

## **Assault on Independence of Judiciary in a Federal State: A Study of Musharraf Era (1999–2004)**

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### **Abstract:**

*Independence of judiciary is a hallmark of a civilized society and salient feature of the modern state-craft. Independent and impartial judiciary is indispensable for endurance of a federal state as it ensures strict adherence to the constitution by all state organs and central and provincial governments. Only an independent and impartial judiciary can: uphold the constitution; safeguard the powers of provinces against encroachment by central government; defend the fundamental rights of citizens, and; keep check on exercise of powers by other state institutions mainly the executive. The independence of judiciary in a multi-ethnic and multi-cultural federal state such as Pakistan is imperative for its endurance, besides interprovincial harmony and good centre-province relations. Despotic governments cannot tolerate the independent and impartial judiciary. In order to advance their personal goals and undemocratic agenda, military rulers in Pakistan have generally targeted the superior judiciary by depriving it of its independence, self-esteem, integrity, and impartiality. In this context, the paper examines as how the military regime under Pervaiz Musharraf assaulted on the independence of the superior judiciary and undermined the supremacy of, and tempered with, the constitution of Pakistan.*

**Key Words:** Judiciary, independence, military, constitution, assault, coup.

### **Introduction**

Independence of judiciary has become a hallmark of a civilized society and salient feature of the modern state-craft. Its independence and impartiality has become an indispensable element of a federal state which reconcile the conflicting desire of creating unity while retaining diversity and identity among participating units. The constituent units entrust the central government powers and functions necessary to pursue the common interests and goals and retain autonomy in other areas. The powers and functions of the central government and federating units are

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clearly defined and elaborated in a written and rigid constitution that provides an equal status and authority to all participating units. The federal arrangement also provides for “an armory of safeguards” to protect the powers, authority, identity and interests of constituent units. Meanwhile, the written constitution guarantees the fundamental human rights of the citizens. The federal state also provides for separation of powers among various branches of the government to create a system of checks and balances and to curtail the predisposition of despotism among those in authority. The federal arrangements are characterized by non-centralization, division and separation of powers guaranteed in written and rigid constitutions, an independent and impartial judiciary and will to unity while maintaining separate identity and territorial integrity of constituent units.<sup>1</sup>

Independent and impartial judiciary holds the key of protecting and preserving the constitution that binds constituent units together like a written covenant, and hence it guarantees the survival of a federation. An attack on independence of judiciary can, thus, be regarded as an assault on the federation itself. Nonetheless, the judiciary has to play a decisive and pivotal role in three key areas: a) to safeguard the powers of constituent units or provinces for endurance and smooth functioning of a federation; b) to uphold the supremacy of the constitution and to defend the fundamental rights of citizens, and c) to keep an eye on the powers exercised by other government organs. Only an independent, vibrant and impartial judiciary can play this vital task.

Pakistan is a federal state with four constituent units or provinces namely Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan besides centrally administered territories including Islamabad capital territory (ICT), Federally Administered Tribal Areas (FATA) and Federally Administered Northern Areas (FANA), now renamed as Gilgit–Baltistan. Pakistan has a written and relatively rigid constitution that provides for the basic structure of the state. It elaborately and clearly defines and divides the functions and powers of central and provincial government and also provides for separation of powers among three distinct branches of the government, namely, executive, judiciary and legislature. In the context of Pakistan being a multi–ethnic and multi–cultural federal state, its judiciary is expected to play highly important role. Notwithstanding these expectations, the record of Pakistan’s judiciary has generally been not been exemplary. Mostly, it was assaulted and deprived of its independence by the military or civilian rulers throughout Pakistan’s history. Occasionally, those on the whelm of affairs in the superior judiciary also chose, by intention or compulsion, a submissive role for

themselves and the institution as a whole for the sake of personal motives and vested interests.

