

IMPACT OF ARMY ON INDEPENDENCE OF THE JUDICIARY IN PAKISTAN:

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ABSTRACT:

The Pakistan Army has ruled over Pakistan for more than half of its total 62 years history. Pakistan had been subjected five times to extra-constitutional emergency or martial law regimes, when the constitution was either abrogated or partly or wholly suspended. Like other institutions of the state, judiciary also suffered a lot under military dictators. This paper studies the damage done to the judiciary particular to its independence during military regimes. Apart from curtailing the jurisdiction of the courts, arbitrary removal of the judges, blatant interference in the proceedings of the courts, damaging the credibility of the court, the military dictators also introduced detrimental changes in the constitutional structure of the judiciary.

Introduction:

The constitutional history of Pakistan is full of constitutional eventualities as well as of extra-constitutional military adventurism. Pakistan has practiced one provisional constitution, three permanent constitutions and one interim constitution. Pakistan had been subjected five times to extra-constitutional emergency or martial law regimes, when the constitution was either abrogated or partly or wholly suspended. The functions of government were being carried on under Laws (Continuance in Force) Orders or

Provisional Constitution Orders. Martial law was declared in Pakistan in 1958, 1969, 1977, 1999 and 2007. In the last two instances, the military initiated their extra-ordinary regime not by a proclamation of martial law, but through “proclamation of emergency.” Thus military ruled over Pakistan for more than half of its total 62 years history.

Like other institutions of the state, judiciary also suffered a lot under military dictators. Each martial law regime clipped the wings of the judiciary by

curtailing its jurisdictions, assaulted the independence of the judiciary by arbitrary removal of the independent judges and degraded the dignity of the judiciary by making open interference in the proceedings of the court. Every successive martial law governments while dealing with judiciary followed the foot prints of its predecessors and adopted the already tested methods of subjugating judiciary with more damaging and aggressive way. In addition to adopting old practices each of the military regimes, added new trend of more harmful and more detrimental act for controlling judiciary. General Ayub Khan, the first military dictator started getting interview of the judges of High Court. General Yahya Khan harassed judges by making scrutiny of the assets of the judges of the superior judiciary. General Zia added new thing by asking judges to take a fresh oath under Martial law. He introduced a new method of arbitrary removal of the judges by simply

not inviting them to take the new oath. General Musharraf followed the foot prints of General Zia. He asked the judges to take new oath and arbitrarily removed unwanted judges. He went forward and left far behind all willful acts of previous martial law regimes undermining the judicial independence. He kept the Chief Justice of Pakistan under house arrest in 2000 on the day when new oath was being given to the judges. Again on November 3, 2007, General Musharraf imposed fifth martial law under nomenclature of emergency, sacked the judges of the superior courts and kept them under house arrest for more than two weeks. The deposed Chief Justice of Pakistan, Justice Iftikhar remained under house arrest for the period of more than five months.

Apart from curtailing the jurisdiction of the courts, arbitrary removal of the judges, blatant interference in the proceedings of the courts,

damaging the credibility of the court, the military dictators also introduced detrimental changes in the constitutional structure of the judiciary. All these issues are examined in this paper.

1: Powers of the Courts under Martial Law Regimes:

Every martial law regime abrogated or suspended the constitution of Pakistan and promulgated new legal order either under the title of Laws (Continuance in Force) Order or under the name of Provisional Constitution Order (PCO). All military dictators declared that the country would be run as much as possible under the abrogated or suspended constitution- paradoxically the political basis for the constitution was not considered viable but its administrative rules were adequate (Newberg, 1995). Unlike the other organ of the state i.e. legislature, the judiciary was allowed to function but was deprived of the power to

challenge the military government. Under all martial law regimes all courts including Supreme Court and High Courts were allowed to exercise their respective powers and jurisdictions provided that no court or tribunal would have the power to pass any order/judgment against military dictator. No court could call in question the proclamation of martial law or extra constitutional emergency or any order made in pursuance of the proclamation.

