

## JUDICIAL ACTIVISM AND DEMOCRACY IN PAKISTAN: A CASE STUDY OF CHIEF JUSTICE SAQIB NISAR ERA

**Sajjad Ahmad Jatoi**

M.Phil. Political Science, Government College University Faisalabad.  
[sajjadbaloch2004@gmail.com](mailto:sajjadbaloch2004@gmail.com)

**Ghulam Mustafa<sup>1</sup>**

Assistant Professor, Department of International Relations,  
Government College University Faisalabad.  
[ghulammustafa@gcuf.edu.pk](mailto:ghulammustafa@gcuf.edu.pk)

**Muhammad Saqib Kataria**

M.Phil. Political Science, Government College University Faisalabad.  
[saqibkataria170@gmail.com](mailto:saqibkataria170@gmail.com)

### ABSTRACT

*A sovereign state is comprised of three important organs that are Legislature, Executive and Judiciary. These organs have their respective routes and way of actions and the concept of separation of power is also in field to run the business of a state smoothly. Now a day a term is used specially in Pakistan “Judicial Activism” that is frequently used after the restoration of judiciary. Judicial activism means judicial review of the matters involving fundamental rights and constitutional issue or invalidate legislative or executive actions. In the recent judicial history of Pakistan apex judiciary used their suo motu powers to resolve the social, constitutional and political matters such as kite flying banning to fundraising for dams and sexually abused child’s matter to disqualification of an elected prime minister. Especially when Mian Saqib Nisar become Chief Justice of Supreme Court of Pakistan, he took unprecedented suo motu notices and sometimes exceeds its powers. In this era there is a great impact on the democratic institutions when Mian Saqib Nisar disqualify the prime minister Mian Nawaz Sharif and used the executive powers. His era is the extreme of judicial activism in Pakistan. In this study ‘judicial activism and its impact on democracy’ are discussed and political dimensions and implications also be observed.*

**Keywords:** Democracy, Judicial Activism, Chief Justice Saqib Nisar Era, Pakistan

### INTRODUCTION

Pakistan’s judicial history is full of ups and downs. It is very clear that judicial system of Pakistan is derived from British India. After independence like the other departments judiciary also faced a lot of difficulties like lack of resources etc. In 1949 Federal Court of Pakistan is established and Mian Abdul Rashid is appointed as the first chief justice (Khan, 2017) this era is known as judicial activism and provide basis for a free judicial environment. After that the controversial period of Justice Muhammad Munir is started in 1954 who introduces theory of necessity and give verdict of validate the dissolution of constituent Assembly in 1954 (“Federation of Pakistan Vs Molvi Tamizuddin Khan”, 1955). After that there is series of ups and downs in the judiciary and a great break throw is appear when “General Pervaiz Musharraf” Suspended Chief Justice “Iftikhar Muhammad Choudry” and reinstatement of the judges of apex court. From then the second phased of independent judiciary is started and it takes suo motu notices on all the national interest matters. Judicial activism now touched every sphere of life from public interest litigation to even any matter of the public interest. After Iftikhar Muhammad Choudry it is Justice Saqib Nisar who uses the power of judicial activism and known as a “Baba Rehmata”. Saqib Nisar took too many suo motu notices that before him no one have taken. He not only ensuring fundamental rights but also decided

---

<sup>1</sup> Corresponding Author

important cases like Panama Leaks and disqualification of Nawz Sharif (<https://theconversation.com>, 2020).

### **What is “Judicial Activism”**

Judicial activism has no single definition, every jurist define it in their own words however simply we can say that judicial activism is a discretionary judicial review regarding the matters involving fundamental rights, constitutional issues and to declare invalidate any legislative or executive action. It can also be said that it is that judicial activity that is done beyond the suspected powers of the court.

The Concept of Judicial Activism

#### **“Merriam Webster’s Dictionary of Law”:**

“Judicial Activism is the practice in the judiciary of expanding and protecting individuals’ rights through decisions that depart from the established precedent or are independent of or in opposition to supposed constitutional or legislative intent.” (Law, 2021)

#### **“Black’s Law Dictionary”:**

“A Philosophy of judicial law making whereby judges allow their personal views about public policy, among other factors to guide their decisions; usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.” (Bryan, 2002)

## **JUDICIAL ACTIVISM IN PAKISTAN**

The notion of “judicial activism” migrated to India and Pakistan under the enactment jurisdiction. After getting sovereignty from British rule in 1947, Pakistan and India enforced various pre-independence law, regulations and legal notions. Articles “32” (India, 1950) and “226” (India, Constitution of India, 1950) of the “Constitution of India” entitle the “Supreme Court and the High Courts”, respectively, to make use of “judicial review” and to make certain orders. In India, supreme courts began “judicial review” in the 1970s to address violations of the “public interest and fundamental rights” by simplifying some technical procedures. In Mumbai Kamgar Sabha case (“Mumbai Kamgar Sabha v. M/S Abdullah Bhai”, 1976), concerning the defendant's failure to pay the applicant a price; Judge “Krishna Iyer” introduced the theory of “judicial activism”, noting that India's "descriptive branch of case law" generally dealt with litigation in rural areas and in vulnerable sections of society, which could not be inappropriate merely because of allegations of drafting pleadings and "procedural shortcomings". "Where there is no evil game and no criticism of justice, latitude is a grace of justice." (“Mumbai Kamgar Sabha v. M/S Abdullah Bhai”, 1976)

