem was resolved in accordance with the Constitution and Ghulam Ishaq Khan, the Chairman Senate, stepped into the presidential office as Acting President of Pakistan.

Neither Muhammad Khan Junejo, nor others challenged the validity of dismissal and dissolution order of the government along with the National and Provincial Assemblies in any court during the life time of General Ziaul Haq. When General Ziaul Haq died, Haji Muhammad Saifullah Khan, one of the dissolved National Assembly members, filed a writ petition in Lahore High Court titled:

Haji Muhammad Saifullah Khan vs Federation of Pakistan. Hearing the case, the Court rejected the charges based on which President General Ziaul Haq had dismissed the National and Provincial Assemblies. The Court declared the charges being so ambiguous and unreal that they could not be sustained in the law. The verdict of the Full Bench of Lahore High Court in this regard was that the dissolution of National Assembly by the President was illegal and unconstitutional. However, the Court neither restored the civil government nor the assemblies, though the sympathies of common people were in favour of Muhammad Khan Junejo. Further, the Court held that since the elections had been scheduled for 16th and 19th November 1988 and the nation was preparing for that, the Assemblies could not be restored [5].

As the Lahore High Court declared the dissolved National Assembly as dead one, maintaining that it could not be restored again, therefore, the judgement was challenged in the Supreme Court of Pakistan. The Supreme Court held detailed hearings, and scrutinising the case, upheld the verdict of Lahore High Court in first week of October 1988 [6]. Although declaring the dissolution of National Assembly as illegal and unconstitutional, it

did not restore the National Assembly. Later, General Mirza Aslam Baig, the successor Army Chief accepted in a press conference on 4th February 1993 after his retirement that a message was sent to the Supreme Court judges, not to issue orders for restoration of the assembly and let the elections process take place as per schedule [7]. It proves that an anti-democratic role was played by the apex court and that the Army Chief committed an unqualified interference in the proceedings of the Supreme Court. This also shows the powers of the Army Chief to influence the civilian institutions during the processes of transfer of power from military to the civilians. It discloses the weaknesses of the judiciary as an institution which was not able to deliver justice, support democracy and take an independent decision in the matter. After this press conference, the claims of Mirza Aslam Baig were not denied by the judges of Supreme Court rather proceedings for contempt of court were initiated. However, Mirza Aslam Baig, taking a stand on his words before the Court maintained that he had disclosed what the reality was. Mirza Aslam Baig, though found guilty of contempt of court, was not charged with any punishment because he had already been reprimanded in the Court [8].

The decision of Supreme Court against the dissolution of National Assembly by President General Ziaul Haq, at least, confirmed its mala-fide, illegal, and arbitrary nature. President General Ziaul Haq and his advisers also knew this, but they thought that they would be able to overcome the difficulties and effectively manage the crisis as was done in 1977. Nonetheless, the dissolution of the National Assembly validated the assumptions that General Zia ul Haq was not sincere to his promises for democratisation of the system. If he could not share power with his handpicked prime minister and if he could not tolerate his assertion of authority in the mandated sphere, how could he agree to the transfer of power in an orderly and peaceful manner? His action also pushed those political forces to opposition that had cooperated with him in holding the 1985 elections. Even he began to think and talk of restructuring the parliamentary system and to form a new coalition of pro-Zia ul Haq cronies. The elections Ziaul Haq had announced for November 1988 could, most likely, be postponed or used for a referendum on new constitutional proposals. General Zia ul Haq had exhausted all his political cards to legitimise his stay in power and to counter

the growing demand for complete democratisation.

It has remained a question whether the judiciary would have declared the dissolution of National Assembly illegal and unconstitutional, had the petition been filed during the life of General Ziaul Haq. Moreover, had the denial of Supreme Court to restore the National Assembly undermined the very spirit of declaration of the dissolution as unconstitutional? Despite these questions, the general effect and role of the Supreme Court of Pakistan in the process of democratisation was appreciated as positive and constructive. At that time, had General Ziaul Haq lived, he would have faced an effective and extremely hostile opposition. The plane crash that took his life, gave him an honourable exit from the upcoming hostile political arena of Pakistan. Realising the mood and possible response of the people, civil society, political parties and the international democratic forces, the military high command decided not to take control of power and let the democratic process continue by allowing the scheduled elections. However, this transfer of power by the military to the elected government was allowed mainly due to the presence of Eighth Constitutional Amendment, which

they were still able to exercise indirectly through the indirectly elected President.

