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## **Dictated Transition of Power: The Role of the Military in the Political Landscape of Pakistan (2002-2008).**

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### **Abstract**

*This research article focuses on democratic era in Pakistan (2002-2008) which elaborates the transition from military to civilian rule after the conduction of the general elections of 2002, following the incorporation of 17<sup>th</sup> amendment in the Constitution of 1973. The article highlights that the abduction of power by the military is not a real transition to democracy. Military institutes its permanent role in the political system to secure its institutional and organizational interests. The complete disengagement of military from decision making is not seen in any post military withdrawal period. From 2002-2008, a dictated transition occurred in which General Pervez Musharraf sought legal cover for all immoderations it has committed during its military rule and put the condition that the civilian government would refrain from using violent measures against the military setup. Pervez Musharraf remained in corridors of power in democratic setup (2002-2007). The article further*

*highlights that Pervez Musharraf resigned presidency due to extreme political pressure; however, he was able to negotiate a very favourable safe-exit agreement that permitted him to remain in Pakistan free from impeachment, legal action, and trial for all the acts he committed during his nine-year rule.*

**Key Words.** Military Coup, Transition, general elections of 2002, 17<sup>th</sup> amendment, National Security Council, Dual Office, Power exit.

## **Introduction**

Military coups typically arise in crisis situations. Regardless of whether the resulting regimes can effectively address the issues that paved the way for their intervention, but, they almost face legitimacy crises over time. This dilemma compels them to either expand the foundation of their regime by collaborating with non-military entities or to withdraw to the barracks<sup>1</sup>. The military has held a dominating position in Pakistan's politics and society since the birth of Pakistan. Pakistan emerged under challenging circumstances, grappling with significant domestic issues and external security pressures. In response, the rulers prioritized state security, linking it to a robust defense posture and substantial defense expenditures<sup>2</sup>. The military emerged as the primary beneficiary of this strategic approach, seen as a guarantee of external security and a fortification against internal turmoil. This laid the foundation for an expanded role of the military<sup>3</sup>. Right from its establishment, the military stood as a formidable institution, with its commanders recognized as influential figures in Pakistan's governing system. In 1954, General Ayub Khan, the armed forces commander, officially entered the power corridor as a defense minister, ultimately imposing martial law in 1958. This pattern of military takeovers recurred in 1969, 1977, and 1999, further cementing the military's role in shaping Pakistan's political landscape<sup>4</sup>. The process of military withdrawal is influenced by various variables<sup>5</sup>. The main variables involved in the military's withdrawal from politics are endogenous and exogenous. Endogenous variables are internal factors that pertain to the military organization itself such as professionalism, expertise, a sense of responsibility, and corporateness within the military<sup>6</sup>. The organizational structure of the military plays a crucial role in its withdrawal from politics<sup>7</sup>. The exogenous variables are external factors originating from outside the military organization. These factors exist in domestic, regional, or international environments. Exogenous variables can encompass a wide range of elements such as political stability within the country, regional conflicts, international pressure or cooperation, economic

conditions, and more. These external influences can both facilitate and hinder the process of military withdrawal from politics<sup>8</sup>.

### **Theoretical framework**

The military generals never disengage from politics after took over the power and intended to tick to power forever<sup>9</sup>. But fact remains that no military government could stay in power for ever. People naturally demand self-governance, as they have consistently fought for democracy and made sacrifices to overthrow dictatorships and totalitarian rule<sup>10</sup>. There is no widely accepted paradigm to study the process of military disengagement from politics but there are following three possible categories through which the dictators relinquish power.

1. When the military is politically more powerful than its opposition, dictated transition occurs.
2. When the military's might matches with of the civilian opposition, a "pact" kind of transition occurs It concludes a pact with civilians and that covers the whole process of transition to democracy.
3. It would be 'abdicated,' when the military is weaker than its opposition. In this case it simply relinquishes power and goes back to the barracks<sup>11</sup>.

The dictated type of transition is more complex than rest of the two types because it is difficult for a powerful military to relinquish power. When they want to retain some powerful role for themselves through legitimization of their regime, through planned elections, they shift power, resulting in either complete or partial democratization<sup>12</sup>.

In this disengagement the military seek legal cover for all immoderations it has committed during its military rule and put the condition that the civilian government would refrain from using violent measures against the military setup. It is the more common type in Asia through which military safely goes to barracks. Pakistan have also passed several times through the dictated type of transition<sup>13</sup>. In the pact type of disengagement, the political balance drastically shifts in favor of the civilians. The gradual liberalization leads to strengthening of political forces by consequent weakening of the military regime. The term "abdicated" is typically applied to the military where a military force voluntarily withdraws from a position of power or authority, especially when it perceives itself to be in a weaker position as compared to its opposition<sup>14</sup>. In this research article the researcher has focused

on the dictated type of military transition during General Pervez Musharraf era from 2002-2008.

