Separation of Powers and its impact on People’s Empowerment:  
A Case study of Pakistan (2007-2013)

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A thesis submitted in partial fulfillment of the requirement for
the Degree of Doctor of Philosophy in Political Science

DEPARTMENT OF POLITICAL
SCIENCE BAHAUDIN ZAKARIYA
UNIVERSITY Multan
In The Name of Almighty

Allah

The Most Beneficent the Most Merciful
DECLARATION

I declare that this research work is based on my own findings through primary and secondary sources of information gathering i.e., books, research articles, internet etc. I also declare that to the best of my knowledge, this work has not been published before. Not a single phrase without exact reference has been included in this thesis.

Muhammad Ikram Ullah Khan
PhD candidate, Roll No.01, Secession (2012-2017)
Supervisor’s Declaration

Mr. Muhammad Ikram Ullah Khan, the PhD candidate, Registration No. 2009-bzps-02, has completed his dissertation, Titled, “Separation of Powers and its Impact on People’s Empowerment: A Case study of Pakistan (2007-2013)”. I hereby recommend it for the final submission of the thesis to acquire the degree of Doctor of Philosophy in Political Science.

Dr. Ayaz Muhammad

HEC Eminent Professor
Dean, Faculty of Arts & Social sciences
Head of Political Science Department
Bahauddin Zakariya University
Abstract

Since 2007, the judiciary in Pakistan has gone from the traditional state of passive institution for enhancing the interests of the executive to an independent institution. It has started asserting its power and role as a genuine enforcer of the law for the interests of the general public. Its role as an arbitrator in the various disputes over sharing of powers between the branches of the government is considered applaudable by many sections of the society. Similarly, Parliament introduced significant reforms to set the tradition of consolidating the democracy and good governance in the country. Positively, the devolution of authority to the provincial governments, reduction in the discretionary power of the president, restoring the parliamentary character and enhancing the oversight on judicial appointments have bolster the power of the legislature in the country.

The purpose of this study is to trace how these changes took place and their impact on the citizens of Pakistan. I have examined the consequences of more vibrant and active judiciary on the principle ‘separation of powers in the perspective of people empowerment’ analyzing the case of Pakistan. The ways and manners in which the separation of powers has taken place are tried to comprehensively analyze. The thesis draws mostly upon the declassified official data since 1947 to onwards. It tries to describe the dominant role of the executive over the other branches of the government. Efforts have been made to highlight the reasons behind the lack of construction relationships among the three institutions.

So the main concern of this study is whether or not separation of powers is a way to empower the people in the political system of Pakistan. For this, the arguments presented in the study are: first, the lack of liberty and empowerment is not due to the absence of separation of powers in the political system of Pakistan, but it is because of overall centralized settings.

Second, the separation of powers is not the ultimate solution for the lack of empowerment of the people. This finding is based on these observations: (1) the principle, separation of powers has been missing in Pakistan for the long time. (2)
Prolonged and repeatedly undemocratic rules (authoritarian regimes) in Pakistan have made the parliament and courts more submissive than an independent institutions (3) Democracy has just completed its five year term. Conversely, the dissertation explores the underlying relationship of empowerment with the democracy.

Third, the people of Pakistan demonstrated more support for democracy. Their participation in elections indicates the trust of people in democratization. The increasing trend of political pluralism has enabled the legislature to exercise effective checks and balances on the executive branch of the government. We cannot say that separation of powers as a principle to empower the people is irrelevant. In addition to this, the study argues that Pakistan needs more stable and viable democratic system.
ACKNOWLEDGEMENT

All praise goes to Almighty Allah, without whose support, I would not have been able to complete this thesis. My ultimate respect and reverence goes to our Holy Prophet Muhammad (PBUH), the torch bearer of knowledge and research for mankind.

Research is a difficult and to some extent a technical job to do. It demands dedication, patience, unbiased approach and frequent efforts. It is not easy to collect relevant materials from a large number of scattered sources. Searching, arranging and analyzing data on a specific subject requires hard work.

All this cannot be done by a single soul; rather it calls for personal exertions and the interaction with the people in the society. It is an admitted fact that one has closest association with one’s supervisor during research and the writing of the thesis. Without the affectionate directions of my supervisor, the ideas behind this study remained just ideas. Fortune favored me to provide a chance of doing research under the supervision of one of the towering personalities in the field of research, named Dr. Ayaz Muhammad, Chairman of Political Science Department and Dean, Faculty of Arts & Social sciences, who supported and guided me throughout my studies. As a refined teacher, he knew my weaknesses and aptitudes; therefore he was able to guide me accordingly. I would not have been able enough to submit the final draft without his proper guidance and valuable advice on finding and utilizing the data concerning political system and pattern of governance in Pakistan.

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used to linking the general conversation (gossip) with my topic. I often found an opportunity to say that ‘here is the separation of powers’. Then he used to explain with his own unique style the application of the concept. Anyhow, these ‘funny’ discussions supported me to be clearer on my research. I am thankful to the staff of Seminar Libraries of various departments of social sciences, Quaid-e-Azam University Islamabad, Seminar Library department of Political Science BZU Multan, Main Library BZU Multan, and Library Centre for South Asian Studies PU Lahore, Punjab Public Library Lahore and Quaid-e-Azam Library Lahore. My thanks are due to the librarians of central library BZU Multan whose organized and systematic records of Newspapers present in the Library benefited me a lot.

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Dedicated

To

I dedicate this work to the memory

of

My Father (late), Rai Ahmad Sher

and

My Dearest son Zafarullah Pomi.

To my family and my sisters.
# ABREVIATION

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AIML</td>
<td>All India Muslim League</td>
</tr>
<tr>
<td>ANP</td>
<td>Awami National Party</td>
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<tr>
<td>BD</td>
<td>Basic Democracy</td>
</tr>
<tr>
<td>CCI</td>
<td>Council of Common Interest</td>
</tr>
<tr>
<td>CEC</td>
<td>Chief Election Commissioner</td>
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<tr>
<td>CMLA</td>
<td>Chief Martial Law Administrator</td>
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<tr>
<td>COAS</td>
<td>Chief of Army Staff</td>
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<tr>
<td>COD</td>
<td>Charter of Democracy</td>
</tr>
<tr>
<td>EBDO</td>
<td>Elective Bodies Disqualification Ordinance</td>
</tr>
<tr>
<td>GHQ</td>
<td>General Head Quarter</td>
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<tr>
<td>IB</td>
<td>Intelligence Bureau</td>
</tr>
<tr>
<td>ISI</td>
<td>Inter- Services Intelligence</td>
</tr>
<tr>
<td>LNG</td>
<td>Liquid Natural Gas</td>
</tr>
<tr>
<td>KPK</td>
<td>Khyber Pakhtunkhaw</td>
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<tr>
<td>NFC</td>
<td>National Finance Commission</td>
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<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
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<tr>
<td>PTI</td>
<td>Pakistan Tehrik-i- Insaf</td>
</tr>
<tr>
<td>OGRA</td>
<td>Oil and Gas Regulatory Authority</td>
</tr>
<tr>
<td>PCNS</td>
<td>Parliamentary Committee on National Security</td>
</tr>
<tr>
<td>PSML</td>
<td>Pakistan Steel Mills Limited</td>
</tr>
<tr>
<td>PM</td>
<td>Prime Minister</td>
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<td>SHBA</td>
<td>Sindh High Court Bar Association</td>
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Chapter No. 1