The constitutionality of the “Supreme Court’s judicial activism” is given in “Article 184(3)” of “The Constitution of Islamic Republic of Pakistan, 1973” in relation to enforcement of fundamental rights (“The Constitution of The Islamic Republic of Pakistan”, 1973). “The language used by the drafters of this article in this article indicates that the dominion of the “Supreme Court of Pakistan” is not within the dominion of the Highest Court but it is the concept of enforcing basic rights. The concept of “fundamental rights” is particularly for those rights clearly set forth in “Articles 8 to 28 of the Constitution of Pakistan”; however, the term "public interest" is a general and broader term. The adjective of the public necessarily means something that belongs to the people in general, to the people, to the state, or to society as a whole (Pakistan Muslim League Vs Federation, 2007)." In several other provisions, the concept of public interest has been interpreted according to the facts and figure of every single case. Neither the Constitution of Pakistan of 1973, nor the “Rules of the Supreme Court of 1980”, especially in the public interest, only make the Supreme Court strong enough to exercise judicial review, while the technical procedures of the relevant laws in various cases are relaxing.

Judges can never be infallible, and the history of Pakistan's constitution has been marred by judgments that have set bad precedents for judicial review, hampering the growth of the democratic process rather than taking care of itself. It has taken decades to overturn the effects of such judgments in subsequent rational Supreme Court verdicts. In particular, the history of court recorded in the first constitutional development of Pakistan created a "legal black hole" for its further development. Later, paying attention to the traces of the previous court, the “Supreme Court” issued decisions suspending the “rule of law” in the country.

A liberated judiciary is an important means for establishment of national integration and the state. The principle of “separation of powers” is based on the distribution of powers among government agencies.

Executive, judiciary and legislature work in their respective fields, but are able to maintain oversight and balance to guarantee the liquidity of the apparatus. By way of responsibility, it improves constitutional status and strengthens the law and order in the country. Judiciary is the guardian of constitution in any state, which strives for justice and fairness (Mr Kanyinke Sena).

The history of Pakistan's current legal system dates back to the middle Ages. It has gone through various stages such as the Hindu period, Muslim administration in the Indian subcontinent, the Company Raj and the period after independence, 1947. Throughout this time, the judiciary developed gradually and no major changes took place. We can divide the historical development of Pakistan's legal system into four main eras. 1) Hindu era. 2) Islamic rule. 3) The British era. 4) The current era. Thus, Pakistan's legal structure has developed by way of the procedure of improving and growth.

We can divide judicial development and role of Pakistan judiciary after independence into following era;

#### **First Era “1947-1962”**

When Pakistan started as a new born country, “Government of India Act 1935” used as the temporary constitution. That resulted the previous colonial power persisted with minor changes as the statute was the same one, but the formation of the judicial system persisted the alike. High courts already established in this part were permitted to operate its working and a new high court was created in Dhaka (Khan, 2017).

Since independence, Pakistan has struggled due to bureaucratic implications for the organizational shape. The political system was feeble because the temporary constitution nourishing establishment and military rule through the “doctrine of necessity”. Thus, it was an influential instrument in the hands of the army and the establishment to maintain their executive location in all circumstances. Judiciary was free according to Constitution and could make independent decisions in the interests of the people, but in practice this was not done.

Although in the beginning Judiciary under the leadership of Mian Abdul Rashid Chief Judge Federal court of Pakistan is morally high and delivered well written and high standard judgments, it is also very important factor that Mian Abdul Rashid did not participate in any event organized by government but he also discourage other judges to attend such events (Khan", "A History of the Judiciary in Pakistan", 2017).

Soon the decline of judiciary of Pakistan was started when after the retirement of “Chief Justice Sir Mian Abdul Rashid”, by ignoring the seniority of the judges appoint “Mr. Munir as Chief Justice of the Federal court” by Ghulam Muhammad Governor General of Pakistan at that time (Khan", "A History of the Judiciary in Pakistan", 2017). The important cases during this era are;

#### **Rawalpindi Conspiracy Case:**

An attempt was made to a military coup d'état by some military officers under the Major General Akbar Khan's leadership in 1951 but the attempt was failed they were arrested with famous poet Faiz Ahmad Faiz who was also accomplice of the conspiracy. A special law was formulated, the Rawalpindi Conspiracy (Special Tribunal) Act, 1951 (1951 PLD Central Acts and Notifications 289). The culprits of the Rawalpindi Conspiracy case was sentence to imprisonment (Dryland, 1992).

#### **A. Maulvi Tamizuddin Case:**

Maulvi Tamizuddin case is very important case in the judicial and constitutional history of Pakistan. It create very bad impact upon the democratic and constitutional progress in Pakistan. It also undermine the credibility of Judiciary in the eye of public at large. Maulvi Tamizuddin was the speaker of the legislative assembly of Pakistan and then “Governor General of Pakistan Mr. Ghulam Muhammad” disbanded first legislative elected parliament of Pakistan. He challenged this proclamation through a writ petition in which Sindh Chief Court accepted unanimously his writ petition (“Maulvi Tamizuddin Khan Vs. Federation of Pakistan”, 1955).

The Government challenge the judgment of Sindh High Court in the “Federal Court of Pakistan”. The court created a bench that was consisted of five judges headed by “Chief Justice Muhammad Munir”. The “Federal Court” accepted the appeal of the Federal Government with majority of four judges while one judge A.R Cornelius write his note against the Government. The Federal Court rejected the petition of Maulvi Tamizuddin who challenging the proclamation of the Governor General (“Federation of Pakistan Vs. Maulvi Tamizuddin Khan”, 1955).