Despotic governments cannot tolerate the independent and impartial judiciary. In order to advance their personal goals and undemocratic agenda, military rulers in Pakistan have generally targeted the superior judiciary by depriving it of its independence, self-esteem, integrity, and impartiality. A judiciary subservient to the executive and deprived of its independence cannot protect the citizens' fundamental rights, safeguard the power of the federating units and keep a check and balance on the powers exercised by other government institutions. Thus, the military rulers also assaulted on the federation of Pakistan or risked its survival by jeopardizing independence of its judiciary. It was probably one of the reasons that caused disintegration of Pakistan in 1971 and, later on, undermined country's federal structure exemplified by tensions in centre-province relations and deterioration of interprovincial harmony. In this context, it becomes imperative to explore as how military government of Pervaiz Musharraf treated the judiciary.

This paper aims to investigate as to how the military regime under Pervaiz Musharraf assaulted on the independence of the superior judiciary by relegating it to a subservient role and undermined the supremacy of, and tempered with, the constitution of Pakistan. The paper has been divided into four sections. First section introduces the problem under investigation, and; second one provides the conceptual framework. Third section gives an account of the encroachment by the Musharraf government into the constitution of Pakistan and curtailment of the independence of judiciary. The study will, however, cover only first five years of Musharraf regime, i.e. from 1999 to 2004. Fourth section will conclude the paper.

### **Conceptual Framework**

The supremacy of constitution and independence of judiciary are the hallmark of a democratic state and guarantors of the rights of its citizens. The constitution describes and gives civil and political rights to its people while judiciary protects and defends their liberties from violations by the government officials. J. S. Mill had long said that presence of representative institutions and constitutional government were the crucial conditions for protection of political liberties. In absence of a constitutional government, human rights situation becomes miserable. As Montesquieu had pointed out, political liberty could only exist "under a government by law, [and] never under despotism or the rule of men." Liberties prevail where there is no abuse of power. To prevent abuse of power by a government required "from the very nature

of things that power should be a check to power.” This can be made possible by separation of powers or a system of checks and balances that restricts the power of each government branch. In case of violation of a law, Montesquieu maintained, other branches of the government can apply law in accordance with the constitutional powers against the officials who “usurp powers” or “act unconstitutionally.”<sup>2</sup>

### **Assaults on Independence of Judiciary**

Musharraf came to power in a military coup after he was dismissed as Chief of Army Staff (COAS) by the civilian Prime Minister Nawaz Sharif on October 12, 1999. The decision was made due to the differences that had emerged between the civilian government and the military leadership on the Kargil crises, “an enterprise” which General Musharraf reportedly undertook without Sharif’s “consent or knowledge.”<sup>3</sup> During the coup, the military arrested many leaders of the then ruling Pakistan Muslim League–Nawaz (PML–N). Those arrested also included the democratically elected Prime Minister Nawaz Sharif, and his family members and close aides, who were kept them in its custody for many months without being charged.<sup>4</sup> On October 14, 1999, the military government declared a state of emergency in the country and suspended Pakistan’s Constitution and the National Assembly.<sup>5</sup> The statement said, “The Constitution of the Islamic Republic of Pakistan shall remain in abeyance,” and all federal and provincial ministers besides governors and chief ministers of four provinces “shall cease to hold office.” The statement further stated that General Musharraf would assume responsibilities as country’s Chief Executive, while President Rafiq Tarar would continue to hold his office. The regime issued “the Provisional Constitution Order” (PCO), which said: “No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the chief executive or any authority designated by the chief executive.” It further said: “No court, tribunal or other authority shall call or permit to be called in question the proclamation of emergency on the 14th day of October 1999 or any order made in pursuance thereof.” However, the military government clarified that fundamental rights that did not contradict “the state of emergency proclamation” would remain in force.<sup>6</sup> The military leadership assured the then Chief Justice of Pakistan (CJP), Justice Saiduzzaman Siddiqui, that the judiciary could continue to function under the constitution and the regime would not interfere with its independence.<sup>7</sup>

### **Quest to make Judiciary Subservient of Military Government**

After usurping powers, Musharraf ventured to make judiciary completely subservient of the military rule. He severely damaged the freedom of the judiciary when he ordered the judges of the Supreme Court of Pakistan