### **Military Coup D'état of October, 1999**

After attempting to consolidate his power after taking office in 1997 as a Prime Minister, Mian Muhammad Nawaz Sharif quickly encountered significant challenges with the leadership of the Pakistani military, the judiciary, and the presidential house<sup>15</sup>. The Constitution of 1973 was repealed by Nawaz Sharif on July 3, 1997, after he secured a two-thirds majority in the National Assembly and passed the Constitutional Thirteenth and Constitutional Fourteenth Amendments in 1997<sup>16</sup>. A dispute between Pakistan's Chief Justice, Justice Sajjad Ali Shah, and the Prime Minister arose around the appointment of judges to the Supreme Court of Pakistan after the Prime Minister fortified his position with these constitutional amendments. When Chief Justice Sajjad Ali Shah decided to hear appeals against the Thirteenth and Fourteenth Amendments in 1997, supporters of the Pakistan Muslim League attacked the courtroom of the Chief Justice<sup>17</sup>. President Farooq Ahmad Leghari attempted to intervene in the matter in support of the Chief Justice, but he was forced to resign on December 2, 1997, due to the fear of impeachment, followed by the resignation of Chief Justice Sajjad Ali Shah on December 23, 1997<sup>18</sup>. The proposal for the establishment of a National Security Council floated by Chief of Army Staff, General Jehangir Karamat on October 5, 1998 deteriorated civil-military relationship<sup>19</sup>. This proposal led to the resignation Karamat three months before his retirement due to the mounting pressure of the Prime Minister who was succeeded by Lieutenant General Pervez Musharraf<sup>20</sup>. The civilian government was compelled by the country's precarious state of law and order to enact the Anti-Terrorist Act in August 1998, which granted the Army the authority to uphold law and order in Karachi under Article 245 of the Constitution of 1973. This included the authority to establish military courts, the decisions of which could not be challenged in a civilian court<sup>21</sup>. After Pakistan's nuclear tests in May 28, 1998, Sharif strived to revive peace negotiations with India to seek a peaceful resolution of all outstanding problems between the two countries which resulted in the conclusion of Lahore Declaration in February 1999<sup>22</sup>. The Lahore Declaration enraged the military, which viewed it as a betrayal of Kashmir. The 1999 Kargil incident, however, shattered the tranquil atmosphere that the Lahore Declaration had established<sup>23</sup>. The retreat of Pakistani troops under

Washington accord brought both the PM and Army Chief into a dagger drawn and the Prime Minister and Army Chief started pointing fingers at each other<sup>24</sup>.

Sensing the intentions of General Pervez Musharraf, the Prime Minister removed him on October 12, 1999, while he was coming on a commercial flight from Colombo, Sri Lanka and was replaced him with his favorite, Lieutenant General Khawaja Ziauddin, the Director General, ISI<sup>25</sup>. But the Army as an institution foiled the plot, without a single gunshot, staged a coup and removed Nawaz Sharif's government and dissolved the National Assembly on October 12, 1999. Chief of Army Staff General Pervaz Musharraf designated himself as the Chief Executive and suspended the 1973 Constitution. The Provisional Constitutional Order (PCO) he issued on October 14, 1999, suspended the National and Provincial Assemblies, the Senate, the Federal and Provincial governments, the Speaker and Deputy Speaker of the National and Provincial Assemblies, and the Chairman and Deputy Chairman of the Senate. However, the President, Mr. Muhammad Rafiq Tarar, was allowed to stay in his position. The National Security Council was formed under PCO with the intention of advising the Chief Executive on issues pertaining to Islamic ideology, national security, Pakistani sovereignty, integrity, and solidarity in order to fulfil the goals and objectives stated in the Objectives Resolution of 1949<sup>26</sup>.

### **Doctrine of State Necessity**

In January 2000, the Supreme Court of Pakistan heard several petitions challenging the constitutionality of the coup d'état under Article 184(3) of the 1973 Constitution. All these petitions were entertained and January 31, 2000 was a fixed for hearing<sup>27</sup>. It was quite probable that these petitions would be accepted and the action of Musharraf shall be declared ultra-constitutional. Understanding the danger, the Oath of Office Judges Order, 2000 was issued on January 25, 2000, requiring all superior court judges to either resign from their positions or take a new oath according to the PCO and the Proclamation of Emergency of October 14, 1999<sup>28</sup>. The Chief Justice of Pakistan, Justice Saeed-uz-Zaman Siddique along with five judges declined to take a fresh oath resulting the appointment of Justice Irshad Hassan Khan as the Chief Justice of Pakistan<sup>29</sup>. On May 12, 2000, the handpicked Supreme Court of Pakistan validated the coup d'état of 1999 of Pervez Musharraf in the light of "*The Doctrine of State Necessity*" (*Syed Zafar Ali Shah vs General Pervez Musharraf*) with a mandate to amend the constitution and hold free and fair elections in the next three years<sup>30</sup>. Pervez Musharraf promulgated the President's Succession Order 2001 on June 20, 2001, by which he removed the President of Pakistan, Rafique Tarar, unceremoniously and unconstitutionally<sup>31</sup>. Chief Justice Irshad Hassan Khan administered the oath

of office as President of Pakistan to Pervez Musharraf on June 20, 2001, without taking into consideration the constitutional procedure for the election of the President. The President changed the suspension orders for legislative bodies and their presiding officials to the dissolution orders that same day with another order, Dissolution Order (C.E. Order No. 2, 2001)<sup>32</sup>.

### **The Incident of 9/11**

After a military coup, the world community responded forcefully, forcing General Musharraf to declare his unwavering commitment to paving the path for democracy as quickly as possible<sup>33</sup>. However, the incident of 9/11 provided Musharraf with an ample opportunity to extend his stay in power with the financial and political support of the US administration at the cost of sovereign and the constitutional government. The subsequent steps taken by him towards civilianization can be explained from that perspective<sup>34</sup>. In view of this discussion, the gradual withdrawal of General Pervez Musharraf from politics in 2001 was a dictated type of transition. He initially portrayed himself as a reluctant intervener in politics, but exploited the opportunity of war against terror in coalition forces to prolong his personal rule for not less than nine years. He presented seven-point agenda and extended his military rule under this umbrella. The army was not in favor of immediate disengagement and chose to legitimize its rule through referendum before withdrawal. He dictated his terms first through legitimizing his position as a president of Pakistan for the next five years through a referendum, then through controlled elections which created a powerless assembly and, in turn, a weak quasi-civilian rule<sup>35</sup>.

### **RoadMap for the Restoration of Democracy**

In order to restore democracy and hand over power to elected representatives by November 2002, President Musharraf released his four-phase road map on August 14, 2001<sup>36</sup>.