### **B. Usif Patel Case:**

After the judgment of Maulvi Tamizuddin case there was created a legal vacuum and a number of statute become invalidate as they are passing without the approval of Governor General. Emergency was imposed in Pakistan and Governor General introduced Emergency Power Ordinance IX of 1955 ("Emergency Powers Ordinance, 1955 (Ordinance IX of 1955)", 1955), for redresses the harms and to prevent the constitutional machinery. These emergency powers of Governor General were challenged before Federal court and the federal court was pleased to declare that Governor General by way of an ordinance cannot used the power to legislate the provisions of constitution of the state by himself (Usif Patel Vs. The Crown, 1955).

### **C. Dosso Case:**

The Dosso case was first filed with the "High Court of West Pakistan" and then with the "Supreme Court" for an appeal against murder. In Balochistan, the Loya Jirga (Council of elders) convict Dosso, a resident of Balochistan, for murder under the 1901 Frontier Crime Regulation (FCR 1901). Dosso's relatives challenged "Loya Jirga's" decision and its incompetency to adjudicate the matter in the High Court. High Court overturned "Loya Jirga's" decision to declare "FCR" was against the "Articles 5 and 7 of the 1956 Constitution of Pakistan". The "Federal Government" appealed against the verdict to the "Supreme Court", and the case was heard on October 13, 1958. On October 7, 1958, President Iskander Mirza declared "Martial Law", and Ayubu Khan became the "Martial Law Administrator".

This important development drew the full attention of the Dosso case, in which High Court annulled the verdict of Loya Jirga under the Constitution of 1956, which was annulled on October 7, 1958, promulgating "Martial Law Order" and the "new legal order of 10 October 1958". However, on October 27, 1958, the Supreme Court unanimously ruled against the High Court's decision, recognizing the "New Legal Order of October 10, 1958", and assuming that courts had jurisdiction to entertained appeals against federal government actions. As a result, the 1956 constitution, the country's first constitution, was repealed (The State Vs. Dosso, 1958).

### **Second Era 1962-1973**

After the "Military coup d'état of Ayub Khan" and supportive role of judiciary to validate his Military Rule on the basis of Doctrine of Necessity by Chief Justice Muhammad Munir, General Ayub Khan arrested the Iskander Mirza and exile to Great Britain where he after some time died (Khan, Constitutional and Political History of Pakistan, 2017). General Ayub Khan introduce "Constitution of Pakistan, 1962" that contain "250 articles divided into twelve parts and three schedules" with a lengthy preamble and name given to Pakistan was "The Republic of Pakistan" ("The Constitution of the Republic of Pakistan", Part I, Article 1).

Under the Constitution of 1962 judiciary was independent and there is a "Supreme Judicial Council" was formulated to impeach the judges of apex courts ("Constitution of Pakistan 1962, Article 128 & 58"). "Ayub Khan" handed over the charge of the country to General Yahya Khan in 1969, who become "Chief Martial Law Administrator" and suspended the "Constitution of 1962" ("Khan, Constitutional and Political History of Pakistan", 2017), and there is an unfortunate incident of Dacca fall happened that permanently separated East Pakistan in December 1971 (Feldman, 1975).

Some important cases of this era are as follows;

#### **A. Malik Ghulam Jilani case:**

After the Tashkent Declaration in 1966, due to fear of criticism and protest under the "Defence of Pakistan Rules and Defence of Pakistan Ordinance, 1965", the government put under detention most of the politician including Malik Ghulam Jilani and Nawabzada Nasrullah Khan. Wirt petition filed by the politicians before West Pakistan High Court were dismissed and being aggrieved of this order they filed appeal before "Supreme Court of Pakistan". The Court pleased to accept the appeal of Nawabzada Nasrullah Khan and declared his detention illegal and dismissed the appeal of Malik Ghulam Jilani. ("Malik Ghulam Jilani Vs Government of West Pakistan", 1967). The court in this case formulate that there should be reasonable grounds to detain a person and reasonable ground did not include only 'suspicion'.

#### **B. Asma Jilani Case:**

Asma Jilani case is very important and a key case in the history of Pakistan. In this decision "Supreme Court" negate the "doctrine of necessity" that was adopted in Dosso case (State Vs Dosso, 1958). In this

case a politician Malik Ghulam Jilani was detained under “Defence of Pakistan Rules and Martial Law Regulation No. 78”. A writ filed against the confinement before “Lahore High Court” was dismissed. Appeal filed against this order before “Supreme Court of Pakistan” and the Court held in its decision that assumptions were not justified and based on Objective Resolution of 1949 to declare Yahya Khan take over entirely illegal and also declare that Martial Law Regulation No. 78 illegal and without any competent authority (“Asma Jilani Vs The Government of the Punjab”, 1972).