(SCP), Federal Shariah Court, and all four High Courts to take a fresh oath under PCO. Under this order, government ordinances, orders and directives promulgated under the PCO were no longer subject to judicial examination.<sup>8</sup> The government had made the decision days before SCP was due to start hearings on the petitions under which petitioner had challenged the legitimacy of the army coup. The government was concerned that judges were being “bribed” to rule against it.<sup>9</sup> Reportedly, on the evening of 25<sup>th</sup> January 2000, Musharraf summoned the then CJP, justice Siddiqui and told him to take a fresh oath under PCO, which the latter repudiated. Later on, Interior Minister, Moin-ud-Din Haider along with two generals met justice Siddiqui at his residence and asked him “to reconsider his decision,” but he once again refused. Early next morning, an army colonel came at CJP’s residence and informed him to not go to SCP that day. The security personnel closed the area around his residence and did not allow anyone to enter or leave the CJP residence. The government forced CJP along with five other judges of SCP and nine of the High Courts to resign. However, 85 percent judges agreed to take new oath and continued to “serve” the country under military government. Four months later, “quiescent Supreme Court” led by new CJP, justice Irshad Hassan Khan, validated the coup under the “law of necessity” and set a three-year limit – starting from October 12, 1999 – for the full return of democratic rule.<sup>10</sup>

#### **Attack on the Office of the President and the Senate of Pakistan**

Musharraf continued to play with the law and constitution of Pakistan in his bid to concentrate all powers around him. He unconstitutionally and illegally declared himself as President of Pakistan and then used all possible unfair means to legitimize his position. He even did not bother to respect the provisions of his own promulgated PCO which had provided, “The President of Pakistan shall continue in office.”<sup>11</sup> In June 2001, Musharraf issued a decree amending the so called PCO and “threw out” the constitutionally and democratically elected President of Pakistan. After ousting Rafiq Tarar, he elevated himself as President. Meanwhile, he also dissolved the senate. SCP in its verdict in March 2000 had allowed Musharraf to make “necessary” amendments in the Constitution to carry through the “business of governance” without disturbing its “salient features.”<sup>12</sup> But he violated both the Constitution and the ruling of SCP by ousting President Tarar in a way and “for reasons not provided for” in the Constitution, and also by elevating himself as President and by dissolving the Senate of Pakistan. Senate being a permanent body under the Constitution was not subject to dissolution.<sup>13</sup> Reportedly, the government had asked Tarar to resign in order to pave the way for Musharraf to elevate himself as President.

However, Tarar had refused to oblige Musharraf and faced unconstitutional removal from the office. Meanwhile, Musharraf was successful to persuade the CJP, Justice Irshad Hassan Khan, to cooperate with him. Reportedly, Musharraf had also “kept ready another decree” regarding dismissal of CJP and appointment of a “compliant successor” in case he had refused to swear him in. But CJP was “more than willing” and sworn him in as President at Aiwan-e-Sadar. Apparently, Musharraf had taken this decision to signal New Delhi through his “self-elevation” before Agra summit that he was in “total control” of the situation in Pakistan.<sup>14</sup>

### **Referendum Ploy and Election to the Office of the President of Pakistan**

In order to retain his position as President, Musharraf also played a referendum ploy. According to reports, the regime had spent huge public funds on the referendum campaign and it compelled government officials including teachers and students to participate in rallies to be addressed by Musharraf. It also forcibly used public and private transport for the purpose. On the evening of 30th April 2002, the official media announced a “huge victory” for the President.<sup>15</sup> There were reports of massive irregularities in the referendum whose facts and figures were also exaggerated by the officials. Impartial observers had reported massive fraud, rigging and intimidation in the referendum.<sup>16</sup> Musharraf had to accept it and apologize for these “irregularities” during a nationwide television speech on 10<sup>th</sup> of July 2002.<sup>17</sup>