INTRODUCTION

1.1 Prologue

Separation of Powers is considered the best approach to ensure good governance. It is pre-requisite to maintain balance of power among three pillars i.e. Executive, Judiciary and Parliament of the state. The essence and fundamental nature of this doctrine persists that the three branches of government should be functionally autonomous, independent and separate from each other. This separation among the institutions is maintained in a sense that none whether individual, agency, organization or department, has an authority to encroach the constitutional jurisdictions of the others. Each has defined powers and responsibilities with own personnel to exercise the functions. Baron De Montesquieu (1689-1755) in his ‘Spirit of Laws’ (1748) explained that the people not only preserve themselves from subjugation, suppression and oppression at the hands of powerful rulers but can also maintain their liberty and empowerment through separation of powers. It is manifested in his ideas that the three powers of the state should be divided, separated and must be independent. He stressed that none of three institutions of the government would be able to intervene the power of the other. Modern democracies in the world use separation of powers as an effective means to advance the system of check and balance. It is considered necessary for good governance and empowerment of the common people. (Manent, 2003, p.120)

Separation of powers as a doctrine, maintains that governmental authority is distributed, divided and shared instead of concentrating it in one institution. It puts a stop to one branch from ever gaining too much power. For instance, in American presidential system, Congress passes laws but the president has the power to veto them. Congress can override the veto of president with two-third majority. It is also possible that the president and the congress may agree on a law but it can be declared unconstitutional by the Supreme Court. Similarly, the president can appoint judges and other governmental officials, but the senate must approve the appointments. (Manent, 2003, p.120)
It is also believed that the idea of separation of powers stems from the separation of judicial branch from the executive and legislature. This doctrine was formulated in the mid-seventeenth century by English writers to restrain the abuse of government power. Some western political thinkers like, John Locke (1690) and Blackstone (1884) presented the modern concept of separation of powers. Locke recognized that if the same persons have the power to make laws and execute them, they may exempt themselves from the laws, make and use the laws to their personal benefits. (Sial, 2011, p.230) The theories of Locke are most commonly practiced in Britain and other parliamentary systems in the world where power of absolute monarch is limited by separating the legislative and executive power.

Montesquieu in 1748 added and highlighted the separation of judicial branch from Executive and legislature. He derived these ideas from ancient sources of Aristotle. It evolves that each of the three arms of government; the legislature, judiciary and the executive should have a specific function to perform. Proper constitutional function and relationship of the executive with courts is that the later will respect all acts of the former within its lawful jurisdiction. Similarly, executive branch has to respect all decisions of the court as to what its lawful area is. This division of power is intended to create a strain between authorities in order to maintain a balance. (Shah, Khan and Mahsood, 2011.p.231) Recently this version of Separation of powers is adopted in US and Australia constitutions. (Alvey, 2005, p.22)

The edifice of a state is based on the judicial system. Justice is the basic human right. A strong judiciary in a state is considered an important pillar in any democracy to help the key institutions and players to find and ensure the right balance among them for the success of governance and above all the life, security and property of the common people. (Rajshree, 2012, p.1-7)

In Pakistan the situation seems entirely different. Possessing the powers by the Executive is the favorite practice in the political history of Pakistan. When we see the Constitution of Pakistan, it is based on the doctrine of “Separation of Powers”. It clearly defines the domains of each organ. The judiciary is entrusted the power to interpret the
law made by the parliament. And if any provision of law violates any fundamental right guaranteed by the constitution, the judiciary can strike it down as ultra vires of the constitution. But judges have no power under law and constitution to propose legislation or participate in any such process. Practically the separation of powers among these institutions hardly existed in Pakistan, because both parliament and judiciary remained subservient to executive. (Shah, Khan and Mahsood, 2011, p.61)

Right from the establishment of Pakistan (1947), the executive branch has been predominately maneuvering to concentrate all the governmental powers. Sharing powers among the state institutions has not been the main concern of the ruling elites. This practice shaped the feeble political system and unstable democracy in Pakistan. Consequently, state institutions could not properly function within their constitutional jurisdictions. On the other hand, the liberals and modern democracies in world have the tradition of power sharing among the state institutions, so that authority may transfer up to the common people. When there is the common practice of concentrating the governmental powers in one institution, people automatically suffer. It is generally observed that people feel empowered when powers of the government are divided and shared among the executive, judiciary and legislature in order to maintain balance.

It is hard fact that political managers of Pakistan could not decide to establish and implement any of the government system. Theoretically, they announced to run the state under Islamic democracy but, practically they neither adopted democracy nor Islam. They developed their own system to operate the state. As for as system of government is concerned, they neither adopted parliamentary nor presidential, not they constituted any set formulae to run the government. Powers remained personality centered rather than institution. Rather a semi presidential system of governance has been practiced, with both parliament and judiciary remained subservient to the executive. Throughout the history of Pakistan, the judiciary remained relatively passive in political matters. It has to play a significant role in checking the executive and legislature, and in protecting the constitution but, for a long time it had been playing an adaptable role in front of military dictatorships. Leading to this harsh observation by one commentator: ‘In short, Pakistan’s Supreme Court has followed the path of least resistance and least fidelity to constitutional
principles…the courts have been the military’s handmaiden in extra- constitutional assaults on the democratic order’. (Rajshree, 2012, p.1-7)

Resultantly, civilian’s governments had been overthrown by Military on several times. Courts justified the military takeover on grounds such as ‘law of necessity’ or ‘revolutionary legality’. Moreover, in order to obtain greater obedience from the courts, military rulers frequently maneuvered and managed the judges to take oath under Provisional Constitutional Order (PCO) and Legal Framework Order (LFO) rather than under the constitution. Removal from service was the fate of judges who ever dared to refuse the orders of the dictators. (Khan, 2009, p.510)