DISMISSAL OF BENAZIR GOVERNMENT AND SUPREME COURT DECISION

The elected government of Benazir Bhutto had supported the Acting President, Ghulam Ishaq Khan in the presidential election. However, due to the struggle for powers, differences between the two emerged mainly over the appointments of high level post. Moreover, the military did not like the interference of Benazir Bhutto government in matters related to defence and foreign affairs. On July 21, 1990, the top military command in its Corps Commanders' meeting concluded that Benazir Bhutto government had crossed the limits. They decided that the government of Benazir Bhutto was not tolerable anymore and, therefore, the military would support any anti-government move by the President [9]. President Ghulam Ishaq Khan, using his powers of 58(2)(b) under the Eighth Constitutional Amendment, dismissed the elected government of Benazir Bhutto and dissolved the National and Provincial Assemblies on August 6, 1990, with an announcement of fresh elections scheduled for October 1990. The charges of corruption, nepotism, inefficiency, violations of the

Constitution, maladministration, financial decline, bad law and order especially in Sindh and many other issues were declared as the reasons for dismissing the PPP government [10].

The dismissal as well as the dissolution order of the President was challenged in the High Courts. Only the Lahore High Court received five petitions. Hearing the petitions in detail, the Lahore High Court gave a unanimous verdict that the ground reasons heavily weighted with the President to dissolve the elected government and the National and Provincial Assemblies. The judges held that president's orders had direct relation with the pre-conditions clearly prescribed in the Article 58(2)(b) under the Eighth Amendment. Therefore, the judgment of Lahore High Court eliminated the hopes for restoration of Benazir Bhutto government under the 1973 Constitution. The Court further held that a recourse to the electorate had become necessary after the dissolution order of the assemblies by the President.

Petitions were also filed to challenge the order of the President regarding dismissal of Benazir Bhutto government in the Sindh High Court. A five-member bench was formed which was headed by Chief Justice Sajjad Ali Shah for hearing the petitions on

September 24, 1990. However, the Governor of Sindh took-off for Saudi Arabia on September 19, 1990 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 order of the President issued for dismissal of Benazir Bhutto government. 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 in this regard. As a result, the Governor stayed abroad and didn't return until the petitions were disposed-off [11]. The dissolution of Benazir Bhutto government was also challenged in the Peshawar High Court (PHC) which declared that the decision of President Ghulam Ishaq Khan was in accordance with his powers under Article 58(2)(b) of the Constitution [12].

An appeal was filed against the decision of Lahore High Court in the Supreme Court. Hearing the case, the Court in its judgement upheld the verdict of Lahore High Court thereby granting legality to the dismissal order for Benazir Bhutto government and dissolution order for the National Assembly

[13]. In fact, the President and his team had analysed the Supreme Court judgment of October 5, 1988 regarding the dismissal of Muhammad Khan Junejo government. Besides the charges of corruption etc., President Ghulam Ishaq Khan also used other grounds for the dissolution of Benazir Bhutto government like the confrontational politics between the federal and two provincial governments (Punjab and Khyber Pakhtunkhwa then NWFP), inability in forming and activating constitutional bodies like the National Finance Commission and the Council of Common Interests coupled with the continuity of ethnic strife in the country [14]. These allegations amounted to the constitutional impasse and therefore, the Courts ruled in favour of Ghulam Ishaq Khan.

DISMISSAL OF NAWAZ SHARIF GOVERNMENT AND REINSTATEMENT BY SUPREME COURT

When Nawaz Sharif assumed power in October 1990 as prime minister, it was expected that the relationship between Ghulam Ishaq Khan and that of the newly-elected premier would remain cordial. The expectations were high since both Ghulam Ishaq Khan and Nawaz Sharif were the legacies of General Zia ul Haq military rule.