Musharraf government had deprived judiciary of its independence to the extent that the latter found itself incapable of giving decisions on important constitutional issues. The decision of SCP on the issue of referendum is worth quoting. Petitioners had challenged the referendum before SCP but it declined to grant a judgment on the question if the election of the President by means of a referendum was lawful or otherwise. SCP made the observation that it “cannot anticipate the course of future events.” Although, there was a stipulation in the Constitution to hold a referendum on any subject of national importance, but it surely did not mean for the use to elect President of the republic – for which the rules and procedures are clearly prescribed. The court held that “the Chief Executive / President had not acted under Article 48(6) of the Constitution to hold a referendum but had promulgated the referendum order in pursuance of the Proclamation of Emergency and the Provisional Constitution Order No. 1 of 1999.”<sup>18</sup> (Reddy, 2002–b). However, most of political parties, media and independent observers had widely condemned the referendum ploy and termed it unlawful and unconstitutional.

**Amendment in the Constitution and Legal Framework Order**

Musharraf's drive against the rule of law got a new impetus when he tried to legitimize all of his acts including military coup, and decrees issued after October 1999. On 21<sup>st</sup> August 2002, Musharraf, in a press conference, announced a legal package known as Legal Framework Order (LFO), under which he declared, "I hereby make it part of the Constitution under the powers vested in me by the Supreme Court and it is now the Constitution." When Musharraf was told that under the Constitution only the parliament was empowered to amend the Constitution and SCP was not authorized to give him such powers, he replied, "Let those who disagree go to court."<sup>19</sup> Interestingly, he was referring to the courts whose judges had already sworn allegiance to him under PCO. Under LFO, Article 270-A was incorporated in the suspended Constitution in order to validate all the acts done by the military government and the laws it had promulgated since army had taken over of the country. The LFO provided that "no suits, prosecution or other legal proceedings will stand in any court against any authority or any person for or on account of or in respect of any order made since October 12, 1999." Under the LFO, Musharraf also extended his term as COAS and President for another term of five years.<sup>20</sup> On 16<sup>th</sup> November 2002, about two hours prior to the opening session of the newly elected national assembly, Musharraf took a "fresh oath" of the office as President of Pakistan, for another term of five years. This oath was administered under the combination of the LFO and 1973 Constitution.<sup>21</sup>

Musharraf significantly changed the main features of the constitution under LFO. Under the amendments made in the suspended constitution through LFO, Musharraf, as President of Pakistan, was empowered to dissolve the national and provincial assemblies at his discretion. Furthermore, he was to chair newly formed National Security Council (NSC), comprising of all the services chiefs along with elected representatives,<sup>22</sup> to make certain that the federal and provincial governments and assemblies do not act against "national interest." Critics argued that such an unconstitutional body would undermine the supremacy of the Parliament.<sup>23</sup>

Musharraf government had not fully restored the constitution even after the general elections held on October 10, 2002. Since 12th October 1999, Musharraf regime had kept more than 70 articles of the constitution suspended, which were not completely resorted even after the civilian government had been formed in 2002.<sup>24</sup> These articles also included the one which makes government servants ineligible for the office of the President. Musharraf was not an ordinary President, because he also had the cap of the COAS. These measures severely undermined