### **Third Era 1973-2005**

Ayub Khan’s system of basic democracy created a strong sense of regionalism instead of nationalism among the masses of Pakistan even after the Dacca Fall, they don’t care about nationalism. The people did not care about nationalism because they demanded regional nationalism as “Baloch, Sindhi, Punjabi and Pakhtun” (“Islam, 2009). Thus, Zulfikar Ali Bhutto introduced the 1973 constitution. Bhutto was democratically elected but was prosecuted for various errors, such as the disbanding the Assembly of Balochistan and the suspension of the “Provincial Assembly of the North-West Frontier Province” (now the KPK) (“Khan, “Constitutional and Political History of Pakistan”, 2017). His fatal mistake was to decrease the power of the judiciary, which led to bad and undemocratic government behavior that destroyed the democratic process. After Bhutto, General Muhammad Zia-ul-Haq enforced martial law and furthered his ambitious governmental plans. Zulfikar Ali Bhutto's democratic government was cut off and the centralization of power gone to military control. Out of necessity, “General Zia-ul-Haq” was constitutionally adopted. The freedom of the judiciary was curtailed and the Provisional Constitutional Order (PCO) was introduced. Serving judges were take the new oath under the interim constitution (Dressel, 2012). In this way, a powerful military executive is strengthening his system.

A major clash broke out between judiciary and executive during the second regime of Prime Minister Nawaz Sharif. This was seen in 1997 when “Prime Minister of Pakistan Mian Muhammad Nawaz Sharif’s” government besieged the Apex Court of Pakistan to warn the Supreme Court not to hear certain set of cases against executive (Kalhan, 2013). During this period, the democratically elected Prime Minister was unable to cooperate with judiciary. The friction between the two organs of state de novo surfaced the way for martial law. In 1999 General Musharraf enforced martial law in Pakistan and expelled pro-democracy activists. He promulgated the Provisional Constitutional Order (PCO), which provides for the judges to take oath under “PCO”. Just as the previous martial law, strong co-operation among judiciary and executive was observed during this period until 2005. During the “martial law”, all the leaders of political parties were banned from Pakistan. The time was changed in Pakistan's history when “General Musharraf” appointed “Chaudhry Iftikhar Pakistan's Chief Justice (CJP) in 2005”. Following his nomination, the inferior judiciary came to the fore, and thus the military rule faced several called into questions. The judiciary defended national interest and took the initiative to restore democracy (Waseem, 2012).

Some important cases of this era are discussed below that effect upon the judicial history and help judiciary to evolve.

#### **A. Begam Nusrat Bhutto case:-**

General Muhammad Zia enforced martial law over the territory, grab the power and acting as the head of the “Martial Law Administrator”, and he also suspended constitution, disbanded the Parliament. President was assented to continue as “head of the state” and “Chief Justices of all the Provincial High Courts” were also given powers as interim governors of their relevant province.

Zulfikar Ali Bhutto along with other superior leadership of “Pakistan People’s Party” were detained. Begam Nusrat Bhutto, wife of Zulfikar Ali Bhutto called into questions the unlawful confinement of the Bhutto and other party leaders in the “Supreme Court of Pakistan” and also challenge the “validity of Martial Law Order No. 12 of 1977”, in a constitutional writ petition.

The “Supreme Court of Pakistan” pleased to dismiss the writ petition of Begam Nusrat Bhutto as not being maintainable (“Begam Nusrat Bhutto Vs Chief of Army Staff and Federation of Pakistan”, 1977). This is very important case as the judiciary of Pakistan again following the precedent because the verdict is given again on the doctrine of necessity.

#### **B. Bhutto’s case and his Execution:-**

Although Bhutto’s murder appeal was a purely matter related to criminal law but Bhutto’s case trial, its judgment and verdict in appeal before Supreme Court where his appeal is dismissed and his sentence of

death is maintain (Zulfiqar Ali Bhutto Vs The State, 1979), leave a long lasting effect upon the face of judicial and political history of Pakistan. This verdict criticize both in national and international level, and the judiciary of Pakistan has been under its cloud ever since.

**C. Muhammad Nawaz Sharif's Case:-**

On April 1993, President Ishaq Khan dissolved Mian Muhammad Nawaz Sharif's elected government and terminate the National Assembly under "Article 58(2)(b) of Constitution of 1973". Being aggrieved from this act of President then "Prime Minister Nawaz Sharif" challenge the order of disbanding assemblies before "Supreme Court of Pakistan". By accepting the petition filed by the aggrieved person the court restored the Assembly, Prime Minister and the cabinet ("Muhammad Nawaz Sharif Vs Federation of Pakistan", 1993). This verdict set a new path and have very importance in the history of Pakistan.

**D. Benazir Bhutto's Case:-**

Farooq Leghari President of Pakistan dissolved the National Assembly on 5<sup>th</sup> November 1996, this was happened second time with Benazir Bhutto when her government was dissolved. Benazir Bhutto challenged the dissolution of National Assembly before Supreme Court of Pakistan through a constitutional writ petition. Benazir Bhutto at that time had not good relation with the judiciary and there is conflict on the appointment of judge's case commonly known as the Judge's Judgment ("Al-Jehad Trust Vs Federation of Pakistan", 1996). Chief Justice of Pakistan Sajjad Ali Shah then at that time become a symbol of resistance and opposition to Benazir Bhutto's government (Khan, "A History of the Judiciary in Pakistan", 2017). Consequently the court by a majority verdict, validate the order of President for Disbanding of "National Assembly" and dismissal of "Benazir Bhutto's government" ("Benazir Bhutto Vs President of Pakistan", 1998).

**E. Musharraf Military Takeover:-**

When General Pervaiz Musharraf takeover the government and impose another Martial Law, there were a lot of petitions filed in the "Supreme Court of Pakistan" to challenge this military takeover and a full bench of twelve Judges after hearing upholds the military takeover vide judgment dated 12<sup>th</sup> of May 2000 and disposed of all the petitions. It is written in the judgment that legitimacy and validation of Musharraf government was conditional to hold elections within time (Zafar Ali Shah Vs General Pervaiz Musharraf, 2000).