During first three martial law regimes of 1958, 1969 and 1977, military courts of criminal jurisdiction were set up. These courts were parallel to the existing courts in the country. The military courts were empowered to punish any person for the violation of martial law regulations or orders and also for offences under ordinary laws. Appeals against any decision or order of the military courts were not allowed to any court

including Supreme Court and High Courts.

Whenever the Courts reviewed the actions taken by martial law regime or questioned military judgments and occasionally overturned military convictions—that is, they acted like real courts rather than puppet tribunals - the military regimes reacted by restricting the powers of the courts and effectively curbing the independence of the judiciary. In 1969 Lahore High Court ruled in a case (Mir Hassan and another Vs. The State) that courts could operate without obstruction. General Yahya's martial law government reacted by promulgating the Courts (Removal of Doubts) Order 1969, just to remind the judges the limitations of their powers. In the Nusrat Bhutto's case, the Supreme Court while giving validity to General Zia's martial of 1977 under doctrine of State Necessity retained the power of judicial review. Chief Justice Anwer-ul-Haq held in the said

judgment that the superior courts continued to have the power of judicial review to judge the validity of any act or action of martial law authorities, if challenged in the light of the principles underlying the law of necessity. The superior courts took Justice Anwar-ul-Haq at his words and started scrutinizing regime's actions, particularly decisions of military courts. The High Courts tried to establish their right to review regime's actions, though their rulings were creative and careful (Newberg, 1995). The judiciary was cautious while exercising the power of judicial review. Martial law regulations and orders were not generally touched in exercise of judicial review. The judges of High Courts interfered with the sentences of the military courts and detention cases under martial law regulations, when there was either no evidence or evidence of independent nature was not there (Khan, 2001).

The judges' optimism proved wrong. General Zia tightened restriction on the superior courts in October 1979, by inserting a new Article 212-A in the constitution. By this amendment the power of judicial review, reserved for the superior courts by the Supreme Court in the judgment of Begum Nusrat Bhutto's case, was completely nullified. The High Courts continued to entertain petition even challenging the validity of the constitutional amendments in the parameter of the Supreme Court judgment in Begum Nusrat Bhutto's case. In May 1980, General Zia further curbed the powers of High Court available under Article 199 of the constitution through Presidential Order No.1 of 1980, promulgated on May 27, 1980. This amendment order restricted the "writ jurisdiction" of the High Courts and barred them from making an order relating to the validity or effect of any martial law regulation or any martial law order. The order also prohibited

the High Courts from reviewing the judgments or sentences passed by military courts or tribunals. The intriguing aspect of this order was that it removed the High Courts' jurisdiction with retrospective effect.

This amendment was challenged in Sindh High Court and Baluchistan High Court. Sindh High Court by majority opinion declared it valid (Yaqoob Ali Vs. summary Military Court, 1980). In July 1980, the Baluchistan High Court, staying the execution of death sentences passed by a special military court, ruled in a case (Suleman Vs. President Special Military Court, 1980) that the High Courts could still decide cases challenging provisions of military courts. It then declared that the two latest constitutional amendments to Articles 212 and 199 (passed on October 16 1979 and May 27 1980 respectively) were illegal. It described them drastic and fundamental and outside the mandate of the military government ruling that

these amendments failed to pass the test of necessity laid down in the Supreme Court's judgment of Begum Nusrat Bhutto's case.