the process of transition to democracy which was the only purpose of the general elections.<sup>25</sup> At the time of taking oath in the national assembly, the parliamentarians from the opposition parties protested on LFO and refused to swear their allegiance under it. They were, however, assured by Elahi Bukhsh Soomro, who was then presiding the house being speaker of the former assembly, that the LFO was not part of the constitution under which they were being sworn in.<sup>26</sup> As a result of “one of the most regulated” general elections, a hung parliament came into being which made formation of government a difficult task. However, after several weeks of intrigues, king’s party was able to make a coalition government only when several members of Pakistan Peoples Party (PPP) were defected through intimidation by government agencies. But sooner, the parliament came to a standstill and opposition parties staged regular protests and walks out over LFO issue. After months of talks and deliberations, ruling Pakistan Muslim League–Quad-e-Azam (PML-Q) and opposition parties allied under the Muttahida Majlis-i-Amal (MMA) reached to an agreement on LFO. They agreed on the 17<sup>th</sup> amendment in the constitution, through incorporating (and legitimizing) LFO with certain changes proposed by MMA. According to the agreement, Musharraf was to relinquish as COAS by 31<sup>st</sup> December 2004. After the agreement, Musharraf himself had promised in his broadcast address to the nation that he would relinquish his uniform by the agreed date. Musharraf was to get vote of confidence from the members of senate as well as those of national and four provincial assemblies. However, parliamentarians from MMA were not “bound” to give him a vote of confidence.<sup>27</sup> On 1<sup>st</sup> January 2004, Musharraf got the required vote of confidence from the parliament, securing 658 votes including those from some members of PPP and MMA. Only a single vote – cast by Senator Sajid Mir – came against him. On the occasion, 175 parliamentarians from MMA abstained and 336 members of other parties were absent.<sup>28</sup>

Musharraf did not honour his own words and sooner reneged the promises made to MMA and the nation as a whole. According to the agreement reached on LFO between government and MMA, article 63(1) (d) of the Constitution would become effectual from December 31, 2004. The said article of the constitution provided that no person could occupy two or more public offices at the same time. But Musharraf’s thirst for absolute powers led him to renege his promise made to the nation on issue of uniform. Sooner on his will, President Secretariat sponsored a campaign in which various political and social groups with no public support demanded Musharraf to retain both the offices. (Mir, 2004). Similarly, provincial assemblies of Punjab and Sind, both dominated by king’s parties, adopted resolutions requesting President to not leave the



office of COAS in the “supreme national interest.” Musharraf followed the suit by taking the position that national interest demanded him to remain as COAS.<sup>29</sup> Meanwhile, parliament passed a bill “allowing President General Pervez Musharraf to simultaneously hold the offices of president and chief of army staff (COAS) beyond December 31, 2004.” Acting President Mohammad Mian Soomro signed the “President to Hold another Office Bill” into law, when Musharraf was abroad. It gave Musharraf an excuse to renege his promise to take off his uniform.<sup>30</sup>

### **Humiliation of Judiciary after Appeasement**

Musharraf government continued to interfere with the independence and integrity of judiciary either through intimidation or seduction. However, both these moves ultimately undermined the integrity of judges and humiliated the judiciary. For instance, the government had elevated three judges of Lahore High Court (LHC) to SCP in violation of the principle of seniority, a rule already settled by SCP in the al-Jihad Trust and Malik Asad Ali cases. These judges included: Justice Faqir Muhammad Khokhar, Justice Nawaz Abbasi and Justice Khalil-ur-Rehman Ramday. Pakistan Bar Council (PBC), the highest representative body of lawyers, in its emergency meeting on 27<sup>th</sup> January 2002, condemned the decision. Later on, it filed a petition in SCP challenging these appointments and seeking to declare them void and unconstitutional.<sup>31</sup> On January 02, 2003 the Supreme Court Bar Association (SCBA) demanded the superior courts’ judges to take fresh oath under the Constitution to evade a constitutional crisis. Just two days later, the government in order to appease judiciary, gave under the LFO three years extension in upper age limit for superannuation of the judges of SCP and the High Courts. PBC refused to accept LFO as a part of the constitution and called the increase in the retirement age of judges as a “dubious gift from the military rulers to the judiciary.” The representative bodies of lawyers as well as political parties demanded judges not to accept the extension in their service and to get retirement on respective dates of their superannuation as prescribed in the 1973 Constitution. The leaders of the bar councils also demanded the parliament to reject the decrees issued by military rulers which were aimed to “undermine parliamentary form of the government, process of presidential election and independence of judiciary.” Judges had left the decision to the government but they had to face humiliation.<sup>32</sup> On 31<sup>st</sup> December 2003, the President approved the 17th Constitutional Amendment Bill, making it a law. Accordingly, the amendment, made through LFO in the Constitution, to increase the upper age limits of judges for retirement were undone. Resultantly, 10 judges of the superior courts stood retired in a disgraceful manner on Dec. 31, 2003, including