**Forth Era 2005 to Onwards, Judicial Activism at its peak**

In the end of June 2005, "Iftikhar Muhammad Chaudry" become the "Chief Justice of Pakistan". After the event of 9<sup>th</sup> March 2007 of his suspension and then restoration after a long struggle with the help of Lawyer's movement in 24<sup>th</sup> of March 2009. This is the beginning of new era of sovereign and independent judiciary in Pakistan. In this era judicial activism was at its peak as the superior judiciary taken a lot of suo motu notices in the name of public interest litigation. After Iftikhar Muhammad Chaudry the suo motu notices taken by Mian Saqib Nisar when he became Chief Justice of Pakistan from 31<sup>st</sup> December 2016 to 17<sup>th</sup> of January 2019. Now the Judiciary of Pakistan is free and fair in the history of Pakistan. The "Supreme Court of Pakistan" regularly exercises its discretionary powers since the reinstatement of judges, which indicates that judges are at their peak of judicial activism during this period. In just a few years, there was a comprehensive list of cases heard by the apex courts, alluding to the excessive use of the suo motu and its original jurisdiction. Some important cases of Iftikhar Chaudry are discussed here.

**A. Privatization of Steel Mill case:-**

In 2005, the privatization process in Pakistan began under the Privatization Order of 2005. The "Pakistan Steel Mill" was privatized by a plan that was called into question by a steel mills union that had filed a petition against the government. Supreme Court of Pakistan canceled a \$ 362 million bid to privatize Pakistan Steel Mill and declared the sale against the law and illegal ("Watan Party Vs Federation of Pakistan", 2006).

**B. Provisional Constitutional Order 2007 Case:-**

On 3 November 2007, General Pervaiz Musharraf Chief of Army staff proclaimed emergency in the country and suspended statute. This act of "General Musharraf" was called into question and the "Supreme Court of Pakistan's" larger bench consisting seven members headed by Iftikhar Chaudry Chief Justice unanimously declaring this act of Musharraf illegal and against the constitution ("Sindh High Court Bar Association Vs Federation of Pakistan", 2009).

### **C. PCO Judge's case of 2009:-**

The "Supreme Court of Pakistan" declared that step whichever taken by General Musharraf on "November 3, 2007" are illegal and unconstitutional under the "Article 279 of the Constitution". The Judges who took oath under "Provisional Constitutional Order 2007" are directed to cease office as Judge and dismissed from service. There was a review filed in the "Supreme Court of Pakistan" and the same was also dismissed ("Justice Hasnat Ahmad Khan and Others Vs Federation of Pakistan/State", 2011).

### **D. National Reconciliation Ordinance 2007 case:-**

On October 5, 2007, President of Pakistan General Pervaiz Musharraf issued "National Reconciliation Ordinance, 2007 (Ordinance No. LX of 2007)" for granting the pardon to political leaders & workers and civil servants from the period of "1<sup>st</sup> January, 1986 to 12<sup>th</sup> October 1999", the time between Zia Ul Haq martial law and Musharraf martial law. There were constitutional writs filed against this ordinance and Supreme Court of Pakistan declare this ordinance as unconstitutional and illegal vide its judgment and order dated 16<sup>th</sup> December 2009 (Dr. Mobashir Hassan etc. Vs Federation of Pakistan, 2009).

### **E. Missing Persons Case:-**

It is a landmark case of the Mr. Justice Iftikhar Chaudry in which he used his power given by the constitution and suo motu taken the action against the agencies of the government who abducted persons only on whims and wishes. The Supreme Court of Pakistan held that forced disappearance is a crime against humanity and the court also condemned the state for abusing its power to abduct unlawfully its citizens without any legal justification and ordered to release such missing persons ("Human Rights Case No.29388-K of 2013", 2014).

### **F. Contempt of Court case & Disqualification of Prime Minister:-**

"Supreme Court of Pakistan" directed the Prime Minister to re-open the cases of corruption against the leadership of "Pakistan People's Party" but Prime Minister Yousaf Raza Gillani did not act upon the direction given by the "Supreme Court". The Court convict him for violation of the "Article 63(1) (g) of Constitution of Pakistan" for contempt of court and gave him symbolic punishment "till rising of the court", a sentence ended within "30 seconds". Prime Minister Yousaf Raza Gillani was disqualified from the office of the "Prime Minister" as well as membership of the Parliament from the date of the verdict i.e 26<sup>th</sup> of April 2012 ("Criminal Original Petition No. 06 of 2012 in Suo Motu Case No. 04 of 2010", 2012).

## **CHIEF JUSTICE SAQIB NISAR ERA**

The Honorable Justice Mian Saqib Nisar was born on January 18, 1954 in Lahore. He received his "Matriculation degree from Cathedral High School in Lahore" and graduated from "Government College Lahore". He then done his LLB from the "University of Punjab in 1979-80", after which he became a lawyer. He was registered as an advocate high court in 1982 and as a respected "Supreme Court advocate of Pakistan in 1994". He was subsequently promoted to "Judge of the High Court of Lahore on 22-05-1998" and to a "Judge of the Supreme Court of Pakistan on 18-02-2010". His Excellency was taken oath as "Chief Justice of Pakistan on 31.12.2016" (Pakistan, 2016).