The government filed an appeal in the Supreme Court against the judgment of Baluchistan High Court. The appeal was pending and it was very difficult for Supreme Court to over rule the findings of the Baluchistan High Court. General Zia who was known as a 'barbarian military tyrant' viewed judiciary as an instrument of the state which should facilitate the exercise of government's authority rather than restrict it (Waseem, 1989). In one stroke, he effectively extinguished judicial powers by promulgating Provisional Constitution Order (PCO) 1981. Judgments against military rule led to confrontation with the military that the courts could not win; the PCO 1981 was General Zia's victory proclamation (Newberg, 1995). The PCO put a formal end to the necessity regime as sanctioned by the

Supreme Court in Begum Nusrat Bhutto's case. It purported to validate every thing done by Zia's regime since its coup in 1977 and such validation was not to be called into question in any court on any ground whatsoever. The courts were deprived of jurisdiction over members of the armed forces and any judicial order concerning them was null and void. A High Court could not release on bail a person detained under a military, or against whom a complained had been made in any court/tribunal or convicted under military law or against whom a case had been registered in a police station. The PCO, in short, effectively extinguished the jurisdiction of the High Courts. To punish and embarrass them further, superior court judges were required to take a new oath to uphold the PCO and not all were invited to do so. The PCO transformed martial regime into a martial state (Newberg, 1995). Blatant interference on such a massive scale in the composition, jurisdiction and

independence of the judiciary was unprecedented in the history of Pakistan (Maluka, 1995). A former Chief Justice of Pakistan, Justice Cornelius, commenting on the unfortunate episode of PCO 1981, called it “the rape of the judiciary” (Khan, 2001).

The military governments, besides depriving the courts from its judicial powers provided by the constitution, caused detrimental changes in the structure of the superior judiciary.

2: Structural Innovation in the Institution of Judiciary under Martial Law Regimes.

As stated earlier, General Zia had imposed third martial law in the country on July 5, 1977. The most extraordinary thing about General Zia’s regime was that it appeared to have had the blessings of the Judiciary right from the beginning (Samdani, 2002). General Zia consulted the Chief Justice of Pakistan on almost all important legal issues. He secured the cooperation of the

Judiciary by appointing the Chief Justices of the High Courts as acting governors of their respective provinces. General Zia got the certificate of validity of his martial law from the judiciary. He eliminated Zulfiqar Ali Bhutto through judicial process. All these favors and concessions could not stop General Zia from undermining the institution of judiciary. General Zia not only restricted the judicial powers of the courts and arbitrarily removed unwanted judges; he also introduced fundamental changes in the judiciary bearing too much detrimental effects on the independence of judiciary even after martial law era.

The structural innovations in the judiciary were made through martial law orders. General Zia was empowered by the Supreme Court in the judgment of Begum Nusrat Bhutto’s case to amend the constitution. He exploited this unique authority by making amendments in the constitution

whatever he liked. To underline its Islamization program, General Zia's regime organized a new constitutional court, namely the Federal Shariat Court, to review the laws in Pakistan whether they were in conformity with the injunctions of Islam and to declare any law invalid if found repugnant to the injunctions of Islam laid down in the Holy Quran and the Sunnah of the Holy Prophet. Ironically, when the Federal Shariat Court judged the 1963 Press and Publication Order and the 1952 Security of Pakistan Act incompatible with the principles of Islam, the regime appealed to the Supreme Court against the decision because it threatened its political programs. In another case when the Federal Shariat Court held that stoning to death was not supported by Islamic law, the Chief Justice of the Federal Shariat Court, Justice Salahuddin Ahmed was terminated and the court was reconstituted. New Chief Justice was appointed and three *Ulema* (i.e. scholars in Islamic Law and

theology) were included as members of the court by amending the constitution. This reconstituted court reviewed the judgment of Justice Salahuddin Ahmed and set it aside.

By creating the Federal Shariat court, General Zia not only showed his lack of confidence in the superior judiciary, he undermined the constitutional position of the Chief Justice of Pakistan also. A judge of the superior courts is to be appointed after consultation with the Federal Shariat Court. As discussed in the preceding chapters, a judge of the Supreme Court and the High Court can be removed from service only through the procedure provided in Article 209 of the constitution. On the contrary, a judge of the Federal Shariat court is appointed for a period of three years extendable by the President and may be removed any time by the President without showing any reason (Article 203C of the Constitution of Pakistan). It is

very strange that the service of a judge of the Federal Shariat Court seems to be the most unsecured service in Pakistan. Every judge of the Federal Shariat Court remains under the pressure of the executive. The job of the Federal Shariat Court is to examine whether the existing laws of the country are against Islamic injunctions and if they are, to declare them void. It appears that General Zia wanted interpretation of Islamic injunctions as he desired. Such tremendous powers of the appointment and removal of the judges of the Federal Shariat Court make a mockery of the independence of the judiciary.