CJP, Justice Shaikh Riaz Ahmad, who was substituted by Justice Nazim Hussain Siddiqui. The other judges included: Justice Munir A. Sheikh and Justice Qazi Mohammad Farooq of SCP; Justice Karamat Nazir Bhandari of LHC (and ad hoc judge of SCP); Justice Raja Mohammad Sabir of LHC; Justice M. Roshan Essani, Justice S. Ahmad Sarwana, Justice Mohammad Ashraf Leghari, and Justice Zahid Kurban Alavi of Sind High Court; and Justice Abdur Rauf Khan Lughmani of Peshawar High Court.<sup>33</sup>

### **Judiciary without Credibility**

Musharraf government made the superior judiciary completely subservient to its dictatorial rule due to which the latter lost its credibility and trust before the people of Pakistan. The SCBA in a statement expressed its lack of trust on the judiciary. It had stated that arguing a case before the superior judiciary was useless because “it had ceased to be independent.” However, SCP reacted strongly and took a serious exception to this statement. SCP reminded that it was only due to its judgment that Musharraf had to hold general elections to transfer power to civilian government. On 29<sup>th</sup> June 2003, PBC issued the “white paper” and questioned the legality of several judgments of the judiciary, given since the military coup in 1999. These developments, however, strained relations between lawyers and judges of superior courts. In order to protect the judiciary from growing criticism, the government had to issue “the draconian Contempt of Court Ordinance, 2003” which had widened the scope of contempt laws. Its provision that even a simple criticism of a judge was a punishable offence was widely criticized by the intelligentsia and human right activists.<sup>34</sup>

### **Inadequate Security Arrangements for Judges**

Musharraf government badly failed to provide security to the judges, including those of superior judiciary, improve conditions of courtrooms and introduce reforms to the judicial and prosecution system in the country. The working conditions in courtrooms as well as judges chambers particularly of the lower courts were quite miserable. The judges were easily approached to give biased decisions. The criminal elements repeatedly threatened them particularly in the cases of severe crimes. In some instances, the judges were left with no option but to refuse to carry on proceedings. In some occasions, they completed the hearings in jails due to the security threats. Still some of them were killed on their way to the courts or going back to their homes.<sup>35</sup> On 25<sup>th</sup> July 2003, a misfortunate incident took place in the premises of Sialkot jail where 03 judges were killed along with five prisoners. The incident took place when prisoners had kidnapped a team of judges that had come on a routine inspection of the jail. All of them were killed by police in a

rescue operation in which proper measures were not taken to ensure safety of the abducted judges.<sup>36</sup> Meanwhile, the living conditions of the prisoners in jails were even worse where thousand of people were closed for many years without their cases being presented before the courts. The complex judicial system in Pakistan had been a cause of delay or even denial of justice to the citizens. It included several court systems which sometimes overlapped and competed with each other over their jurisdictions, i.e. civil and criminal systems with special courts for antinarcotics, banking, and antiterrorist cases, as well as the Federal Shariah Court for Hudood cases. Furthermore, the appeal process had been lengthy which involved civil and district courts, High Court, and the Supreme Court in the civil system while the progression was made through magistrate, session court, High Court, and the Supreme Court in the criminal system.<sup>37</sup>

#### **Establishment of Anti-Terrorist Courts**

Instead of introducing reforms in the judicial system or improving prosecution, Musharraf government amended the Anti-Terrorism Act in November 2002. Accordingly, the term of custody was increased from one month to up to twelve months devoid of any charge or trial. It also gave powers to the law enforcement agencies to investigate bank accounts and assets of the relatives of suspects.<sup>38</sup> Earlier, the military government had decided to include military officers in panels of judges hearing the cases related to “terrorist offences” to ensure speedy trial of such cases. According to critics, the move was aimed to “undermine the rule of law and judicial independence.” On 16<sup>th</sup> March 2002, the government had named 13 army officers of Lt. Colonel rank for induction in Anti-Terrorist Courts (ATCs) all over Pakistan for the purpose. However, LHC had stayed the appointment of army officers in ATCs under the amended Anti-Terrorism Ordinance 2002 promulgated on 31<sup>st</sup> January 2002.<sup>39</sup> Amnesty International had criticized this move saying that it would undermine the independence of the judiciary.<sup>40</sup>