The devolution of power to the gross root level was the first stage. Under the direction of General Tanvir Naqvi, the National Reconstruction Bureau was established<sup>37</sup>. It formulated a "Devolution Plan" that allowed local governments to be elected without regard to party affiliation between December 30, 2000, and July 5, 2001, and it became operational on August 14, 2001<sup>38</sup>. The creation of an election commission to register voters marked the start of the second phase in October 2001<sup>39</sup>. The dates of the Senate elections and the National and Provincial Assemblies will be announced in the first week of July 2002, once the electoral rolls were finalized and the constituencies were delineated. Subsequently, the general elections were scheduled between October 1, 2002 and October 11, 2002<sup>40</sup>.

## **The Conduct of General Elections Order, 2002**

On January 16, 2002, Pervez Musharraf appointed Chief Justice (R) Irshad Hassan Khan as Chief Election Commissioner through the Election Commission Order<sup>41</sup>. On February 27, 2002, the Conduct of General Elections Order was issued, which increased the general seats in the National Assembly from 207 to 272, including 60 for women and 10 for non-Muslims. The joint electorate system was established for National and Provincial Assemblies elections. Additionally, the voting age was reduced from 21 to 18<sup>42</sup> and the status of Qadianis (Ahmadiyya) remained unchanged as per Clause 7-B, consistent with the Constitution of 1973<sup>43</sup>. The order introduced a mandatory educational qualification for elections, requiring candidates to be graduates. Clause 8-A specified that individuals aspiring to be members of Parliament or Provincial Assembly must hold a bachelor's degree or an equivalent recognized by the University Grants Commission under the University Grants Commission Act, 1974 (XXIII of 1974). Despite opposition from politicians, the Supreme Court of Pakistan dismissed the challenge in July 2002, upholding the educational qualification requirement outlined in the order<sup>44</sup>. After strengthening his position both at home and abroad after the incident of 9/11, Musharraf announced on April 8, 2002 that he would hold a referendum on April 30, 2002. The referendum was challenged before the Supreme Court in a number of petitions as unconstitutional<sup>45</sup> but, these petitions were deemed premature by the Supreme Court in the case of *Qazi Hussain Ahmad vs. Pervez Musharraf*. It was decided that the results of the referendum will be decided by a suitable forum at the right time, most likely by the elected Parliament following the general elections. On April 30, 2002, the results of the referendum were announced and Pervez Musharraf was chosen to serve as a President of Pakistan for another five years<sup>46</sup>.

In Pakistan, the challenge of instilling democratic values is linked to undemocratic practices within political parties<sup>47</sup>. To address this, the Political Parties Act of 1962 was initially introduced but proved insufficient. It was replaced by the Political Parties Order of 2002, mandating parties to formulate constitutions, maintain financial records, and conduct intra-party elections by a specified deadline<sup>48</sup>. The election schedule was announced on August 16, 2002, for the October 10, 2002, polls, and all political parties decided to participate in the elections<sup>49</sup>. Following a referendum, President Musharraf promulgated the Legal Framework Order (LFO) 2002 on August 21, granting him authority to amend the Constitution and conduct general elections based on the Supreme Court's judgment<sup>50</sup>.

## **General Elections, 2002**

After the promulgation of the Legal Framework Order (LFO), President Musharraf announced the schedule of general elections by the end of 2002, adhering to the Supreme Court's timeline. To consolidate support, Musharraf's government orchestrated the formation of a loyalist party, assigning the task to the Chaudhary brothers<sup>51</sup>. Working under the patronage of Tariq Aziz, political Secretary of General Musharraf, dissenters from the Pakistan People's Party and Pakistan Muslim League(N) were brought together to establish the Pakistan Muslim League(Q) on August 20, 2002, led by Chaudhury Shujaat Hussain. The political wing of ISI and NAB played a pivotal role in establishment of this king party<sup>52</sup>. Simultaneously, a pro-Musharraf electoral alliance, the National Alliance, including Millat Party of Farooq Ahmad Khan Lughari, National People's Party of Ghulam Mustafa Jatoi, Sindh Democratic Movement led by Arbab Ghulam Rahim and Sindh National Front led by Mumtaz Bhutto was formed under the leadership of former President Farooq Ahmad Khan Lughari. Both PML(Q) and NA were supportive of Musharraf, and seat adjustments were facilitated between them. The *Mutahida Majlis-e-Amal* (MMA), an electoral alliance of six religious political parties, contested the 2002 general elections with a common manifesto. Musharraf, aiming to weaken the positions of PML-N and PPP, promulgated two presidential ordinances. The first limited anyone from holding the premiership for more than two terms, barred leaders like Nawaz Sharif and Benazir Bhutto from becoming Premiers for second time<sup>53</sup>. The second ordinance stated that if someone is not allowed to participate in elections due to certain criteria, they would also be barred from leading a political party. The Pakistan People's Party Parliamentarian (PPP-P), led by Makhdoom Amin Fahim, was founded by the PPP on Benazir Bhutto's direction in order to avoid legal complications. Consequently, both PML(N) and PPP had to navigate the elections without their respective leaders. Despite the lifting of the ban on political activities, state machinery was employed to restrict public processions, rallies, and gatherings without prior approval<sup>54</sup>.