Judges in the mentioned situation were segmented in three groups; first, those who were called for oath, second, those who were not called for oath and the third, those who were stopped to take oath. There are few examples, when judiciary tried to assert its independent position. In 2006 Supreme Court opposed the government’s attempt to privatize Pakistan Steel Mills. It was the beginning of a series of cases in which the Courts began to question the actions of the executive- President Musharraf. He needed very submissive and obedient Judges because of the incoming presidential election and the controversy as to whether he could contest for the presidency and, in particular, retain concurrently the position of Chief of Army Staff. To accomplish his designs, Musharraf summoned the chief Justice of Pakistan to Army House on 9th March 2007 and forced him to resign. On his refusal, Musharraf suspended him from his office. Although he was restored later on by the full bench of the Supreme Court yet he was again removed following a declaration of a state of emergency on 3 November 2007. (Khan, 2009, p.510)

In this way, new political development started because Judiciary enhanced itself as an institution. With the judicial independence, the principle ‘separation of powers’ is exemplified in Pakistan. Later on we see that Judiciary and Parliament were also trying to dominate each other during democratic regime under Pakistan People Party (PPP) in 2008-2013. During this period, it is observed that Judiciary became so powerful that it convicted one Prime Minister for contempt of court. Some critics say that judiciary had
constraint the powers of the other two institutions. In spite of the constrained relationships among the legislature, executive and judiciary since 2007, there have been immense prospects for the long term consolidation of democracy and the business of the government.

Now the purpose of this study is to find, up to what extent ‘separation of powers’ exists in Pakistan. Secondly, what are the factors responsible for the independence of judiciary and finally the impact of this independence on the empowerment of the people? Whether the state institutions are functioning with checks and balances contrary to the previous traditions of powerful executive? And if there is checks and balances with separation of powers among the three state institution, then the people of Pakistan are empowered or not?

1.2 Objective and Scope of Study

In the beginning, it is imperative to decide the scope and objectives of this study. It has precise objectives and definite time period.

- The basic objective of the study is to contribute the analysis of the sharing of powers among the main governmental, political and democratic institutions of Pakistan.
- It is also important to clarify here that this work does not mean to prove or falsify the Montesquieu theory, but it intends to enhance our understanding concerning the function, efficacy and usefulness of the democratic system based on separation of powers for liberty and empowerment of people in the federal parliamentary system, analyzing the case of Pakistan.
- It is also important to clarify that the valid generalization cannot be established nor it can be refuted on the basis of a single case, but the findings and outcomes of this work will be supportive for the policy makers and the people in the helm of affairs.
This study covers the time period between 2007 and 2013. The reason for selecting this period is that it differs from the pre 2007 period in political and constitutional history of Pakistan. The shape of relation between legislature, executive and judiciary has been changed and judiciary has asserted its power as an independent institution. The closing point of the study is 2013- the completion of five years term of the democratic government. The role of military and civil bureaucracy also matters in Pakistan, but this study is confined to the three pillars of the state considering the theory of separation of powers and its impact on empowering the people.

1.3 Research Questions

The central concern of this research is ‘whether political system based on Separation of powers leads towards people empowerment in Pakistan? There are secondary questions also:

1. Whether the judiciary in Pakistan has empowered itself as an institution or not?
2. What are the factors which led to the judiciary as an independent institution?
3. How independent judiciary based on separation of powers leads to people empowerment in the political system of Pakistan?
4. How executive based on separation of powers leads to people empowerment in the political system of Pakistan?
5. How legislature based on separation of powers leads to people empowerment in the political system of Pakistan?

1.4 Hypothesis to Investigate

Separation of powers is an approach of modern democracy based on the system of checks and balances within Executive, Judiciary and Parliament which in due course leads people to empowerment rather than to struggle for gaining power in terms of getting mere dominance over them in the test case of the political system of Pakistan.

1.5 Research Methodology
Both secondary and primary sources of material are used. Careful readings of the published work on separation of powers by Montesquieu and John Locke as well as the model of separation of powers specially, UK and US system of checks and balances in the federal system are made. Secondary sources of material such as books, research articles published in reputed journals, reviews, online published materials newspapers, official websites also relied upon. Both qualitative and quantitative research approaches have their own weaknesses and strengths, but the growing trends in social sciences, research is shifted towards integrated studies, which is called the mixed method of research. In a mixed method both quantitative and qualitative research approaches will be used in a single study. In this study mixed research method to provide more reliable data for better understanding of the research problem is used.

1.6 Literature Review

Mustafa, Z. (2005) “Pakistan’s struggles with democracy” discusses in her book about the efforts made by the different governments in Pakistan to make the country democratic in true sense. The writer does not highlight the real causes of democracy failure and lack of empowerment in Pakistan. This work focuses the causes of failure of democracy and the rule of law in Pakistan.

Talbot, I. (2012) “Pakistan: A modern history” points out the general perception of the west towards Pakistan. It is urgent need to defuse the understanding about the stereotypes, authoritarian and reactionary observation of the country. Writer also highlights the comparison of Pakistan with the tolerant, democratic and progressive India. Pakistan at the time of golden jubilee is needed to be taken seriously in its own right as a country with 130 million people. The complex plural society of Pakistan which is deeply fashioned by the colonial inheritance by its birth is also experiencing a fast change. The approach of author breaks down the stereotype perception and supports in answering the problematical question of democratic success in India. Comparatively, Pakistan has been subject to long term rule of authoritarianism during its more than five decades of existence.
Jalal, A. in “A comparative and historical study of the interplay between democratic politics and authoritarian states in South Asia” discusses the effects of shared colonial inheritance which led to apparently divergent trends of political development in India and authoritarianism both in Pakistan and Bangladesh. It is obvious from this analysis that despite having differences in forms of governance, there is the existence of central political authority in each state. This central authority in these states remains in conflict with similar threats from regional and linguistic disputes, religious and sectarian conflicts, as well as classes and castes differences. The comparison of states structures with political processes, the writer redefines democracy, citizenship, sovereignty and the nation-state. The argument put forward by the writer is decentralized governmental structure.

Allen McGrath in “The destruction of Pakistan's democracy” discusses that immediately after independence (1947); Pakistan departed from democracy to undemocratic regimes. He recounts that this change did not occur by the military, as is generally perceived, but by the chief executives and ruling elites of the country. The wrongdoings and actions of both political elites and the army received the legal cover from the judiciary. This book vividly presents these events in detail regarding this dramatic change at governmental level.

Niaz, I., (2010), The Culture of Power and Governance of Pakistan 1947-2008, highlighted the crisis of governance in Pakistan. The writer tried to discuss the crisis of governance in historical and philosophical perspectives. The ruling elites and the political apparatus has not brought positive change in their behaviors in spite of having got the independence from the British dates back to some sixty years ago. As a result, the behavior of the political elites towards the general masses remained more unreliable, delusional and proprietarily. This has led to the deteriorated condition in the intellectual and moral quality of the government apparatus, which is according to the writer, is a mortal threat for Pakistan. The main argument of the writer is that the regression in the behavior of the ruling elites in south Asia is due to the reassertion of the indigenous orientations. It is equally unfortunate that the majority of the intellectual and academic work about developing states has been emphasizing the national development, security
and democracy. This work of the Ilhan Niaz recounts the declassified record of Pakistan to balance the debates on the crisis of governance.