General Zia's regime, besides creating a new court, made substantial changes in the constitutional provisions relating to the Superior Courts. In spite of the protection of the services of the judges under Article 209(7) of the constitution which declares in unambiguous words that no judge of the Supreme Court or a High Court shall be removed except as

provided by the Article, certain detrimental provisions were inserted in the constitution by General Zia which allow removal of the judges otherwise. A judge of a High Court may be transferred to another High Court under Article 200 and may be appointed as a judge of the Federal Shariat Court under Article 203-C. These articles further provide that if any judge does not accept such transfer or appointment, he will cease to be a judge and be deemed as retired. Various governments have abused these provisions of the constitution either for getting ride of unwanted judges or for harassment and punishment of independent judges.

All these structural changes are detrimental to the independence of the judiciary. These changes were incorporated in the constitution at the time of its revival in 1985. The unfortunate thing is that the parliament which came into existence as a result of party less election, ratified,

though under coercion, all the outrageous measures of General Zia's regime by passing the Eighth Constitutional Amendment. Thus these detrimental steps were made permanent provisions of the constitution which are still formidable blockades in the way of achieving independence of the judiciary in Pakistan.

3: Appointment of the Judges of the Superior Courts during Martial

Law Regimes:

Pakistan, in its very first constitution in 1956, adopted the system of judicial appointment prevalent during the time of British India. The same system has been retained in all constitutions of Pakistan. All appointments of Judges in the superior judiciary are made by the executive, i.e. by the President of Pakistan after consultation with the Chief Justice of Pakistan in case the judge is appointed in the Supreme Court and if a judge is appointed

in a High Court, in addition to the Chief Justice of Pakistan, the Chief Justice of the concerned High Court and the Governor of the concerned Province are to be consulted too. The Chief Justice of Pakistan is appointed by the President and the Chief Justice of a High Court is appointed by him after consultation with Chief Justice of Pakistan and the Governor of the concerned province.

Every government in Pakistan whether civilian executive or military dictators, has repeatedly manipulated the system of appointment of judges and made appointments on personal or political consideration. In very few cases of judicial appointments, merit seemed to be adopted. The appointments of the judges in the superior courts under martial law regimes had been more arbitrary and outrageous. The judicial appointment without merit is one of the major factors undermining the independence of the judiciary.

The direct and blatant assault on the independence of judiciary was first made by the first military dictator, General Ayub Khan who started, in gross violation of the procedure provided by the constitution, the practice of interviewing the judges before appointment to the High Courts. The governor of West Pakistan, General Musa and the Federal law minister were to assist General Ayub while interviewing judges (Shah, 1997). The consultation of the Chief Justice of Pakistan and the Chief Justice of the concerned High Court or their participation in the process of interview were not considered necessary. Even the interview was arbitrary and subjective. One of the candidates was not appointed merely because his shoes were rather gaudy and did not go with his attire. Another was rejected because he had dropped an egg on his collar band while having boiled egg at his breakfast before going for the interview (Khan, 1997).