## **Formation of Central Government**

Enjoying the blessings of the military junta, the Pakistan Muslim League (Q) appeared as a major party in the National Assembly with 122 seats in the house of 342 seats while the PPP secured 80 seats, and the MMA became the third political force with 61 seats. No single party held enough seats to independently form a government<sup>55</sup>. The MMA engaged in negotiations with the PML(Q) to create a coalition government at the center. However,



attempts to reach an agreement faltered as the MMA demanded the position of prime minister and a specific date for General Musharraf to step down as the Chief of Army Staff, along with the reversal of pro-U.S. policies<sup>56</sup>. Mawlana Fazl-ur-Rehman, desiring the role of Prime Minister, personally lobbied General Musharraf and pledged a reconciliatory approach toward the U.S. and the West<sup>57</sup>. General Musharraf, eager to have the PML(Q) in power, found the MMA's demands excessive. Political engineering was used by the military government to enable the PML-Q to form government at center. It was successful in garnering support for the PML-Q from the MQM, the National Alliance, and the majority of independent members. The NAB and ISI, in a collaboration, were able to detach ten MNAs from Pakistan People's Party Parliamentarians (PPPP) and they formed a forward bloc in Lahore and labelled them as Pakistan People's Party Patriots at the head of Makhdoom Faisal Salih Hayat who was appointed an Interior Minister<sup>58</sup> while suspending Article 63(A) of the Constitution on November 15, 2002, which prohibited for defection<sup>59</sup>. Following these developments, Zafarullah Jamali, a candidate of PML-Q for the slot of premiership secured the majority vote and was elected as Prime Minister on November 24, 2002, with 172 votes in the 342-member house<sup>60</sup>. Despite the formation of a civilian government, Jamali remained a non-assertive Prime Minister, publicly acknowledging Musharraf as his boss. Consequently, even within the civilian political structure, General Musharraf held a dominating position as President, with a compliant Prime Minister, parliamentarians adhering to his agenda, and control over a pliable political party<sup>61</sup>.

### **The Legal Framework Order Controversy**

The political developments that followed the 2002 general elections allowed for a deadlock in the parliament. The political impasse was primarily caused by the disagreement between the opposition parties and the administration over the Legal Framework Order (LFO)<sup>62</sup>. The LFO legalized all the steps of General Pervez Musharraf since October 12, 1999 was opposed by the opposition parties in the parliament such as the MMA, PPPP, and PML(N)<sup>63</sup>. The government tried to talk the PPPP and PML-N, on the issue of LFO, but, unfortunately, they couldn't get these parties to come to the negotiation table<sup>64</sup>. The government successfully convinced the MMA over the issue of the LFO, which included the President's military uniform, his discretionary powers over the National Assembly, the creation of the National Security Council (NSC), the validity of the 2002 Presidential Referendum, and the raising of the retirement age for judges<sup>65</sup>. A parliamentary committee was formed at the

National Assembly level by the ruling PML (Q) and the MMA in an effort to reach a consensus on LFO. The MMA contended that the LFO should be deliberated in the parliament and be amended by the parliament<sup>66</sup>.

The MMA held multiple rounds of talks over the LFO with Chaudhary Shujaat Hussain, president of PML(Q). However, the negotiations suffered from standstill when Musharraf refused to shed military uniform and continue to hold both the offices of president and COAS<sup>67</sup>. Differences arose among the leaders of the MMA leaders over LFO Presidential powers under Article 58(2-b) in the Constitution of 1973 which had empowered the President to dissolve the National Assembly. Both General Musharraf's five-year presidential extension and the proposed National Security Council (NSC) were rejected by the MMA and demanded for his resignation from the position of COAS. The LFO, which granted to the president discretionary authority over Pakistan's elected parliament, was something the MMA wished to abolish<sup>68</sup>.

At the time, there was a standoff in the talks between the two sides because General Pervez Musharraf would not disclose a timetable for taking off his military uniform. After the failure of the talks on the LFO talks, the government began to put pressure on the religious alliance. The government tried to sought a link of Jamaat-e-Islami with Al-Qaeda after the arrests of Khalid Shaikh Mohammed (KSM)<sup>69</sup>. However, the JIP leadership disregarded the perception and called the accusation as a false propaganda. The Jamaat maintained its denials of any affiliation with any terrorist organisations and its unwavering support for democracy and peace. Jamaat deemed it a plot to put pressure on the MMA and the JIP<sup>70</sup>. The government, represented by Dr. Aslam Khaki, filed a petition in the Supreme Court of Pakistan seeking the disqualification of 65 MNAs of the MMA with a request that the madrassa (seminary) degrees held by these MNAs were not equivalent to bachelor's degrees from recognized universities<sup>71</sup>. Regarding madrassa degrees, the largest constituent party of MMA, JUI (F), was in a more vulnerable position than JIP, since it had all of these members while JI had none<sup>72</sup>. Consequently, JUI (F) became more accommodating than other constituent parties regarding LFO and General Musharraf's multiple roles over time<sup>73</sup>. Realizing the center's administrative and financial powers, fearing of intervention in NWFP and Baluchistan and fear of disqualification of MMAs members of parliament holding seminary degrees forced the MMA to compromise on the issue of LFO. On December 24, 2003, after the protracted negotiations between the negotiating teams of both sides signed an agreement on LFO. Chaudhry Shujaat Husain and S.M. Zafar represented the government side while Mawlana Fazal ur Rehman, Liaquat Baloch, and Hafiz Hussain

Ahmad signed the LFO on behalf of the MMA<sup>74</sup>. After the agreement the parliament passed the seventeenth amendment bill which accommodated all provisions of the LFO. Since the general elections of 2002, the opposition's protests over the LFO issue had essentially rendered the newly elected parliament useless. The MMA supported the PML-Q on 17<sup>th</sup> amendment to save the nascent democracy. General Pervez Musharraf promised to leave the office of the COAS till December 31, 2004. It is worth mentioning here that the agreement of the MMA and government on the LFO, the formation of the National Security Council was put out of the preview of the 17<sup>th</sup> amendment and was decided that National Security Council shall be passed as a separate act by a simple majority of the parliament<sup>75</sup>. After the creation of a rubber stamp parliament and strengthening his hand by 17<sup>th</sup> amendment, General Pervez Musharraf decided to take vote of confidence from the electoral college (Parliament and four provincial assemblies). He summoned the session of the electoral college on January 1, 2004 for taking of vote of confidence<sup>76</sup>. Musharraf received 658 votes out of electoral votes of 1170<sup>77</sup>. However, parliamentarians from MMA were not “bound” to give him a vote of confidence. On 1st 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>78</sup>.