In *A Political History of Pakistan 1947-2007*, Vyacheslav Y. and Vladimir N. Moskalenko describe the political history of Pakistan from 1947 (time of independence) to Musharraf era. In this work, authors discussed the features and predominant trends of Pakistani politics. The role and performance of the different governments in Pakistan have analyzed with special purpose of socio-economic interests. Writers tried to narrate the situation of Pakistan in the perspective of life of the nation. Among the seven chapters, the first chapter deals with the historical struggle for independence and the forces behind the emergence. In the second chapter, formative years and the first military coup of 1958 have been discussed. Likewise, the remaining chapters deal with the administration of both military and civil rulers in the country. The final chapter of the book is related to the policies of the Musharraf rule in the Pakistan.

Tushent and Khosla (2015), in (Eds.), *Unstable Constitutionalism Law and Politics in South Asia*, Cambridge University Press, New York, highlighted the increasing trends of constitutional law in the modern times, but it has not yet succeeded to change it geographic focus. South Asia, which has the largest democracy in the world, is still lagging behind. In this book the focus is to remedy the lack of attention towards the region. There is a detailed examination of the constitutional law and the prevailing practice in the south Asian Countries specially, Pakistan, Sri Lanka, India, Bangladesh and Nepal. The common theme identified is volatile change by studying the sources of instability and reactions to it. The “Unconstitutional Constitutionalism” has constituted the important step towards real global constitutional literature by identifying the unique question in unrepresentative part of the globe.

Moeen H. Cheema and Ijaz Shafi Gilani (2015) highlighted the tenure of Pakistan’s chief justice Iftikhar Chaudhry from 2005 to 2013. This period is characterized by the remarkable progress in the field of constitutional politics as well as in the jurisprudence of the Supreme Court. Opinions differ on the role and function of the apex
court in this period. However, the detailed scrutiny of the actions in Chaudhry court remained lacking. In this volume, an attempt has been made to fill this gap.

1.7 Scheme of Study

Ch: 2 Separation of powers and People’s Empowerment: a Theoretical Framework

The second chapter of the study highlights the concept ‘separation of powers’ and its implementation in both presidential and parliamentary systems of the world. It attempts to review the different theories of separation of powers as well as different kinds of separation of powers in the world and how separation of powers is linked with the empowerment of people. Apart from this theme, this chapter examines previous studies’ proposed mechanisms for people’s empowerment.

Ch: 3 Powers Sharing in Pakistan: an Historical Overview

This chapter explains the role of three institutions in the history of Pakistan and their effects on the democratic institutions. It also presents a brief analysis of the performance of judiciary, executive and parliament in the past. The major constitutional developments and the trends of power sharing in Pakistan since 1947 are discussed.

Ch: 4 Separation of powers: A case of Pakistan

The aim of this chapter is to explore apparent factors led to the separation of powers between three pillars of the state since 2007. This chapter attempts to show the performance of judiciary after the restoration of Chief Justice Iftikhar Muhammad Chaudhry. This analysis highlights the shortcomings of both judiciary as an institution and the dominance of executive over the judiciary and parliament. It will also discuss the aptitude of the general public and the new civilian government toward the independence of judiciary. It also discusses the main provisions of the 1956, 1962 and 1973 constitutions of Pakistan related to separation of powers.

Ch: 5 Empowerment of people through separation of powers
This part is the main body of the thesis in which the impacts of separation of powers concerning the people’s empowerment are discussed. To analyze this, large set of indicators of separation of powers and people’s empowerment; achievements of parliament, judiciary as an institution and its independence, legislative output, content analysis of debates and advocacy for people’s empowerment would be used.

**Ch: 6 People’s opinions based on a survey**

This chapter discusses the data collected through survey. Attempts have made to gauge the public opinions regarding the empowerment of people through separation of powers. There are three sections in this chapter. First comprises the introduction, second describes the methodology to conduct the survey, while the third portion discusses in detail the survey results.

**Ch: 7 Findings and Conclusion**

This final chapter summarizes the findings of the thesis. It reviews the implications of the theoretical studies of separation of powers and its impact on people’s empowerment. It also presents some insights into the consumption of the separation of powers with empowering the people.
References


Chapter No. 2

SEPARATION OF POWERS AND PEOPLE’S EMPOWERMENT: A THEORETICAL FRAME WORK

2.1 Introduction

The concept ‘separation of powers’ dates back to the earliest 17\textsuperscript{th} century constitutionalism, where it became basic factor to the system of a limited government. It has to pass through different evolutionary phases. Some ancient scholars like Machiavelli, Aristotle, Cicero, St. Thomas, and Polybius was the supporter of mixed Regime. Earlier, this doctrine had disposition of two fold division of power i.e., Executive and Legislature. Later on, its description of three fold doctrine included Judiciary as an important, separate and independent institution of the government. In the modern political thought particularly in the era of constitutionalism, rule of law, liberal democracies and good governance, this doctrine has gained greater importance. It is being used in almost every system of governance as an essential mechanism for checks and balances with certain changes. The primary purpose of the Separation of Powers, according to Montesquieu is to prevent tyranny, suppression, oppression and subjugation in the society i.e. to empower the general masses through sharing the power of government into different branches. In short when central powers or governmental power is shared into more groups and institutions, it felicitates the participation of the people in the decision making process, which is the ultimate empowerment of people. The first part of the chapter elaborates the concept ‘separation of powers’ whiles the second part discusses the ‘empowerment’. Therefore, the theoretical framework devised in this chapter is to link the Separation of Powers with the Empowerment of the people.