Moreover, Ghulam Ishaq Khan had consistently supported Nawaz Sharif as Chief Minister Punjab, during the Benazir Bhutto government. Initially, these expectations proved right; however, differences emerged when the prime minister started making decisions independently. The efforts of Nawaz Sharif to establish an independent identity, as a public representative and an all-powerful prime minister had been an alarming issue for the president. Ghulam Ishaq Khan got alarmed by the growing popularity of Nawaz Sharif. The differences grew higher to the point that the prime minister indulged in tussle and issued public statements against the president.

Therefore, Ghulam Ishaq Khan issued order for dismissal of Nawaz Sharif government as well as dissolution of National Assembly on April 18, 1993. The grounds for dismissal were corruption, nepotism, maladministration, violation of the Constitution, failure to work effectively with the provincial governments, unleashing a reign of terror against the opposition, and had been unable to conduct investigation of the death of former Army Chief, General Asif Nawaz Janjua [15]. It did not end here because a week later, the ousted prime minister filed a reference to the Supreme

Court on April 25, 1993 challenging the dismissal order of his government by the president. This time, against the background of a negative imagery, the judges had been at pains to emphasize commitment of the judiciary to decide the case of Nawaz Sharif based on merit. On the first day of hearing the petition of Nawaz Sharif, Chief Justice Nasim Hasan Shah recalled the widely criticised decision by Justice Muhammad Munir which had validated the order of Governor General Ghulam Mohammed in dissolving the first Constituent Assembly of Pakistan on October 24, 1954. Chief Justice Nasim Hasan Shah mentioned that jurists and the nation had not pardoned Justice Muhammad Munir for the decision, thus indicating intentions of the Court not to repeat history by making a similar mistake. During the hearing, the panel questioned the legality of the presidential decision, noting that the President is not authorized to dismiss an elected government and dissolve the National Assembly simultaneously under Article 58(2)(b) which only refers to the dissolution of the National Assembly. The Court also declared that the premier could only be removed under Article 91(5), which entitles discretionary power in the president to dismiss an elected government.

Chief Justice Nasim Hasan Shah categorically stated, that Article 58(2)(b) did not confer unlimited authority and the president is constrained from using this power subjectively. The dismissal of an elected government can only be ordered after recourse to other constitutional means. For instance, the judges asked the reason, why president had not asked the premier to seek a fresh vote of confidence from the National Assembly. The Attorney General of Pakistan informed the Court that the president had intended to summon the National Assembly on April 22, 1993 but the speech of Nawaz Sharif on April 17, 1993 had altered the scenario. The Court declared that the speech could have been the beginning of the impeachment procedures by the government against the president. The Court also questioned the idea of dismissing an elected government based on unsubstantiated allegations of corruption. Supreme Court pointed out that only actual findings of investigations conducted by the president or references filed in court against the prime minister could be used as “material” to prove corruption charges. The chief justice, for instance, questioned the attorney general's references to corruption and said that all you need to do is hire hundred people, get letters written to the

president and by the weekend the prime minister will be sitting at home [16].

Meanwhile, during the hearings, there was the sudden death of the son of Justice Shafiur Rehman, which ultimately raised the possibility that the proceedings may be postponed. However, emphasizing the gravity of the on-going situation and the responsibility that the judiciary owed to the nation; Justice Shafiur Rehman attended the Court on the same day after burying his son, and also took active participation in the hearings. Together these actions, questions, and the final decision marked the assertion of the judiciary on its independence and the ability to "correct constitutional irritants" that had allowed the presidents to dismiss the governments and the national and provincial assemblies. During the hearings, the Court questioned the underlying concept that the president “operates as a custodian of national interest” and, hence, the validity of presidential ‘interventions’ in the working of an elected government. The Chief Justice declared that the president can inform the government of his views but then he should leave it to the people to decide in the next elections [17].