#### **National Security Council Act, 2004**

The National Security Council (NCS) was established as a platform for consultation on strategic matters as a result of the Legal Framework Order (LFO), related to the State's sovereignty, integrity, and security as well as issues related to democracy, governance, and interprovincial matters<sup>79</sup>. The government and MMA leadership decided that the National Security Council would be established in accordance with ordinary law and kept the NSC out from the preview of 17th Amendment. In April 2004, the treasury benches introduced the "Bill of the National Security Council" to the National Assembly. As per the wishes of President Pervez Musharraf, the NSC was an attempt to legitimise the military's position in Pakistani politics and give the military effective control over the Parliament. Five members of the military would be the members of these eleven members proposed NSC<sup>80</sup>. Strongly opposing this law, the MMA and ARD declared that they will oppose it together on the floor of the Parliament. The PML-Q and the MQM helped to swiftly pass this bill on April 19,

2004, even though a simple majority was needed to approve it<sup>81</sup>. The opposition offered stiff resistance and finally observed walkout. The MNAs and Senators from the MMA stayed in the House but abstained from voting. Musharraf labelled it as a breach of agreement on the part of MMA during the passage of 17<sup>th</sup> Amendment<sup>82</sup>. The Pakistan Army, and particularly General Musharraf, expressed a desire to manage Pakistani politics through the founding of the NSC, and the PML-Q met the President's wish by compromising on democratic norms and values<sup>83</sup>. The National Security Council provided for the inclusion of the President as its Chairman, the Prime Minister, the Chairman of the Senate, the Speaker of the national Assembly, Chief Ministers of the Provinces, Chairman Joint Chiefs of Staff Committee, Chief of Army Staff, Navel Chief and Chief of Air Force<sup>84</sup>.

### **The Issue of the uniform**

Article 63(1)(d) of the constitution, which banned a government person from becoming president of Pakistan, was suspended by the LFO. A new clause was added to article 41(7)(b) by the 17th amendment, stating that 63(1)(d) would stay suspended till December 31, 2004, the date General Pervez Musharraf had specified for him to take off his military uniform<sup>85</sup>. In order to avoid losing the military uniform, which was General Pervez Musharraf's true source of power, the hand-picked ruling PML(Q) started a campaign in the middle of 2004 asking Musharraf to keep his uniform till December 31. Resolutions passed by the Provincial Assemblies of Sindh and Punjab after this campaign urged Musharraf to retain his position as COAS<sup>86</sup>. The government tabled a bill in the National Assembly with a title "The President to hold Another Office Bill" permitting Musharraf to hold both the offices of COAS and President. The opposition sharply reacted the bill and accused Musharraf of going back of his promise to shed the military uniform. Both National Assembly and Senate of Pakistan passed the bill expeditiously on October14, 2004 and November2, 2004 respectively<sup>87</sup>.

In order to keep Musharraf's army position throughout his presidency, the government moved a bill in the National Assembly "The President to Hold Another Office Bill." The opposition charged that General Pervez Musharraf was betraying his sacred promise to the country, and this law created a great deal of agitation in the National Assembly. Both National Assembly on and Senate of Pakistan passed this bill in haste on October14, 2004 and November2, 2004 respectively. A clever game was played to assent the bill. The

President Musharraf went abroad and the bill was assented by the Acting President Muhammad Mian Soomro on November 30, 2004<sup>88</sup>.

### **From friendship to Confrontation-Musharraf's relations with Judiciary**

The judiciary was not initially touched by the military government. After the military revolution of 1999, General Pervez Musharraf assured the independence of judiciary under the constitution of 1973. Under the Provisional Constitutional Order 91, judges of the upper courts were excused from taking an oath<sup>89</sup>. In December 1999, the Supreme Court of Pakistan received several petitions challenging the constitutionality of the 1999 coup, filed by five Muslim League leaders: Syed Zafar Ali Shah, Wasim Sajjad, Ilahi Bux Soomro, Raja Zafar-ul-Haq, and Chaudhry Pervez Ilahi. The petitions were filed under Article 184(3) of the 1973 Constitution<sup>90</sup>. All these petitions were entertained and January 31, 2000, was fixed for its hearing. Musharraf sensed that these petitions might be accepted and assemblies might be restored<sup>91</sup>. Sensing the threat, on January 25, 2000, the Oath of Office Judges Order, 2000, was promulgated, in which all judges of the superior courts were required to take a new oath under the Provisional Constitutional Order or quit their posts<sup>92</sup>.

Justice Saeed-uz-Zaman Siddique, the Chief Justice of Pakistan, was among the nineteen justices who declined to take a fresh oath in accordance with this order. Irshad Hassan Khan after taking oath under PCO was appointed as the Chief Justice of Pakistan. Musharraf selected submissive judges to support the government and shield him from any legal challenges<sup>93</sup>. At the expense of democracy, the Supreme Court, led by its newly appointed Chief Justice, had vowed to protect and further the military regime's objectives. The petition against the coup of 1999 was heard by 12- members bench of the Supreme Court. On May 12, 2000, the Pakistani Supreme Court upheld the military coup on the grounds of the "doctrine of state necessity," allowing the chief executive three years from October 12, 1999, to accomplish the agenda he had declared and announced on October 17, 1999 and requiring him to set a date for general elections to the National Assembly, Provincial Assemblies, and Senate of Pakistan no later than ninety days prior to the end of that period. The judicial decision endowed the military regime with the right to incorporate amendments to the Constitution. Chief Justice Irshad Hassan Khan after retirement was rewarded with the appointment as Chief Election Commissioner<sup>94</sup>. The docile judiciary fully facilitated Pervez Musharraf in referendum of 2002<sup>95</sup>. The constitutionality of the referendum was challenged in the supreme court of Pakistan through several petitions. These petitions were declared

premature by the Supreme Court of Pakistan in *Qazi Hussain Ahmad vs Musharraf* case and left it to be decided by the coming elected Parliament<sup>96</sup>. Encouraged by the judgements of the Supreme Court, Musharraf issued LFO on August 21, 2002, empowered him to amend the constitution of 1973 on the basis of the Supreme Court judgement in Zafar Ali Shah case<sup>97</sup>.