2.2 Separation of Powers as a Concept

Generally, Governments have three broader powers: the judicial, the executive and the legislature. These powers are performed by three different branches of government: Executive, Legislature and Judiciary. When power of the government is
broadly divided into three spheres and activities of the government are performed by these three branches separately and independently through checks and balances on each other instead of concentrating and accumulating the power and authority in one body, person or group of persons, it is called separation of powers. In simple worlds, separation of powers is separating, dividing and sharing the governmental powers and functions into three branches and to minimize the interference and influence of one branch into the functions of the other branch. In the ‘separation of powers’ all the three powers i.e. legislative, executive and judiciary balance each other. The essence of the concept is that the power should not be concentrated in one branch, but be distributed like that each branch can independently carry out its own respective functions. Normally, there are two principles on which separation and balance of powers rests on. First, all branches of government are bound by the rule of law. Secondly, the competencies of the three branches of governmental powers must be clearly defined. (Resende, 2011, p.5)

According to Axford and other (1997), “It is the concept that maintains that three powers/elements of government (executive, legislature, and judiciary) should be separated in role and responsibility and that such a separation will ensure good and just government”. (Axford, Browning and Turner, 1997, p.290)

2.3 Philosophical Foundation of the Separation of Powers

Since ancient times, Greek philosopher like Aristotle (350 B.C) mentioned that the powers of the government rest with three branches. He stated in his great work ‘Politics’ “that there are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it, if these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these three elements. These three are, first the deliberative, who discuss everything of common importance, second the officials…and the third is judicial element.” (Parpworth, 2012, P.19)

Similarly, John Locke (1632-1704), the modern English political theorist, also categorized the power of government into three branches: Legislative, executive and
federative. He stressed that “…it may be too great a temptation to human frailty; apt to grasp at power for the same persons who have the powers of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution to their own private advantages.” (Waldron, 2013, pp.433-468)

But in his Second Treatise of Government (1689), he differentiated the legislative branch as a supreme of the other two. He concluded that “in all cases whilst the government subsists, the legislative is the Supreme power. For what can give laws to another must needs be supervise of the society, but by the right it has to make laws for all the parts and for every member of the society, prescribing rules to their actions, and giving powers of execution, where they are transgressed, the legislative must needs be the supreme.” Judicial power according to Lock is the part and parcel of the executive branch. With this major difference Lock’s theory does not match with the three powers of Montesquieu. (Ratnapala, 1993, p.208)

Many other scholars had the same views. According to Vile (1998), the history of this concept dates back to the ancient 17th century constitutionalism, when it became central element to the system of a limited government. In the modern political thought, it can be used as an important instrument with modifications. Earlier, doctrine had two fold division of government i.e., Executive and Legislature. Latter on its version of three fold doctrine, included Judiciary as an important pillar of the state. So, since 18th century, threefold division of power has been recognized for constitutional governments. (Vile, 1998, p.1)

2.4 Precursor of the Doctrine Separation of Powers

The idea of ‘mixed state’, originated by Plato is generally accepted as the antecedent of the separation of powers. Later on Aristotle endorsed the idea of mixed state and on its base; he categorized the functions of government into three parts to ensure good governance. There was checks and balances in the British System of Mixed Regime. Kings, the Lords and the Commons were the main pillars of the British
Government. Under the Mixed Regime, these three estates of the kingdom checked and balanced one another. This system of checks and balances under the Mixed Regime was strongly supported by the famous theorists like, Machiavelli, Aristotle, Cicero, St. Thomas, and Polybius. (Calabresi, et al., 2012, PP. 527-548)

Polybius (200-118 BC), a Greek historian of Hellenistic Period (264-146 BC) was the main exponent of Theory of Mixed Government. He was very much impressed by the stability of worldwide Roman Empire. He opined that the stability of Roman Empire was due to Mixed Government. The salient features of the Mixed Government were the consuls, the senate and the Assemblies. All these principles were drawn from the old forms of government like, Monarchy, Aristocracy and democracy. The Roman Empire used to share powers among these three wings in such a way that each branch checked the powers of others in order to maintain the balance. This system of governance was so successful in Roman Empire that it impressed the theorists of 17th Century who ultimately derived the concept of separation of powers with some amendments in the mixed government. The only apparent reason to replace the mixed government with separation of powers was its inherited flaws of office holding by the Kings and the Nobles. (Vishwanadham, 2012, p.237-240)

With the dawn of Enlightenment, the theory of separation of powers gained further momentum. Thus the Legislature, Executive and Judicial powers of the state were being considered functionally separate branches. So we can say it is an alternate form of the Mixed Regime. The best example is the US Constitution, where Congress enjoys powers just like House of Lords and House of Commons in Britain. President enjoys powers in the same way the King of England. Supreme Court plays its role like that of Privy Council. (Calabresi, et al., 2012, PP. 527-548)

2.5 Objective of separation of powers

The doctrine, separation of powers is the core of modern democracy. This principle provides such a system through which the people of the state express their political opinions and participate in the decision making process fearlessly. The
democratic states with check and balance guarantee the fundamental rights of the citizens and thus pave the ways for the people to lead their life independently. We can say that liberty and empowerment of the people is the basic and essential objective of this doctrine. Liberty or empowerment of the people is maintained and preserved through preventing the accumulation of governmental powers in one branch, person, organization, institution or in department. This division of powers, specially the independent judiciary minimizes the tyrannical nature of the government. Misuse of powers at governmental level is seen only at the time when judicial branch restrains to perform its function properly and fairly. Common people feel liberty when legislature, executive and judiciary counterbalance the power of each branch. (Singh and Vijay, 2013, p.1-7)

2.6 Montesquieu and theory of separation of powers

Separation of Powers is best known theory of French Jurist, Baron De Montesquieu (1689-1755). There are two salient features of the theory of Montesquieu: governmental functions are categorized into legislative, executive and judicial, and the other one is balance of powers through checks and balances. He discussed this theory in his famous book “De l’Espirit des Loix” (The Spirit of the Laws) published in1748 with the subject titled: “Of the Laws Which Establish Political Liberty with Regard to the Constitution”. His main concern was the constitutional arrangement to secure the liberty and empowerment of an individual with adequate authority of the Government. Montesquieu was very much impressed by the English political institutions during his stay at England. He observed that people were empowered and enjoying full liberty without any suppression and tyrannical rule. He concluded from the experience of good governance at England that people in moderate governments, could only be empowered and liberated themselves from the tyrannical rules through the important element of check and balance at government level. For this, he said: “power must be checked with power”. English people were fully empowered and enjoying their political liberty due to separation of powers. After his return from England, he formulated this theory therefore; the origin of this theory is England. (Harmon, 2000. p.280-281)
The classical formulation of the Montesquieu theory is that in every government there are three kinds of powers: the legislative power, the executive power and the judicial power. Laws are made under the legislature branch of the government; policies, both internal and external are executed by the executive power. The third is judicial power, which is exercised according to Montesquieu, by the separate body to interpret the laws and check the authority of the executive. Montesquieu stated that,

“When the legislative and executive powers are united in the same person, or in the same body or Magistrate, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner...there would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”
(Harmon, 2000, p.281-282)