#### **Conclusion**

It is to conclude that Musharraf had come into power by overthrowing a constitutional and democratically elected government. He suspended the constitution, imposed PCO and forced judges of superior judiciary to take oath under it. He unconstitutionally dissolved the senate of Pakistan and illegally ousted President from his office. Musharraf unlawfully elevated himself to the position of President and held ploy of referendum to legitimize and prolong his unconstitutional rule. Musharraf severely undermined the independence of judiciary either through intimidation or inducement. Resultantly, judges of the superior

courts lost their integrity and they had to face humiliation. In its bid to serve the military government, the judiciary had given Musharraf the powers to amend the constitution. He took its full advantage and inserted several unconstitutional amendments in the constitution and significantly changed its salient features. The people of Pakistan generally ceased to exercise their civil and political rights including the right to change the government, peacefully and democratically. Judiciary became complete subservient to the military rule and lost confidence of the people particularly the lawyer community of Pakistan. It found itself increasingly unable and incapable of safeguarding the citizens' "civil and political rights" and upholding the constitution in the wake of onslaught by the despotic government.

## Notes & References:

- <sup>1</sup> The New Encyclopedia Britannica, Vol. 4, 15<sup>th</sup> ed. 2005, s.v. "Federalism," pp.712-3.
- <sup>2</sup> Encyclopedia Britannica, 1975 ed., s.v. "Liberty", p.996.
- <sup>3</sup> Human Rights Watch, *World Report 2000*. Available at <http://www.hrw.org/wr2k/Asia-07.htm#TopOfPage>
- <sup>4</sup> US Department of State, *Country Reports on Human Rights Practices - 1999*. Available at <http://www.state.gov/g/drl/rls/hrrpt/1999/441.htm>
- <sup>5</sup> Human Rights Watch, *Word Report 2001*. Available at <http://www.hrw.org/wr2k1/asia/pakistan.html>
- <sup>6</sup> Proclamation – Text of Provisional Constitutional Order No.1 of 1999. Available at [http://www.fas.org/news/pakistan/1999/Proclamations\\_text.htm](http://www.fas.org/news/pakistan/1999/Proclamations_text.htm)
- <sup>7</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> ed. 4<sup>th</sup> imp. (Karachi, Oxford University Press, 2012), p.480.
- <sup>8</sup> Human Rights Watch, *Word Report 2001*.
- <sup>9</sup> Jurist Legal Intelligence, *Pakistan Constitution, Government & Legislation*. Available at <http://jurist.law.pitt.edu/world/pak.htm>
- <sup>10</sup> Abid Ullah Jan, "Musharraf or no Musharraf," *Islamic Web-Community*, Jan. 02, 2003. Available at <http://www.myiwc.com/forums/showthread.php?t=3219> also available at [http://icssa.org/no\\_musharraf.htm](http://icssa.org/no_musharraf.htm)
- <sup>11</sup> "Constitution Suspended Again." Available at [http://ghazali.net/book3/ch2/ch2p2/body\\_ch2p2.html](http://ghazali.net/book3/ch2/ch2p2/body_ch2p2.html)
- <sup>12</sup> B. Muralidhar Reddy, "By, of and for Musharraf," *Frontline*, (August 31 - September 13, 2002). Available at <http://www.frontlineonnet.com/fl1918/19180450.htm>
- <sup>13</sup> Jan, "Musharraf or no Musharraf."
- <sup>14</sup> B. Raman, "Musharraf: Beginning of end?" Available at <http://www.thehindubusinessline.com/businessline/2001/07/05/stories/040555ju.htm>
- <sup>15</sup> Jan, "Musharraf or no Musharraf."
- <sup>16</sup> Human Rights Watch, *World Report 2002*. Available at <http://hrw.org/wr2k2/asia9.html>
- <sup>17</sup> Human Rights Commission of Pakistan, *Current HR Information: Political Development 2002*. Available at <http://www.hrcp-web.org/about.cfm>
- <sup>18</sup> B. Muralidhar Reddy, "A Controversial Move," *Frontline*, (November 23 - December 06, 2002). Available at <http://www.hinduonnet.com/fline/fl1924/stories/20021206009112400.htm>
- <sup>19</sup> Jan, "Musharraf or no Musharraf."
- <sup>20</sup> Reddy, "By, of and for Musharraf."
- <sup>21</sup> Reddy, "A Controversial Move."
- <sup>22</sup> Human Rights Watch, *Word Report 2002*.
- <sup>23</sup> Reddy, "A Controversial Move."