He dealt with "Civil, Commercial, Tax and Constitutional Law" and appeared in many important constitutional cases before the "High Courts and the Supreme Court". He was elected "Secretary General of the Lahore High Court Bar Association" in 1991. On March 29, 1997, he was appointed "Secretary of Federal Law" (Pakistan, 2016).

Justice Mian Saqib Nisar was a member of the "delegation representing Pakistan at the 1973 International Youth Conference in Tripoli, Libya". He represented Pakistan at the "International Conference, Pakistan and India in Fifty held in Wilton Park, United Kingdom". He led the Pakistani delegation to the Philippine Ministerial Conference on Transitional Crimes in the Asian Region and the Pakistani Human Rights Delegation to Switzerland. In "February 2009, under the auspices of the Pakistani community and in collaboration with the Norwegian Ministry of Foreign Affairs", he attended a conference on "Islam and Democracy" in Oslo, Norway, and gave a presentation on "The Role of Courts in an Islamic democratic society." He also continued as a part-time lecturer at 'Punjab Law College and Pakistan College of Law', where he taught "civil procedure and constitutional law" (Pakistan, 2016).

"Justice Nisar" began his career as a judge on May 22, 1998, when he was uplifted as "Judge of the High Court of Lahore". He was later took oath after the military coup in 2000 under the "Provisional

Constitutional Order (PCO)", but refused to take oath as a judge during "PCO in November 2007". On 18 February 2010, he was uplifted to the "Supreme Court" and he took oath as "Chief Justice of Pakistan on December 31, 2016 and retired on January 17, 2019". His career as a Supreme Court judge can be divided into several stages.

This was probably the first time in Pakistani history that the "Chief Justice of Pakistan" also heard cases over the weekend. His main priorities were "Water, Health, Education and Population control". The Chief Justice Saqib Nisar also conducted unique proceedings on issues of public interest in the "Lahore Registry". "Justice Nisar" not only handles cases of public importance but also inspected various hospitals, prisons, etc. He also launched a movement to raise money to build dams. In spite of distrusts, people praise him for raising the problem of water scarcity in Pakistan (Yahya, 2019).

It is well established that his "judicial activism" has eclipsed his preceding executive and parliamentary taking aside, which was characterized by "judicial restraint". He believed in constitutional judicial supremacy. He was skeptical of public interest requirements under "Article 184 (3) of the Constitution", but became a strong promoter of the exercise of suo motu power. It was clear that he was strict with politicians, the media and senior officials. However, he did not notice a significant change in his orientation towards the military rule. Therefore, one sect blamed him of sobbing civilian sovereignty. But the second sect is believed to expose the corruption of the political elite.

Far from foregoing "Chief Justice of Pakistan Iftikhar Muhammad Chaudhry", who called into question "General Pervez Musharraf" and wrangle against the executive, addressing very important issues such as the declaring against the constitution of the "National Reconciliation Order (NRO)", the cases of "missing persons and the Memogate scandal", "Chief Justice Nisar" solved a number of issues of greater public interest, keeping him ahead of Chief Justices in recent times.

The other matter that "Justice Nisar" handled during his apparently industrious sphere was the "Water Crisis". No doubt water reservoirs of Pakistan are running low and research has set alarm bells ringing - and sadly no one noticed. Justice Nisar not only popularized water disputes with his speeches, but also aided to create a fund for construction of a dam. In addition to urging Pakistanis to contribute to the fund by way of a large-scale television commercial, Chief Justice also traveled to England for a dinner to fund raising. After criticizing that such cases did not fall under the jurisdiction of the judiciary, Justice Nisar threatened to thwart opponents of the dam construction under Article 6 of the Constitution that is high treason (Tanveer, 2019).

With such like praise for "Justice Nisar", he was described as a popular judge who would do anything to keep him a savior but avoid restructuring his field judiciary. The result is that, there was a number of cases pending before the Supreme Court has increased from about "38 thousand in 2017 to more than 40 thousand by the end of 2018". Moreover, the number of cases adjudicating before the lower court is rapidly reaching millions. They also claim that, despite having worked as a Chief Justice for more than two years, he did not improve the judiciary and instead used "Suo-Motu", convulsingly that it was a panacea (Tanveer, 2019).

Mr. Justice Saqib Nisar era always remember because of his suo motu notices that was taken on the pretext of public interest litigation. Justice Nisar not only interfere in the executive domain but also disturb political leaders through its controversial verdicts. Here are some of the important cases discussed that were decided by him.

## CONCLUSION

Judicial activism has easily found its place in societies where governments are weak. Another feature of Pakistani judicial history is judicial activism. Suo Motu is useful in societies where government agencies are largely non-functional or undemonstrative to public stipulations. The reason is that; The Pakistani masses admire the Supreme Court when it finds public interest litigation under the Suo Motu power. People welcomed the Supreme Court's rulings in direct aid cases such as forced labor, cases of inhumane reception in prisons, "NICL fraud, kite flying, Hajj corruption, ephedrine scams and missing persons", and so on many other cases.

Sometimes, however, the Supreme Court going beyond its limits by stepped in affairs that do not fall within its domain. Valuable time of courts are wasted as they did not achieve the desired results. The

court's attempt to bring sugar, oil and electricity prices under control failed. The priority of cases before the Supreme Court is a concern. For example, the court ignored Asghar Khan's case about ISI financing. During this research, no example has been found prior to the present gesture of "judicial activism" that would justify the expansion of the public interest litigation to include political and legislative issues in its scope. Pakistan's current political and bureaucratic environment is well tackle by the Justice Saqib Nisar era.