He also explained the term ‘liberty’ that it “is a right of doing what the laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because of all his fellow citizens would have the same power.” Montesquieu stresses more on the judicial branch to provide liberty to the citizens. According to him, “there is no liberty if the judicial power be not separated from Executive and Legislature. Where it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge might behave with violence and oppression”. He also explains how the political liberty is achieved. His focus is on checks and balances on the use of powers. The liberty is only achieved when there is some mechanism of restrictions on the use of powers. He said that “even virtue has limits”. Thus to prevent the abuse of power it should be checked by power through the arrangements at state level. He further says that, “constant experience shows that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. To prevent this abuse, it is necessary from
the very nature of things that power should be a check to power.” (Harmon, 2000, p.281-282)

Similar views are expressed by the English Jurist, Blackstone. He said “Whenever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no liberty.” Accumulation of all powers in one person leads towards tyranny. As Hamilton, the American thinker argued that “the accumulation of all powers, legislative, executive and judicial in the same hands, whether of one, few or many, may justly be pronounced the very definition of tyranny.” (Haq, 2002, p.327)

So the real motives of the doctrine were to protect the citizens from impulsive, tyrannical, capricious and unrestraint powers of the rulers. Liberty and empowerment of the individuals is preserved and maintained through Separation of Powers. Tyranny and arbitrary rule of the Government is prevented only through the sharing of powers. It is generally observed that when powers are divided and shared among different organs, it leads towards the creation of constitutionalism or limited government. In this way, the Governmental power is specified into three independent institutions i.e. legislative, executive and judicial. These independent wings (institutions) of the government function with different and independent personnel of each other. Vile (1998) summarized the doctrine:

“It is essential for the establishment and maintenance of liberty that the powers at the government level be divided into three independent branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time
a member of more than one branch. In this way, each of the branches will be a check to the others and no single group of people will be able to control the machinery of the state.’’ (Vile, 1998, p.13-14)

2.7 Contemporary world and the concept of separation of powers

As discussed earlier that the concept ‘separation of powers’ has very deep historical roots. It has constitutional, political and philosophical history. The ancient philosophers, thinkers and political scholars like, Aristotle, Polybius, Epicurus and Plato gave their philosophical foundations of the concept. John Lock and Charles de Montesquieu are credited as the main author of the concept. The general question regarding the separation of the powers is how can we judge it? The answer is simple. It is originated only at the time when there is complete or partial independent ‘judiciary’ from the legislature and executive branches of the government. One can also judge it from other criteria of the actions of the executive. When the actions of the head of the government fall within the jurisdictions of the courts, there is separation of powers. (Barenboim, 2005, pp.23-24)

In the modern perspective, this doctrine is at the top of the seven ‘essential elements’ of democracy laid down by the UN General Assembly in 2004. Those are:

- Separation and balance of powers
- Independence of judiciary
- A pluralistic system of political parties and organizations
- Respect for the rule of law
- Accountability and transparency
- Free, independence and pluralistic media
- Respect for human and political rights

This resolution was endorsed by 172 states. It therefore both represents and consolidates an international consensus on what democracy means and how it should function. (Resende, 2011, p.5) Protect the liberty and empowerment of individuals
within the state, and to ensure good governance by appropriate specialization and specification of functions is the main objectives of this theory. The general perception about the applicability of the doctrine is that it is best suited to presidential system. This is not necessary. It is the theory of government, so it can be adopted by any systems of government with varying degree of changes and alterations. There is no restriction of only presidential system. Like representative government, it is adjustable in the prevailing legal conventions, principles or practices of the different constitutional systems. (Carney, 1993)

2.8 Branches of the Government

As the separation of power rests on three powers of the government (executive, judiciary and legislature), it is pertinent to define these three branches.

2.8.1 The Executive

Executive branch or executive power is “the top tier of the government. It directs the nation’s affairs, supervises the execution of policy, mobilizes support for its goals and offers crisis leadership.” This branch of the government is the core of the state. It is quite impossible for the government to run without executive. The executive power is considered the government’s energizing force. Its function is to make decisions, set priorities and ensures the implementation of the decisions. If we use the term ‘executive’ in broader sense, it includes from president to policeman, i.e. all officials from highest to the lowest, who administer and enforce the laws. But in real sense, there is clear distinction between bureaucracies and executive, because the former is appointed officials while, the later is chosen representative and also answerable to the legislature for their conduct. So the executive is the person or group of persons who head the executive branch to launch the policies of the government. It comprises the president, prime minister, and cabinet. For instance in Britain, the Queen, the prime minister and the cabinet are the executive of the state. In USA, executive means the president and his secretaries, while in Pakistan, the president; prime minister, cabinet and governors form the executive. (Hague and Harp, 2004, p.268)
2.8.2 The Legislature

Legislature is a body within political system that makes laws. Norton (1990) stated that “It is a multimember representative body which considers public issues. Its main function is to give consent on behalf of a political community that extends beyond the executive authority.” It has different names like, parliament, congress, senate, national council, national assembly or Majlis in different states. (Hague and Harp, 2004, p.247)

2.8.3 The Judiciary

It is the third organ of the state primarily to enforce and interpret laws made by the legislature and executive, while in some states it maintains the constitutional rules also. There are certain rules and regulations of every political system. Judiciary enforces these rules for the better functioning of the business of a state. It can also invalidate the acts passed by the executive or legislature through the power of judicial review. Nearly all the modern democracies have the same judicial organization. The following table will depict the hierarchical order of the court in few countries.

Table 2-1: Hierarchical order of the courts

<table>
<thead>
<tr>
<th>Grade</th>
<th>Pakistan/India</th>
<th>England</th>
<th>USA</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td>High courts of review</td>
<td>Supreme court: high courts</td>
<td>Supreme court of judicature</td>
<td>Supreme court</td>
<td>Courts of cassation</td>
</tr>
<tr>
<td>Intermediate appellate courts</td>
<td>District session courts</td>
<td>Country courts and quarter sessions</td>
<td>Circuit courts of appeal</td>
<td>Courts of departments</td>
</tr>
<tr>
<td>Lower courts of first instance</td>
<td>Courts of sub-judges and magistrates</td>
<td>Courts of petty sessions: justices of peace</td>
<td>District courts</td>
<td>Justices of peace</td>
</tr>
</tbody>
</table>

Source: (Haq, 2002, p.371)

The role of the executive determines the mode of governance, whether democratic or authoritarian. The liberal and modern democracies have established some rules and regulations to control the unrestraint powers of the executive. The powers and functions
of the executive vary in the presidential, parliamentary and semi presidential system of
the government. The important difference between presidential and parliamentary system
is the selection of the executive. The following table will explain the three powers of the
government.