According to a former judge of Indian Supreme Court, persons aligned with some political party are ill-fitted to occupy seats of justice. In the eyes of many a committed judge is a contradiction in terms. Allegiance to justice and commitment to a partisan political ideology cannot go together. A judge in order to be true to his office cannot worship simultaneously at two shrines – the shrine of justice and the shrine of his favorite political ideology (Khanna, 1985). But Ayub Khan during his period inducted active politicians into the superior judiciary. Manzoor Qadir who was holding the portfolio of Minister for Foreign Affairs, in the cabinet of President Ayub Khan, was inducted as the Chief Justice of High Court of West Pakistan in 1962 (Mian, 2004). His appointment was resented by the bench and bar alike and due to the resentment he tendered his resignation. In 1962 Ayub Khan appointed Afzal Cheema, deputy speaker of the National Assembly

of Pakistan as judge of the West Pakistan High Court, in return to his casting vote on a matter which was highly sensitive for the government in power. He appointed a brother of a prominent politician, who helped him in the presidential election of 1965, as a judge of West Pakistan High Court (Khan, 1999). Zakiuddin Pal, a member of the Central Executive of the Awami League and Hamood-ur-Rehman, an active worker of Pakistan Muslim League (PML) were appointed by Ayub Khan as judges in the East Pakistan High Court (Babar, 1994).

Not many judicial appointments were made during the second martial law regime of General Yahya Khan because his period was short and army left government after defeat at the hand of Indian army in 1971, yet still a PML politician, Javed Iqbal was appointed as a judge of Lahore High Court soon after he (Javed Iqbal) contested and lost

election against Zulfiqar Ali Bhutto in 1970 (Babar, 1994).

The judiciary came under real trial during the period of General Zia. In the beginning there was an understanding rather 'a marriage of convenience' between the martial law regime and the superior judiciary. The Chief Justice of Lahore High Court Moulvi Mushtaq Hussain, who had presided over the bench which sentenced Bhutto to death, was given free hand in the appointment of judges. This opportunity was grossly misused and he got two batches of nine judges each appointed in years 1978 and 1979. Baring a few of them who deserved such appointment on merit, others were unknown lawyers without much recognition or reputation (Babar, 1994).

General Zia also elevated Justice S.A. Nusrat to the Supreme Court superseding many senior judges even though he had not served on the high court bench for five

years as required by the Constitution (Article 177) for purpose of such elevation. General Zia started the practice of appointing acting Chief Justices of the High Courts and kept them acting because a temporary judge can easily be manipulated. During the Martial Law of General Zia the politician had lost influence in the matter of appointment of judges. Judges of the superior court, serving or retired and all other influential men at that time having close relationship with General Zia exercised their powers and influence, unfortunately, without any regard to the dignity or independence of the judiciary.

Then came two important judgments of the Supreme Court in the cases of Al-Jehad Trust Vs. Federation of Pakistan (1996) and Malik Asad Ali V. Federation of Pakistan (1998) as a check on the executive against the arbitrary use of its powers of appointing judges in the superior judiciary. The Supreme Court ruled in these

judgments that Chief Justice of a High Court and Chief Justice of Pakistan will be appointed on the basis of seniority in the absence of any strong and cogent reason to the contrary to be recorded by the executive. The court also held that the opinion of the Chief Justices, as constitutional consultees, for appointment of judges to the superior judiciary, was binding on the executive and if the executive disagreed with the view of the Chief Justice of Pakistan and the Chief Justice of a High Court, it should record strong reasons to be justiciable. But these verdicts could not stop the fourth military dictator General Pervez Musharraf from misuse of the appointing powers. For example in June 1999, the Chief Justice of Lahore High Court Justice Rashid Aziz was going on Ex-Pakistan leave, the Chief Justice of Pakistan recommended the name of the most senior judge of Lahore High Court, Justice Falak Sher to be appointed as acting Chief Justice of Lahore High Court. The

federal government appointed the next senior judge in the violation of the Supreme Court rulings in Al-Jehad Trust Vs Federation of Pakistan and also against the recommendation of the Chief Justice of Pakistan.