- <sup>24</sup> Tarique Niazi, "Illegitimacy, the Father of All Uncertainties," *South Asia Tribune*, (Dec 23-29, 2002). Available at [http://www.satribune.com/archives/dec23\\_29\\_02/opinion\\_drniazi.htm](http://www.satribune.com/archives/dec23_29_02/opinion_drniazi.htm)
- <sup>25</sup> Reddy, "A Controversial Move."
- <sup>26</sup> "324 MNAs-elect sworn in: speaker, deputy speaker's election on Tuesday," *Daily Dawn*, No. 17, 2002. Available at <http://www.dawn.com/news/67236/324-mnas-elect-sworn-in-speaker-deputy-speaker-s-election-on-tuesday>
- <sup>27</sup> "Govt and MMA sign agreement on LFO," *Daily Times*, Dec. 25, 2003. Available at <http://archives.dailytimes.com.pk/main/25-Dec-2003/govt-and-mma-sign-agreement-on-lfo>
- <sup>28</sup> "Musharraf wins vote of confidence," *Daily Dawn*, Jan. 02, 2004. Available at <http://www.dawn.com/news/390619/musharraf-wins-vote-of-confidence>
- <sup>29</sup> Zaffar Abbas, "Off Centre," *Herald* (Karachi), October 2004. Available at <http://dawn.com/herald/octmain04.htm#Go>
- <sup>30</sup> Human Rights Commission of Pakistan, *Current HR Information: Political Development*; and also Human Rights Watch, *World Report 2005*.
- <sup>31</sup> "PBC Challenges Elevation of Judges," *Pakistan Political Perspective*, April 2002, p.11.
- <sup>32</sup> Human Rights Commission of Pakistan, *Current HR Information: Judiciary*, 2004. Available at <http://www.hrcp-web.org/about.cfm>
- <sup>33</sup> "New Chief Justice takes oath: 10 judges retire," *Daily Dawn*, January 01, 2004. Available at <http://www.dawn.com/news/390612/new-chief-justice-takes-oath-10-judges-retire>
- <sup>34</sup> Human Rights Commission of Pakistan, *Current HR Information: Judiciary*.
- <sup>35</sup> Ibid.
- <sup>36</sup> "Three judges, 5 prisoners killed in Sialkot jail: Police action to free hostages ends in tragedy," *Daily Dawn*, July 26, 2003. Available at <http://www.dawn.com/news/132069/three-judges-5-prisoners-killed-in-sialkot-jail-police-action-to-free-hostages-ends-in-tragedy>
- <sup>37</sup> Jurist Legal Intelligence, *Pakistan Constitution, Government & Legislation*.
- <sup>38</sup> Human Rights Watch, *World Report 2003*. Available from <http://hrw.org/wr2k3/asia8.html>
- <sup>39</sup> "Thirteen Lieutenant Colonels named for Special Courts," *Pakistan Political Perspective*, April 2002, p.12.
- <sup>40</sup> Amnesty International, *Report 2003*. Available at <http://web.amnesty.org/report2003/pak-summary-eng>