Table 2-2: Three branches of the government

<table>
<thead>
<tr>
<th>The state</th>
<th>Three branches</th>
<th>Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>All institutions</td>
<td>legislature</td>
<td>Makes laws</td>
</tr>
<tr>
<td>Executive</td>
<td></td>
<td>Administers laws</td>
</tr>
<tr>
<td>judiciary</td>
<td></td>
<td>Interprets laws</td>
</tr>
</tbody>
</table>

Source: (Ryan, Parker, and Hutchings, 1999, p.89)

2.9 Separation of powers under the Presidential system of government

This is the system of government where executive branch is separate and
independent by function and by selection from the legislature. Historically, the monarchy
in France, England, and Scotland, executive power was entrusted to the Crown rather
than the parliament. Gradually the executive power of the Crown in England limited to
the ceremonial head, while the same power and functions of the Crown converted into the
form of president in UAS. President is vested the powers of simultaneously the head of
the state and the chief executive. The separation of powers is the main feature of the
presidential system. In this system, the power of executive is vested with the president
who is elected by a popular election along with the independent legislature. As both
institutions are separately elected for a specific period with certain autonomy of separate
personnel, therefore the chances of encroaching and overlapping the powers of other
institutions are least considered. Thus the office of the chief executive or the president is
not answerable to the legislature branch. Main features of the presidential system are:

6. Head of the government is also the head of the state.
2. The executive is called the president who is directly elected by the people for a fix time.

3. Heads of the departments are appointed by the president. (Hague and Harp, 2004, p.268-269)

The following table will explain the power of executive in the Presidential form of government.

Table 2-3: Role of executive in presidential system

<table>
<thead>
<tr>
<th>Voter</th>
<th>Elect</th>
<th>1. Legislature</th>
<th>2. President:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>(a) Chooses-cabinet ministers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(b) Administer-departments</td>
</tr>
</tbody>
</table>

Source: (Hague and Harp, 2004, p.269)

2.10 Separation of powers under the Parliamentary system of government

In the parliamentary form of government, the executive power is vested with the prime minister along with his cabinet. There is difference between head of the state and the head of the government in the parliamentary system. Prime minister or premier, which is chosen by the majority party in the parliament, is the chief executive and the head of the government. President or the hereditary monarch is the head of the state. Executive branch of government is chosen by the legislature of the state and hence answerable to it. The function of the chief executive is performed by the head of the government, while the head of the state remains as a ceremonial head. For instance, in UK, which is the leading and classical example of the parliamentary form of government in the world, the royal family enjoys and keeps the status of head of the state. The important features are:
1. In the parliamentary system executive is divided into two parts, the head of the state and the head of the government.

2. Head of the state appoints the head of the government while, the later appoints the ministers of the cabinet.

3. Ministers are the part of the parliament.

4. Head of the state dissolves the assembly on the advice of the head of the government.

The British constitution which is based on Westminster system exemplifies the separation of powers and establishes a rule of law. There are distinctive roles and offices associated with the various branches of government work to sustain constitutional government. (Axford, Browning and Turner, 1997, p.292)

Following table presents the parliamentary and presidential system adopted by the countries in the world up till 2002.
Table 2-4: Both systems prevailed in the world

<table>
<thead>
<tr>
<th>Continents</th>
<th>Parliamentary form of government</th>
<th>Presidential form of Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>America</td>
<td>Canada, Jamaica</td>
<td>Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, United States, Uruguay</td>
</tr>
<tr>
<td>Post Communist</td>
<td>Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Slovak Republic</td>
<td>Belarus</td>
</tr>
<tr>
<td>Western Europe</td>
<td>Austria, Belgium, Denmark, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherland, Norway, Spain, Sweden, United Kingdom</td>
<td></td>
</tr>
<tr>
<td>Asia</td>
<td>Australia, Fiji, Israel, India, Japan, Jordan, Malaysia, Nepal, New Zealand, Papua New Guinea, Singapore, Thailand, Turkey,</td>
<td>Bangladesh, Pakistan, Philippine, South Korea</td>
</tr>
<tr>
<td>Africa</td>
<td>Botswana, Senegal, South Africa</td>
<td>Gambia, Ghana, Malawi, Namibia, Uganda, Zambia, Zimbabwe</td>
</tr>
</tbody>
</table>

Source: (Carey, 2005, p. 91-122)

2.11 Model of separation of powers in the world

Complete separation of powers is nowhere found in the constitutional systems of the world. Some overlaps are inevitable in the strict application of this doctrine; therefore, a system of checks and balances has to develop. Although states in the World like, USA tried to adopt this doctrine in strict manners but could not succeed. Thus, complete separation of powers is limited to simple theory before the realities of the government. (Carney, 1993, p.3)
Similarly, there is no pure and absolute universal model of separation of powers in the universe. The court of South Africa in 1996 while clarifying the objection on the constitution, explained that, “Under the democratic systems of government it is general practice that checks and balances result in the imposition of restraints by one branch of government upon another, thus, there is no absolute separation.” It further maintained that, “Mostly the presidential systems in the world are based on the division of powers among the three autonomous departments of the government. Some constitutional democracies, like Argentina, Brazil, Panama, the Philippines, and the United States of America have adopted the Separation of powers model. It exists in different forms in different countries, like in USA, Netherlands and the France, members of the executive may not continue to be members of the legislature, while in German separation of powers this is not a requirement. Moreover, because of the different systems of checks and balances that exist in these countries, the relationship between the different branches of government and the power to influence one branch of government over the other differs from one country to another”. (Regan, 2005 p.120)

2.11.1 Separation of powers in UK

Theoretically speaking, the parliamentary system of English Constitution is based on Separation of Powers. Parliament only makes laws; it cannot interfere in the executive functions of the Crown. Executive appoints Judges but cannot remove them. But in practice, it reflects fusion of powers. Executive and Parliament are closely interlinked through cabinet. Prime Minister and other cabinet members are part of the Parliament and hence answerable to it. (Haq, 2002, p.327)

Following table will interpret the separation of powers in Westminster system (parliamentary system):
Table 2-5: Separation of powers in the Westminster system

<table>
<thead>
<tr>
<th>Institution</th>
<th>Power</th>
<th>Personnel</th>
<th>Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliament</td>
<td>make laws</td>
<td>Representative elected to lower house. Elected or nominated to upper house.</td>
<td>Royal Assent/Supervision and expulsion by the House.</td>
</tr>
<tr>
<td>Executive</td>
<td>Executive power</td>
<td>Minister appointed by the Crown with the support of the lower house, must be members of the Parliament.</td>
<td>Maintain support of the lower House, Parliamentary and Judicial Review.</td>
</tr>
<tr>
<td>Council:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Courts</td>
<td>Judicial power</td>
<td>Judges appointed by the Executive</td>
<td>Superior Court justice’s removal by the Crown, address from both Houses on certain grounds.</td>
</tr>
</tbody>
</table>

Sources: (Australian study group, parliament house, Brisbane, 1993)