4. Removal of the Judges during Army Regimes:

Services of the judges of the superior courts are protected under Article 209(7) of the constitution of Pakistan which ensures that a judge of the Supreme Court and of a High Court shall not be removed from service except as provided by the said Article. Article 209 provides the forum and the procedure for the removal of a judge of the superior courts. This article constitutes the Supreme Judicial Council consisting of the Chief Justice of Pakistan, two next senior judges of the Supreme Court and two most senior Chief Justices of the High Courts. The President of Pakistan may direct the Supreme Judicial Council to conduct inquiry into the

matter/complaint against a judge of the Supreme Court or a High Court. Such inquiry can be initiated on either of the allegations that he is guilty of misconduct or is incapable to perform his duties. If the Council, after conducting inquiry, recommends removal of a judge, the President may remove the judge from his office.

It is very intriguing that removal of the judges always took place during military governments. No judge of the superior judiciary has ever been removed from office during civilian rule. The military dictators removed unwanted judges of the superior courts sometimes by adopting the constitutional procedure, other times by arbitrary orders. Only in few cases the constitutional procedure was adopted and a big number of judges had arbitrarily been removed from their offices. The first two military dictators (i.e. General Ayub Khan and General Yahya Khan) adopted the constitutional procedure, though

it was also questionable, for removal of judges. General Zia started the practice of arbitrary removal of the judges of the superior courts and General Musharraf followed the foot prints of General Zia.

More than 80 judges of the superior courts including several Chief Justices were arbitrarily removed under three Provisional Constitution Orders promulgated by military dictators at three different stages. Under PCO 1981 issued by General Zia four judges of the Supreme Court including the Chief Justice of Pakistan and more than a dozen judges of High Courts including Chief Justice of Baluchistan High Court were arbitrarily removed from their offices. The same process was repeated by General Musharraf in January 2000 where six judges of the Supreme Court including the Chief Justice of Pakistan and seven judges of the High Courts lost their offices. The Chief Justice of Pakistan, Justice Iftikhar Muhammad Choudhry

was suspended in March 2007 by General Musharraf and kept under house arrest up to five days. Justice Iftikhar challenged his suspension in the Supreme Court and as a result of the court's ruling, he was restored. The most shocking and painful episode is the PCO 2007 issued by General Musharraf on November 3, 2007. Under PCO 2007 twelve judges of the Supreme Court including the Chief Justice of Pakistan, Justice Iftikhar Muhammad Choudhry and more than four dozens judges of the High Courts including two Chief Justices of two High Courts were arbitrarily removed. All the deposed judges of the superior courts were kept under house arrest for several weeks. The deposed Chief Justice Iftikhar Muhammad Chaudhry was under house arrest till March 21, 2008. His detention came to an end when the New Prime Minister of Pakistan, Yusuf Raza Gilani announced freedom for all arrested judges after his election from the National Assembly as Prime Minister of Pakistan.

The military regimes' inroads in the independence of the judiciary were not limited to the arbitrary removal of judges or depriving the courts of its jurisdictions, they manipulated the judges to get favorable decisions from them.

5: Manipulation of the Courts during Martial Law Regimes:

Maneuvering and manipulation of the judges for getting favorable decisions have been practiced by all successive military governments. The coup of General Zia was challenged in the Supreme Court by Begum Nusrat Bhutto (wife of Z.A Bhutto). The Supreme Court entertained the petition and date was fixed for hearing. The Chief Justice of Pakistan, Justice Yaqoob Ali Khan, could not remain in office up to the hearing date of the petition. The new Chief Justice Anwer-ul-Haq granted the legitimacy certificate and empowered General Zia to perform all legislative measures

including amending the constitution. The same practice was repeated by General Musharraf in 1999 for getting legitimacy from the court for his coup in October 1999. The Chief Justice of Pakistan along with other five judges of the Supreme Court was arbitrarily removed when the military takeover was challenged in the Supreme Court. General Musharraf made second coup on November 3, 2007, this time, against the judiciary to stop the Supreme Court from giving a judgment in the cases challenging his eligibility for the Presidential election. Twelve out of seventeen judges of the Supreme Court were arbitrarily removed. A new Supreme Court of his choice was reconstituted and got the eligibility verdict from it.