By amending the LFO to raise the retirement age by three years, Musharraf rewarded the judges for their service and prolonged their tenure. Judge Riaz and Musharraf worked together to sneak this modification into the LFO, but the agreement between the government and the MMA on the LFO reversed the three-year increase in the retirement age for Supreme Court judges. Ten judges of the higher courts retired as a result of this agreement, including Justice Riaz Ahmad, the Chief Justice of Pakistan, who was succeeded in January 2004 by Justice Nazim Hussain Siddiqui<sup>98</sup>.

Leading a five-members bench, Justice Siddiqui gave thoroughly disappointing judgement in upholding the Seventeenth Amendment to the Constitution in a case *Watan Party vs. Chief Executive of Pakistan*) and validated the Two Offices Act, 2004 (*Pakistan Lawyers Forum vs. Federation of Pakistan 2005*)<sup>99</sup>. Justice Nazim Hussain Siddiqui was succeeded by Iftikhar Muhammad Chaudhry on June 30, 2005 as a Chief Justice of Pakistan. Chaudhry Iftikhar took an oath under the LFO and was one of the judges who approved of General Musharraf's 1999 military takeover<sup>100</sup>. Suo moto powers in cases of public interest brought Justice Iftikhar Muhammad Chaudhry to the attention of the public. He focused on matters of political and public significance in addition to other cases concerning human rights breaches. His most prominent rulings concerned the 2005 privatization of Pakistan Steel Mills, Pakistan Tele Communication Ltd. (PTCL), Pakistan State Oil (PSO), cases involving missing persons, and an investigation into land allocation to powerful individuals in Gwadar, deeply exasperated Pervez Musharraf, the Prime Minister, Shaukat Aziz, and numerous other close associates<sup>101</sup>. On March 9, 2007, Musharraf suspended Iftikhar Muhammad Chaudhry and restrained him to act as Chief Justice of Pakistan. The seniormost judge of the supreme court, Justice Rana Bhagwandas, was temporarily abroad from Pakistan and was in India at the time of Justice Javid Iqbal's appointment as Acting Chief Justice of Pakistan. On March 9, 2007, President Musharraf sent a reference to the Supreme Judicial Council. He gave the order to look into numerous accusations of wrongdoing against him<sup>102</sup>. The Supreme Judicial Council met at the chair of the acting Chief Justice was also attended

by Justices Abdul Hameed Dogar and Sardar Muhammad Raza Khan of the Supreme Court, Chief Justice Iftikhar Hussain Chaudhry of the Lahore High Court, two judges were from Karachi and Lahore and Attorney General of Pakistan<sup>103</sup>. Meanwhile, on March 15, 2007, Musharraf sent him on forced leave with effect from March 9, 2007, till the submission of the report of the Supreme Judicial Council. On April 18, 2007, the defunct Chief Justice of Pakistan filled a constitutional petition in the Supreme Court of Pakistan challenging Musharraf's reference against him. A bench of three judges of the Supreme Court was already hearing similar petitions filled by different bar councils. On May 7, 2007, a bench of five members stayed proceedings in the Supreme Judicial Council and decided that the full court would hear the petition of the defunct Chief Justice and 22 similar petitions<sup>104</sup>. A full court of the Supreme Court was constituted which started a regular hearing of the petition of the Chief Justice. Support for the removed Chief Justice grew among the populace. When Iftikhar Chaudhry was being heard, the courts were overflowing. This made him seem more significant. For Musharraf, this movement posed a serious problem. A comprehensive investigation against the removed Chief Justice was released by government lawyers on July 16, 2007. Iftikhar Chaudhry, the ousted chief justice, was reinstated on July 20, 2007, by a 13-member bench of the Pakistani Supreme Court. The public was pleased with the Supreme Court's verdict. On July 21, 2007, Iftikhar Muhammad Chaudhry returned to his position as Pakistan's Chief Justice<sup>105</sup>.

### **Dual Office Case**

It was the most notable case in the Supreme court of Pakistan after the restoration of Iftikhar Muhammad Chaudhry. Writ petitions were filed by Qazi Hussain Ahmad and Imran Khan challenging the constitutionality of dual office held by Pervez Musharraf. Musharraf's eligibility as a presidential candidate, the inadequacy of the outgoing parliament to create a legitimate electoral college, and the inability of the same electoral college to elect the same candidate again were among the other points of contention<sup>106</sup>. These petitions were heard by a nine-person Supreme Court bench. A brief order declaring that these petitions were unmaintainable was issued on September 28, 2007, by a majority of six to three and paved the way for presidential elections of October 6, 2007 from the incomplete electoral college because twenty-seven MPAs of JIP in the NWFP Assembly had resigned before the conduction of the election<sup>107</sup>.