The decision of Supreme Court, thus raising the possibility of repealing the Eighth Amendment, brought Pakistan at the verge

of a genuine democracy. The Court also questioned the constitutional validity of the power of the president to appoint the Army Chief and other services chiefs. It was argued that by allowing the president to dismiss the National and Provincial Assemblies, and to be the virtual guardian of security of Pakistan as Commander-in-Chief of the three services, the Eighth Constitutional Amendment had opened the way for decisions that may be dangerous for the security of the state. Interestingly, the criticism of Eighth Constitutional Amendment went beyond the issues of transfer of powers to the parliament, questioning the presidential powers in terms of Islamic identity of Pakistan. It was argued that under the Constitution of Pakistan, the sovereign powers lie with Allah Almighty alone. However, the 8th Constitutional Amendment breaches the basis of the 1973 Constitution giving powers to the President of Pakistan to an extent that he is not answerable to anyone [18].

Thus, the presidential power in Pakistan suffered with a great setback on May 26, 1993, when the Supreme Court reinstated the government of Nawaz Sharif and the National Assembly. 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.' The Court declared in its verdict that the order of April 18, 1993 is not in accordance with the powers granted to him under Article 58(2)(b) of the 1973 Constitution as well as other similar powers, thereby making it of no legal effect [19]. The Court declared that it was Ghulam Ishaq Khan and not Nawaz Sharif who played an instrumental role to subvert the constitutional process. Ghulam Ishaq Khan had ceased to be a neutral head of the state and had aligned with prime minister's opponents to encourage these actors thus making efforts to destabilize the elected government [20].

This time, the Supreme Court under by the Chief Justice Nasim Hassan Shah, gave its verdict against the Law of Necessity. The historic decision of the Supreme Court not only restored the National Assembly and reinstated Nawaz Sharif government, it also restored the trust of the public in judiciary. However, the decision of the Court was also seen partisan, because it was observed throughout the proceedings that the judges had already decided for upholding the supremacy of the parliament and the 1973 Constitution. Moreover, the scope of the

powers of president under the Eighth Constitutional Amendment were narrowed down to such an extent that in future a president would be thinking hard prior to take any action against the National Assembly [21]. However, the verdict eliminated the myth that the President is over lord of the parliament and the elected government. From the very beginning of filing the petition, the Chief Justice of Pakistan seemed to be in favour of the dismissed government because he had announced that the nation was about to hear 'good news' [22]. It is alleged that a deal involving a huge sum of money had been reached at Dubai due to which the decision of Supreme Court went in his favour. However, it is also clear that the decision came against the backdrop of an intense public criticism of the dismissal and the presidential powers conferred under the Eighth Constitutional Amendment. Indeed, the judgement of the Court had been a prosecution of the President by the highest judicial organ in Pakistan. The decision was ultimately an insult for a person having never got a taste of defeat and that also at the hands of a person, who until yesterday remained subordinate to his office. The President House, issuing a press release on

the same evening declared that the verdict of Supreme Court will be honoured.

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 rather 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 assemblies. However, the tables of the Court had turned in favour of a Punjabi Prime Minister and the government along with the National Assembly had been restored. Justice Sajjad Ali Shah further added that the Court had indicated that the decision would please the nation, which should be based on legality only [24]. Benazir Bhutto remarked on the decision stating that the decision of Supreme Court was not doubted but at the same time the people were left confused. They wanted to know why the presidential order for dismissal of her government was upheld in 1990, and why had it struck down the same nature of order issued for dismissal of Nawaz Sharif government. Addressing the PPP congregation at Liaquat Bagh (Rawalpindi),

Benazir Bhutto also expressed that the people did not know what did Nawaz Sharif has due to which he remains in power. He had been the ultimate beneficiary in case the government of PPP was dismissed under the Eighth Constitutional Amendment or that of his own (Nawaz Sharif) [25].