Military dictators abused the judicial process for political persecution. General Zia used court to eliminate his arch rival, Zulfiqar Ali Bhutto. It was through manipulation of judges that he had been able to wrest

from the court a death sentence for Z. A. Bhutto (Anupama, 1999). General Zia knew that Justice Mushtaq was aggrieved and held a grudge against Bhutto. Justice Mushtaq was appointed as acting Chief Justice of Lahore High Court. Justice Mushtaq had made the selection of the bench for Bhutto's trial much carefully (Khan, 2001). Under questionable proceedings, Justice Mushtaq convicted Bhutto and sentenced him to death (Mahmood, 1992). The Supreme Court under another annoyed Chief Justice Anwer-ul-Haq rejected Bhutto's appeal and endorsed the decision of Lahore High Court. The Supreme Court upheld the judgment of Lahore High Court by majority opinion of four to three. One of the dissenting judges, Justice Patel admitted in his later life that he remained under heavy pressure while hearing Bhutto's appeal (Gauhar, 1998).

Apart from manipulation of judges to get favorable decisions in particular cases, army

interfered in the judicial proceedings of the courts and tried to influence the decisions of the courts. When they failed to influence the independent judges, then they harassed and intimidated such judges.

6: Army's Interference in the Judicial Proceedings and Harassment of Independent Judges:

The judicial history of Pakistan provides a lot of instances of army's interference in the judicial proceedings of the court. Army of Pakistan did interfere in the judicial affairs and successfully influenced the decisions of the courts even during civilian governments, but its interference during military regimes had been so blatant and outrageous that the whole judicial process seemed to be a mockery. For example, in 1977, during General Zia's martial law, in the garb of accountability, Tribunals were constituted consisting of a Judge of High Court and a Brigadier from army to decide the

allegations of misconduct against politicians and bureaucracy (Kadri, 1990).

After death of General Zia in August 1988, there was an appeal before the Supreme Court for restoration of the dissolved government of Muhammad Khan Junejo. The Supreme Court, upholding the findings of Lahore High Court that the dissolution of the National Assembly was illegal and unconstitutional, hence void, yet refused to grant the relief of restoration of the Assembly. The then Chief of Army staff General Mirza Aslam Beg claimed in a press conference after his retirement that the Supreme Court did not restore the government of Junejo because he had send a message to the judges of the Supreme Court not to restore the Assembly (The News, Feb.5, 1993). The Supreme Court judges did not rebut his claim. Contempt proceedings were initiated against him. General Beg took stand on his words even before the court that he had told the truth. General Beg was found guilty of contempt

of court, but not sentenced for the reason that he had already been reprimanded in court (Shah, 2001).

Apart from outrageous and blatant interference in the judicial proceedings of the court, the army government harassed, intimidated and humiliated judges of the superior courts. During General Yahya's martial law in 1969, a sub-martial law administrator, General Abu Bakr Usman Mitha issued a notice of contempt of martial law to two judges of West Pakistan High Court and both judges were asked to appear before the General. They were blamed in the notice for staying an order of a military court. The Chief Justice of the High Court met the Zonal Martial Law Administrator, who was also Governor for West Pakistan, in this regard and the crisis was averted by intervention of the Governor (Shah, 1997).

Conclusion:

On the basis of the foregoing discussion one can say without fear of contradiction that all military regimes did not allow judiciary to function independently. They assaulted the independence of the judiciary and degraded the judiciary. Gradually the public lost confidence in the independence and impartiality of the judiciary. The judiciary, once a prestigious institution, has been down graded to such a low level, due to the detrimental measures of the powerful executive particularly military regimes that in 2002, the then President of Supreme Court Bar Association, submitted an application to the Supreme Court for withdrawal of a review petition because Pakistan Bar Council and Supreme Court Bar Association both were of the opinion that the Supreme Court was not independent (Dawn, Nov.7, 2002).

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