Wajihuddin filed a constitution petition on October 2, 2007, invoking Article 184(3) of the 1973 Constitution to contest the Chief Election Commissioner's September 29, 2007, ratification of Musharraf's nomination paper. Makhdoom Amin Fahim, the Pakistan Peoples Party's presidential candidate, also submitted a similar petition. On October 3, all of these petitions were scheduled to be heard by the Supreme Court's nine-member bench<sup>108</sup>. October 6 was fixed for polling day; it was not possible to decide the case in such a limited time. In a short order issued by the bench on October 5, directed that the election process shall continue however, the official declaration of the victorious candidate's election would not be published until these petitions have been decided<sup>109</sup>. The Supreme Court's eleven-member bench, led by Justice Javid Iqbal, began hearing the Wajihuddin case on a day-to-day basis on October 17, 2007. It was anticipated that the hearing would end quickly and the court's decision would be made public by November 8, 2007<sup>110</sup>. The proceedings of Wajihuddin case put Musharraf in a very panic condition. On November 3, 2007, he declared a state of emergency, issued the PCO (No. 1 of 2007), the Oath of Office (Judges) Order, and suspended the Constitution, under the fear that the existing judiciary would decide the case against him<sup>111</sup>. The Supreme Court and the High Courts could not issue decisions against the Prime Minister, the President of Pakistan, or anybody else exercising official authority. All judges serving on the Federal Shari'at Court, Supreme Court, or High Court were required to take a new oath under the PCO. Judges who declined to take an oath under the PCO or were not presented with the opportunity to do so would be removed from office<sup>112</sup>. A majority of Supreme Court judges declined to take the oath under PCO, leaving only five judges to do so. Justice Abdul Hamid Dogar, the most senior of these judges, was sworn in as the new Chief Justice of Pakistan under PCO<sup>113</sup>.

Musharraf became the most despised person in Pakistan following the declaration of a state of emergency on November 3. Still, the White House continued to back him and nonetheless asked his resign from the position of the COAS. The Army Act of 1952 was amended on November 10, granting the army broad powers to prosecute civilians on treason, sedition, assault on army personnel, and making statements conducive to public mischief counts. Musharraf declared on November 11, 2007, that general elections for the National and Provincial Assemblies would take place before January 9, 2008, and that the National Assembly would be dissolved on November 15, 2007<sup>114</sup>. PCO was amended on November 15 and went into effect on November 3, 2007. In his capacity as COAS, Musharraf made



the change that transferred the authority to amend the PCO or lift the emergency. By himself, Musharraf amended the constitution on November 21 and added Article 270 AAA, validating and upholding the emergency proclamation of November 3, all presidential orders, ordinances, orders from the Chief of Army Staff, including Provision Constitutional order No. 1 of 2007, the Oath of office (judges) order of 2007, amendments made to the constitution through the constitution (Amendment) order of 2007, and other laws passed between November 3, 2007, and the date on which the emergency would be lifted, regardless of the provisions of the constitution. Furthermore, it was stated that these amendments could not be challenged in any court or forum<sup>115</sup>.

### **Fall of Pervez Musharraf**

On November 28, 2007, Musharraf vacated the office of Army Chief and handed over the command of the army to General Ashfaq Parvez Kayani as the Chief of Army Staff, losing the direct control of the Army. He took the oath as the civilian president for second term on November 30, 2007<sup>116</sup>. On November 30, 2007, he took the oath of office for a second term as president. Musharraf declared on November 11, 2007, that general elections to the national and provincial assemblies would take place on January 8, 2008, and that the national assembly would be dissolved on November 15. After Benazir Bhutto was assassinated on December 27, 2007, rioting broke out, and this date was rescheduled for February 18, 2008<sup>117</sup>. Musharraf made a number of changes to the 1973 constitution on December 14, 2007, in an effort to solidify and stabilize his power. On December 15, the state of emergency was lifted and the constitution was restored<sup>118</sup>.

The National Reconciliation Ordinance (NRO), signed by Musharraf on October 5, 2007, allowed Benazir Bhutto and Nawaz Sharif to return to Pakistan on October 18, 2007 and November 25, 2007, respectively, following the announcement of the general elections<sup>119</sup>. Pakistan People's Party agreed on November 22, 2007, to participate in the elections, while the All-Parties Democratic Movement (APDM), comprised of PML(N), JIP, PTI, and PMAP, decided on November 24, 2007, to boycott them. On the arrival of Nawaz Sharif to Pakistan, decided to review the decision of boycott and was decided to approach Benazir Bhutto to join in boycott of polls<sup>120</sup>. A joint committee of ARD including PPP, PML (N), MQM, ANP, PML, and JAH) and APDM was constructed to prepare a charter of demand for the restoration of judges. The APDM fully supported the restoration of judiciary while the PPP had reservations about the restoration of judges. Thus, ARD and APDM failed to

agree the restoration of judges<sup>121</sup>. The constituent political parties of APDM, Pakistan Tehrik-e-Insaf, Jamaat-e-Islami Pakistan and Pakhtunkhwa Milli Awami Party decided to boycott the polls while the PML-N decided to stay in the electoral process to halt the ruling PML-Q on open field in the elections<sup>122</sup>.

The general elections were held on February 18, 2008 which gave a split mandate and a hung parliament was created. The PPP captured 121 seats in the National Assembly while the PML-N came second with 92 seats. The ruling PML-Q secured 54 seats while MQM got 25 seats and ANP secured 13 seats. 10 seats went to independent candidates<sup>123</sup>. PPP and PML-N installed a coalition government both at center and provinces with two major goals i.e. Pervez Musharraf's exit from the presidency and restoration of judges. Syed Yousaf Raza Gillani of the PPP was unanimously elected as a PM on March 25, 2008 with 264 votes while his opponent candidate Ch. Pervez Elahi got 42 votes. Dr. Fahmida Mirza was elected the speaker of the National Assembly<sup>124</sup>. The PPP and PML-N's alliance didn't last long, as the latter chose to sit in the opposition and withdrew from the cabinet in August 2008 on the issue of the restoration of judges but both had agreed to the removal of Pervez Musharraf from the presidency<sup>125</sup>.

Asif Ali Zardari and Nawaz Sharif, the coalition partners met on 7th August, 2008 to decide strategy for judges' restoration and Musharraf's impeachment. Before this highly important meeting Nawaz Sharif had once again demanded of his coalition partners to come up with clear stance over two important issues of judge restoration and Musharraf's impeachment<sup>126</sup>. If President Musharraf is not able to secure a vote of confidence from the parliament, as he had promised the Supreme Court, the ruling coalition has resolved to impeach him under Article 47 of the constitution<sup>127</sup>. It further declared that after the impeachment process, the removed judges will be reinstated in conformity with the Murree Declaration. The US decision to withdraw its support from Musharraf and get more closely involved with the political government was tied to the decision to start the impeachment process<sup>128</sup>.