It is pertinent to mention here that the government of Nawaz Sharif and the previous government of Benazir Bhutto were dismissed within different operational contexts. The government of Benazir Bhutto had been dismissed in August 1990 with a military backed initiative, on the grounds of corruption, failure to work effectively with the provincial governments and efforts in questioning the powers of the military. However, the dismissal of Nawaz Sharif's government was basically due to the efforts of the President for re-election. In fact, these two different contexts were the main reason that the Supreme Court asserted its independence and questioned the scope of the power of the president under the Eighth Constitutional Amendment, thereby invalidating the April 18, 1993 decision of the president. The decision of Supreme Court brought Pakistan to a crucial juncture in its history, by offering the politicians with an opportunity to move in the direction of genuine parliamentary democracy. However,

motivated by their personal interest to regain power of the government, these politicians were still participating in the constitutional war of the President against the prime minister. By joining hands with the president, they also prevented a democratically elected government to complete its five-year term.

DISMISSAL OF BENAZIR BHUTTO SECOND GOVERNMENT AND SUPREME COURT DECISION

Since the beginning, the government of Benazir Bhutto had been facing strong resistance from the opposition political parties and a critical press. This time, Nawaz Sharif was posing a much stronger opposition to Benazir Bhutto and was more impatient for overthrowing her government mainly through agitation politics and a rigorous campaign through media. Benazir Bhutto government also made some efforts to control the higher judiciary through political appointments which went unsuccessful. Benazir Bhutto government also avoided appointing the Public Accounts Committee in the National Assembly meant for scrutinising the expenditures of the PPP government. During the year 1996, Benazir Bhutto government had alienated the judiciary, the military, the president, the world monetary bodies like World Bank and

IMF (in particular), and the Pakistani public-at-large. The confrontation and the intolerance of the government and opposition towards each other provided again an opportunity to the military and the president to roll down the elected government.

The Army Chief apparently remained neutral in the controversy of Benazir Bhutto with both Farooq Khan Leghari and Justice Sajjad Ali Shah. However, majority of the military commanders were in favour of the President and the Chief Justice. The military also warned President Farooq Ahmad Khan Leghari about the worst situation and demanded quick remedial measures in August 1996 [26]. The President, called Benazir Bhutto for a meeting in which she issued derogatory statements about Farooq Ahmad Khan Leghari saying that he has been nominated as President by her party [27]. In October 1996 the military concluded that the elected government of Benazir Bhutto was failing in dealing with the crises. Therefore, it became easy for President Farooq Ahmad Khan Leghari to dismiss the government of Benazir Bhutto as he was now sure that military would not object to his action of dismissal.

On November 5, 1996, the president invoked Article 58(2)(b) of the Constitution

to dissolve the National Assembly and dismiss the elected government following months of turmoil in the country. In the dissolution order, the President charged Benazir Bhutto government for not taking adequate steps for bringing an end to the extra judicial killings, blamed the president and other state institutions for involvement in the killing of Mir Murtaza Bhutto. It showed reluctance in implementation of the Supreme Court orders and curtailed the independence of higher judiciary by passing of the accountability laws. Moreover, it was alleged with moving a bill in the Parliament, apparently meant for preventing corruption, but its effect was a deliberate violation of the basic rights of the citizens to have privacy. In addition, there was rampant corruption, nepotism, favouritism and violation of administrative rules for running the affairs of the government, as among lesser charges [28]. This was the fourth elected prime minister dismissed since 1988, and Farooq Ahmad Khan Leghari became the third president of Pakistan to have exercised the constitutional power under 58(2)(b) in this regard. However, the performance of Benazir Bhutto government had made that day bound to come. In fact, Benazir Bhutto was emerging as an arrogant, reckless, capricious and corrupt ruler.

Moreover, she was surrounded by sycophants, lackeys and flunkeys thereby squandering away another good opportunity to prove her services for the people of the country [29].