The transition to democracy in the post-Mucharrar era gives the development of an unprecedented institutionalization. Democratic change can make democracy more legitimate. The role of the judiciary in this transformation is inevitable and revolves around two perspectives: extreme government interference, which poses a potential threat to democracy, highly independent judiciary can help institutions comply with the law. In the light of past experience, the best way to express independence can be changed and used against weak governments. To strengthen democracy, Pakistan needs permanent representation with strong governments to prevent sweeping reforms.

## REFERENCES

- Pakistan Muslim League Vs Federation, PLD 2007 SC 642 (Supreme Court of Pakistan 2007).  
"Al-Jehad Trust Vs Federation of Pakistan", PLD 1996 SC 324 (Supreme Court of Pakistan 1996).  
"Asma Jilani Vs The Government of the Punjab", PLD 1972 SC 139 (Supreme Court of Pakistan 1972).  
"Begam Nusrat Bhutto Vs Chief of Army Staff and Federation of Pakistan", PLD 1977 SC 657 (Supreme Court of Pakistan 1977).  
"Benazir Bhutto Vs President of Pakistan", PLD 1998 SC 388 (Supreme Court of Pakistan 1998).  
"Constitution of Pakistan 1962, Article 128 & 58". (n.d.).  
"Criminal Original Petition No. 06 of 2012 in Suo Motu Case No. 04 of 2010", PLD 2012 SC 553 (Supreme Court of Pakistan April 26, 2012).  
"Emergency Powers Ordinance, 1955 (Ordinance IX of 1955)", PLD 1955 Central Acts and Notification (1955).  
"Federation of Pakistan Vs. Maulvi Tamizuddin Khan", PLD 1955 FC 240 (Federal Court of Pakistan March 21, 1955).  
"Human Rights Case No.29388-K of 2013", PLD 2014 SC 305 (Supreme Court of Pakistan 2014).  
"Islam, D. M. (2009). "CHALLENGES OF NATION-BUILDING IN PAKISTAN AND BANGLADESH: QUEST FOR A CRISIS MANAGEMENT". *The Journal of Political Science*, 52-71.  
"Islamic Republic of Pakistan Vs Abdul Wali Khan", PLD 1976 SC 57 (Supreme Court of Pakistan 1976).  
"Justice Hasnat Ahmad Khan and Others Vs Federation of Pakistan/State", PLD 2011SC 680 (Supreme Court of Pakistan 2011).  
"Kelsen, H. (1945). *General Theory of Law and State*". Cambridge: Harvard University Press.  
"Khan, H. (2017). *A History of The Judiciary in Pakistan*". Karachi: OXFORD University Press.  
"Malik Ghulam Jilani Vs Government of West Pakistan", PLD 1967 SC 373 (Supreme Court of Pakistan 1967).  
"Maulvi Tamizuddin Khan Vs. Federation of Pakistan", PLD 1955 Sindh 96 (Sindh Chief Court 1955).  
"Muhammad Nawaz Sharif Vs Federation of Pakistan", PLD 1993 SC 473 (Supreme Court of Pakistan May 26, 1993).  
"Mumbai Kamgar Sabha v. M/S Abdullah Bhai", 1976 AIR SC 1455 (Supreme Court of India 1976).  
"Pakistan Lawyers Forum Vs Federation of Pakistan", PLD 2005 SC 719 (Supreme Court of Pakistan 2005).  
"Sindh High Court Bar Association Vs Federation of Pakistan", PLD 2009 SC 879 (Supreme Court of Pakistan 2009).  
"*The Constitution of The Islamic Republic of Pakistan*". (1973). Islamabad: National Assembly of Pakistan.  
"The Constitution of the Republic of Pakistan", Part I, Article 1, PLD 1956 Central Acts and Notifications 54.  
"Watan Party Vs Federation of Pakistan", PLD 2006 SC 697 (Supreme Court of Pakistan 2006).  
"Wukala Mahaz Barai Tahafz-e-Dastoor Vs Federation of Pakistan", PLD 1998 SC 1263 (Supreme Court of Pakistan 1998).  
1951 PLD Central Acts and Notifications 289. (n.d.).