The four provincial assemblies passed resolutions to give their approval for Musharraf's impeachment. The unanimous verdict of the provincial assemblies accorded credibility to coalition government's venture for impeaching Musharraf. It added to the woes of Pervez Musharraf on whom the pressure mounted to step down or face impeachment<sup>129</sup>. The provincial assembly's resolution served as deterrence to Musharraf for using 58(2)b to

dissolve the assemblies. He announced that he would not dissolve the assemblies. The resolution of the provincial assemblies rejecting Musharraf's presidency showed that he was no longer acceptable to major political parties and groups all over the country<sup>130</sup>. A charge sheet against Pervez Musharraf was issued by the coalition government including his unconstitutional actions against the elected government of Mian Muhammad Nawaz Sharif in 1999, followed by his ultra constitutional steps taken by him from 1999 to 2007<sup>131</sup>. With the charge sheet issued, Musharraf came under heavy pressure to quit or face the music later. Musharraf missed an opportunity to gracefully quit when his party and loyalist were defeated in February 18, 2008 general elections<sup>132</sup>.

Pervez Musharraf made a last-ditch effort to avoid impeachment. He knocked at every door that could help him that included the army, the Supreme Court and the Bush administration. All declined to intervene<sup>133</sup>. The US secretary of state, Condoleezza Rice declared Musharraf's impeachment as Pakistan's internal matter. The Army Chief also expressed his inability to intervene in a civilian issue. Saudi intelligence chief met president Pervez Musharraf and conveyed king Abdullah's message. The royal envoy discussed the issue of president Pervez Musharraf's safe exit with the political leaders. As the political leader thought since Musharraf's crimes were too big to be ignored, hence there was no question of safe exit<sup>134</sup>.

With the mounting pressure by the ruling coalition to impeach him, Pervez Musharraf chose to bow out to save his skin from being held an accountable for his nine years 'misrule' and secure indemnity instead of facing the charges. He surrendered at the end of the day against what he has been boasting for quite a long time<sup>135</sup>. On Monday, August 18, 2008, Pervez Musharraf resigned from his position due to extreme political pressure; however, he was able to negotiate a very favourable safe-exit agreement that permitted him to remain in Pakistan free from impeachment, legal action, and trial for all the acts he committed during his nine-year rule<sup>136</sup>. He got the necessary assurance of indemnity from the government after the intervention of Army Chief. He was allowed to address the nation on TV to apprise the people of his achievements, given the guard of honor he desired on his final departure from the presidency<sup>137</sup>.

## **Conclusion**

The period from 2002 to 2008 in Pakistan marked a crucial phase in its political history as the country transitioned from military rule under General Pervez Musharraf to civilian

governance. The military coup in October 1999 set the stage for a complex interplay of political dynamics and constitutional changes. The theoretical framework categorized the military disengagement into dictated, pact, and abdicated types, with Pakistan experiencing a predominantly dictated withdrawal. General Musharraf initially showed reluctance to relinquish power, and the events surrounding the military coup, along with the doctrine of state necessity, played a vital role in understanding this transition. The geopolitical shift after 9/11 led Musharraf to align with the U.S. in the war against terror, securing economic and political support that strengthened his position domestically. The move towards civilianization followed a four-phase road map for the restoration of democracy. This dictated transition involved local government devolution, constitutional amendments, voter registration, and, eventually, general elections. The road map aimed at legitimizing Musharraf's rule while extending military influence in the political landscape. Overall, this period was characterized by a complex interplay of power struggles and strategic alignments that shaped Pakistan's trajectory from military rule to civilian governance. The conduct of the 2002 general elections in Pakistan ushered in pro-Musharraf parties, including PML(Q) and the National Alliance, strategically formed to support military interests. The Political Parties Ordinance of 2002 aimed at enhancing political discipline and transparency but imposed restrictions, especially targeting established political figures. Musharraf's victory in the post-election referendum solidified his grip on power, and the Legal Framework Order (LFO) granted him constitutional authority, allowing amendments and assembly dissolution. The election landscape was carefully manipulated to weaken opposition parties, such as PML-N and PPP, through presidential ordinances. The intricate interplay between the military and civilian government post-2002 elections set the stage for subsequent developments in Pakistan's political landscape. Coalition politics emerged with the MMA initially engaging in talks with PML(Q), but obstacles arose due to demands deemed too substantial for Musharraf to concede. This period in Pakistan was characterized by intricate negotiations, power struggles, and constitutional controversies, shaping a political landscape marked by the emergence of pro-Musharraf parties and the complexities of coalition politics. The controversy surrounding the Legal Framework Order (LFO) became a key point of political deadlock in Pakistan, particularly with opposition parties like the MMA. Negotiations faced hurdles, primarily concerning President Musharraf's dual roles as both President and Chief of Army Staff. The creation of the National Security Council (NSC)

through the National Security Council Act of 2004 highlighted the military's desire to influence political affairs. The military uniform issue, with Musharraf reluctant to give it up by the agreed deadline, led to political maneuvering, including the passing of the "President to Hold Another Office Bill," showcasing efforts to accommodate his retention of military command. The article further delves into the military government's interactions with the judiciary, revealing a shift from promised judicial independence to a more controlled and compliant judiciary. Suspension and replacement of judges, along with constitutional amendments, reflected the government's attempts to consolidate power and shield Musharraf from legal challenges. The article concludes with the imposition of a state of emergency in 2007, the promulgation of the Provisional Constitutional Order (PCO), and the suspension of the constitution. This drastic step illustrated the government's extreme measures to preempt potential unfavorable judicial decisions and consolidate power in the face of political challenges.

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