Benazir Bhutto's government was dismissed for the second time in a coup like style and regular troops of the military were asked to take control of all government buildings in Islamabad including the office of the prime minister. Moreover, all the international airports were closed and, the telephones were also jammed for the first time in Pakistan [30]. The military also arrested Asif Ali Zardari from the Governor House in Lahore and was later taken into custody by the local administration. Initially, the Governor of Punjab was kept under the house-arrest but later he was forced to give resignation. After the successful completion of this operation, the military handed over charge to the para-military forces. All the Corps Headquarters remained open in all the four provincial capitals for the whole night. They had been passing on the instructions being received from the Presidency and General Headquarters (GHQ) of Pakistan Army to the top brass of civil bureaucracy and were ensuring the compliance [31]. This support and coordination really shows what was the level of support from the Army to

the decision of President Farooq Ahmad Khan Leghari.

The effort of Benazir Bhutto to get the dismissal order reversed through the Supreme Court was as unsuccessful like her appeal to the public. On November 13, 1996 Benazir Bhutto challenged her dismissal and filed a 42-page petition in the Supreme Court which "contained blistering criticism of the President." Three days later, the Court dismissed the petition stating that it was "argumentative, irrelevant, and scandalous." The Supreme Court in a 6:1 judgement upheld the decision of the president. It maintained that the president had been able to submit adequate evidences to prove that the dismissal order of Benazir Bhutto government was correct. The Chief Justice of Pakistan declared in his judgement that there is enough material to establish corruption, nepotism and misrule against Benazir Bhutto government. The Court also allowed fresh general elections on the scheduled dates [32]. Thus, the November 5, 1996 presidential order, validated by Supreme Court removed Benazir Bhutto as prime minister, one again. However, the decision of Chief Justice Sajjad Ali Shah's Court clearly reflected its own grudge against Benazir Bhutto government also. Another petition was then filed in the

Supreme Court, but it was also dismissed for hearing.

CONCLUSION

Since the first decade of independent Pakistan, the judiciary had sided with the institutions of the presidency and military in dismissing the elected governments. It created an image of a judiciary for lacking real independence. The impressions, especially conveyed during Z. A. Bhutto's dismissal and trial, were further reinforced in February 1993 when General (Rtd.) Mirza Aslam Baig claimed that he had personally asked the Supreme Court of Pakistan not to restore the government of Mohammed Khan Junejo back in 1988. The claims also implicated the judiciary in interrupting the process of democratization in the country due to military involvement. Whatever the pros and cons of the constitutional amendments and the resultant imbalance between the powers of the president and prime minister, the superior courts in Pakistan have not been consistent in their judgments and have showed disparities in the resolution and strength with which presidential reasons for dissolution were analysed for judgement. The judgments of superior judiciary in such matters has far reaching negative effects on the stability of political systems, on the one hand, and the

image of judiciary in the eyes of people, on the other. As a result, the role of judiciary as guardian of the Constitution and the institutions thereunder has only partially materialized in the case of Pakistan. The appointment of judges without merit, especially at high court has been a major factor which harmed the independence of judiciary in Pakistan. The judicial appointment should be made more competitive and the processes should be more transparent. The system of appointment and promotion needs to be conducted through proper channels, i.e., appointment as magistrate and onwards promotions are merit based. The Supreme Judicial Council has also remained ineffective due to which the judiciary in Pakistan lacks an effective system of accountability. To make this institution more transparent, Chairman of the Senate and Speaker of the National Assembly, being neutral offices, shall be made its members. This development will enhance the prestige of these two important heads of parliamentary chambers as well.

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- [26] *Herald*, September 1996.
- [27] From interview of first author with Brigadier (Rtd.) Mahmood Shah, Defence and Security Analyst, dated: December 15, 2015.
- [28] *Daily Dawn*, November 5, 1996.
- [29] The editorial published in *Friday Times*, November 3-7, 1996.
- [30] *The Muslim*, November 6, 1996.
- [31] Rizvi, Hassan Askari, *Military, State and Society in Pakistan*, (Lahore: Sung-e-Meel Publications, 2003), 225.
- [32] Although Syed Yousaf Raza Gilani, the Speaker of National Assembly had challenged dissolution of the National Assembly, Benazir Bhutto also filed a separate constitutional petition against the dissolution of assembly and dismissal of her government. For details see, Benazir Bhutto vs Farooq Ahmad Leghari Case, PLJ 1998 SC 27.
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