- (2020, December 12). Retrieved from <https://theconversation.com>: <https://theconversation.com/pakistans-activist-supreme-court-endangers-a-fragile-democracy-91896>
- Abul ala Maududi Vs. Government of West Pakistan, PLD 1964 SC 673 (Supreme Court of Pakistan 1964).
- Ali, S. (2018). Images of Judicial Activism in Pakistan: The representation of Superior Judiciary in National English Dailies. *Journal of Research and Reviews in Social Sciences Pakistan*, 1 (2), 212-223.
- Awan, M. R. (2014, July). Judicial Activism in Pakistan in Commercial and Constitutional matters: Let justice be done though the heaven fall. *Journal of International Criminal Justice Research*, 1, 1-28.
- Bryan, G. A. (2002). *Black's Law Dictionary* (7th ed.). St. Poul: West Group Publication.
- Corruption in Rental power plants, C.M.As.NOs.3685-3686 of 2012 in HRC No.7734-G of 2009 (Supreme Court of Pakistan January 31, 2013).
- Dr. Mobashir Hassan etc. Vs Federation of Pakistan, PLD 2010 SC 265 (Supreme Court of Pakistan December 16, 2009).
- Dressel, B. (2012). *The Judicialization of Politics in South Asia*. Canada: Routledge Publishers.
- Dryland, E. (1992). FAIZ AHMED FAIZ AND THE RAWALPINDI CONSPIRACY CASE. *Journal of South Asian Literature*, 175-185.
- eds., M. T. (2015). *"Unstable Constitutionalism: Law and Politics in South Asia"*. New York: Cambridge University Press.
- Feldman, H. (1975). *The End and the Beginning Pakistan 1969-1971*. London: Oxford University Press.
- III", ". R. (2011). *"The myth of Judicial Activism"*. New Dehli: Universal Law Publishing Co. Pvt. Ltd.
- India, C. o. (1950). *Constitution of India*. New Dehli: Government of India. Retrieved September 11, 2021, from <https://www.india.gov.in/my-government/constitution-india>
- India, C. o. (1950). *Constitution of India*. New Dehli: Government of India. Retrieved September 11, 2021, from <https://www.india.gov.in/my-government/constitution-india>
- Kalhan, A. (2013, January). "Gray Zone" Constitutionalism and the Dilemma of Judicial Independence in Pakistan. *Vanderbilt Journal of Transnational Law*, 46(1), 44-60.
- Khalid, I. (2012). Role of Judiciary in the evolution of democracy in Pakistan. *Journal of Political Studies*, 19(2), 125-142.
- Khan", ". (2017). *"A History of the Judiciary in Pakistan"*. Karachi: Oxford University Press.
- Khan, H. (2017). *Constitutional and Political History of Pakistan* (Third Edition ed.). Karachi: Oxford University Press.
- Khawaja Tariq Rahim Vs Federation of Pakistan, PLD 1992 SC 646 (Supreme Court of Pakistan 1992).
- Kishwar Munir, I. K. (2018, July-December). Judicial Activism in Pakistan: A Case study of Supreme Court Judgments 2008-2013. *South Asian Studies*, 33, 321-334.
- Law, M.-W. D. (2021, September 8). <https://www.merriam-webster.com/legal/judicial%20activism>. Retrieved from <https://www.merriam-webster.com>: <https://www.merriam-webster.com/legal/judicial%20activism>
- Mr Kanyinke Sena, J. E. (n.d.). The Role of the Judiciary in nation building: Lessons from rebuilding Native Nations in the United States of America. Retrieved september 12, 2021, from <https://www.academia.edu/9755931>
- Munir, B. (2018, January 29). CONSTITUTIONALISM AND THE DILEMMA OF JUDICIAL AUTONOMY IN PAKISTAN: A CRITICAL ANALYSIS. *CONSTITUTIONALISM AND THE DILEMMA OF JUDICIAL AUTONOMY IN PAKISTAN: A CRITICAL ANALYSIS*. Islamabad, Pakistan: International Islamic University.
- Pakistan, S. C. (2016, December 31). <http://www.supremecourt.gov.pk>. Retrieved September 20, 2021, from <http://www.supremecourt.gov.pk>: <http://www.supremecourt.gov.pk/web/page.asp?id=1873>
- Reference by the His Excellency, PLD 1955 FC 435 (Federal Court of Pakistan 1955).
- Sabir Shah Vs Federation of Pakistan, PLD 1994 SC 738 (Supreme Court of Pakistan 1994).
- Sadaf Farooq, A. R. (2016). Independent Judiciary and its Role in National-Building: A case study of Pakistan. *Gloobal regional Review GRR*, 1, 99-115.
- Sh. Liaqat Hussain Vs Federation of Pakistan, PLD 1999 SC 1026 (Supreme Court of Pakistan 1999).

- Shabbir, S. S. (2013, January 31). *SSRN*. Retrieved February 2, 2021, from [https://papers.ssrn.com/https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2209067](https://papers.ssrn.com/https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2209067)
- State Vs Dosso, PLD 1958 SC 533 (Supreme Court of Pakistan 1958).
- Tamizuddin Ahmad Vs. Government of East Pakistan, PLD 1964 Dacca 795 (Dacca High Court 1964).
- Tanveer, A. (2019, January 17). The Age of Nisar: How Pakistan's celebrity chief justice chose activism over judiciary. Retrieved September 20, 2021, from <https://theprint.in/opinion/the-age-of-nisar-how-pakistans-celebrity-chief-justice-chose-activism-over-judiciary/179140/>
- The State Vs. Dosso, PLD 1958 SC 533 (Supreme Court of Pakistan October 27, 1958).
- Usif Patel Vs. The Crown, PLD 1955 SC 387 (Federal Court of Pakistan April 13, 1955).
- Waseem, M. (2012). Judging Democracy in Pakistan: Conflict between the Executive and Judiciary. *Contemporary South Asia*, 20(1), 51-66.
- West Pakistan Universities (Amendment) Ordinance, 1962 ( Ordinance XL of 1962), PLD 1962 West Pakistan Statute 354.
- Yahya, I. (2019, January 17). *The 'populist era' of Chief Justice Mian Saqib Nisar comes to an end*. Retrieved September 19, 2021, from <https://tribune.com.pk/https://tribune.com.pk/story/1889968/cjp-mian-saqib-nisar-retires-today>
- Zafar Ali Shah Vs General Pervaiz Musharraf, PLD 2000 SC 869 (Supreme Court of Pakistan 2000).
- Ziring, L. (2001). *Pakistan in the Twentieth Century A Political History*. Karachi: Oxford University Press.
- Zulfiqar Ali Bhutto Vs The State, PLD 1979 SC 53 (Supreme Court of Pakistan 1979).