2.11.2 Separation of Powers in US Constitution

Constitution of US is based on separation of powers theory. The founding father of the US Constitution, James Madison stated in the Federalist No. 47 that “the accumulation of all powers, executive, legislative and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed or elected, may justly be pronounced the very definition of tyranny…” (John, 1990, P.77)

First three clauses of the US constitution are related to the division of power into three independent branches. Article 1 empowers the Congress to make laws. It has two houses; Senate and the House of Representatives. A bill needs majority vote in both houses to become law. President enforces these laws under the Article 2 of the Constitution. Judiciary interprets laws under the Article 3. There is inbuilt mechanism of
checks and balances in the US Constitution. Each branch restrain the powers of other branch to maintain balance of powers. For instance, President can veto the bill in order to check the power of Congress. But Congress can overturn the veto power of the President with two-third majority. These laws can be declared unconstitutional by the Courts. President appoints Judges of Supreme Court but he has to get prior approval from the Senate. In this constitutional procedure, people are protected from oppression and misuse of powers by the governmental machinery. This is considered the best way of limited government because in sharing the powers among three institutions prevent any branch from interfering in the domains of other. (John, 1990, P.79) Following table will help to understand the division of government in US:

**Table 2- 6: Separation of powers in USA**

<table>
<thead>
<tr>
<th>institutions</th>
<th>Powers</th>
<th>Personnel</th>
<th>Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congress</td>
<td>Power to make laws</td>
<td>Elected representatives</td>
<td>Presidential veto; Supreme Court review of validity</td>
</tr>
<tr>
<td>President</td>
<td>Executive power</td>
<td>Elected. Cannot be a Member of Congress</td>
<td>Senate ratification necessary for cabinet and diplomatic appointments, and treaties; Judicial review; Impeachment by removal by Congress.</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>Judicial power including judicial review of legislative and executive activity</td>
<td>Appointed by President with Senate ratification</td>
<td>Impeachment by congress.</td>
</tr>
</tbody>
</table>

**Sources:** (Australian study group, parliament house, Brisbane, 1993)

The beauty of governance lies in the proper functioning of the institutions. We see that under the separation of powers concept, there is functional independence within the
main organs of the state. When the institutions of the state function independently without the pressure of interference from the other institution, the principle of checks and balances automatically strength, which will ensure that the constitutional order puts a stop to the branches of the government from capturing powers from one and other. In Justice Frankfurter’s words, ‘The areas are partly interacting, not wholly disjointed’. (Regan, 2005 p.121)

Having discussed the concept separation of powers now it is equally important to discuss the various dimensions of it’s by product- empowerment. In this study, we will take liberty in the meaning of Empowerment. Therefore, we will discuss the role and function of three institutions (legislature, judiciary and executive) and their consequent impact on empowering the masses in general.

2.12 Relationships between Separation of Powers and Empowerment

It is generally believed that all activities of the government revolve around the objective of empowering the citizens of the state. The decisions of the government have direct affects on the daily lives of the citizens. People are always empowered with their participation in the making of policies, decisions and legislations of the government. Thus the success of the governments’ activities and legislations lies on the empowerment of the people. As separation of powers ensures liberty and a way of inclusion of the more groups in the decision making process, so it is the ultimate empowerment of the people. Therefore one can say that ‘separation of powers’ is the ‘empowerment’ of the people. It is further argued that Separation of powers ensures the liberal and free environment, which only occurs when the three organ of the state perform their respective duties independently.

2.13 Pedigree of Empowerment

Empowerment is originated from the Liberals school of thought. ‘Liberalism’ as a concept means the class of free Human being whether men or women, who enjoy possibly the maximum liberty and freedom within the state. Liberals focus on the
protection of the citizens from the tyranny and abuse of powers by the government. According to them, the citizens can be protected from tyranny by adopting two principles: mutual consent and constitutionalism. (Heywood, 2007, p.23)

The exclusive purpose of the liberal’s ideology was liberty and freedom from the absolutism. According to liberal school of thought, liberty is a vital and essential political value. It is a natural right and a basic necessity for leading an honorable life in the society. People in the liberal society pursue the opportunities of their concern. Their living standards, likings disliking and performance is changed. This provides the opportunities to develop their talents and skills with great potential. (Heywood, 2007, p.29)

Liberals had radical Ideologies. They tried to seek thorough reforms and revolutionary changes in Europe. Their ideas clashed with the principle of the ‘divine right’ of the king and challenged the supreme powers of the monarchy. They shook the very foundation of the established powers, the landed aristocracy and absolute monarchies. The famous revolutions like the 17th century revolution of England, French, and American Revolution of 18th century, based distinctively on liberals.

In this way the absolutism replaced the constitutionalism and finally the representative government was established. This transition reflected the chronic ambitions of the rising middle classes as their interests used to conflict with the established feudalism of that time. Their primary criticism was on the political and economic privileges enjoyed only by the landed aristocracy. Liberals also targeted and criticized the injustices of a feudalism where the social status of the individual was determined and associated with the family and by birth. (Heywood, 2007, p.24)

In other words, Liberals strongly advocated the limited type of government instead of arbitrary. Limited government is achieved by establishing some inbuilt constitutional constraints. It is necessary for the institutions of the government to function within the limits of powers and duties allocated by the set of rules under the prevailing constitution. These set of rules govern and limit the powers of the government itself.
Similarly, there are also legal constraints i.e. the written constitutions to limit the powers of politicians and government. These constitutions codify the powers of the state institutions and other functionaries of the government. Today, all the liberal democracies since the 19th and 20th centuries have adopted the written constitutions except UK, New Zealand and Israel.

Besides written constitutions, ‘Bills of Rights’ are another check to contain the powers of the government. In many states, Individual rights are established through bills of rights (as first ten amendments in the US Constitution and declaration of rights of man adopted in the French Revolution-1789) which create constructive relationship between state and the individuals. But Montesquieu (1689-1775), the French political philosopher, rightly said that ‘power should be a check to power’. His views were closely linked to the liberal school of thought, because liberals had stressed the prime value of the written laws to check the power of the government and to establish the rule of law.

Heywood (2007) argued that constitutionalism is a common point between liberalism and the theory of separation of powers. It can be established through introducing the internal limitations to divide the political powers among the institutions and creates checks and balances. This internal division exists in almost all the liberal democracies. When there is internal fragmentation among the institutions, the theory of Separation of Powers proposed by the Montesquieu is best applied. Thus the dictatorial power and tyranny is prevented by exercising the judicial, executive and legislative powers independently. US presidential system is based on the doctrine of separation of powers. (Heywood, 2007, p.26)

2.14 Good Governance and Empowerment

Similarly in modern constitutionalism, the ultimate aim of good governance is empowering the people. The 1999 South Asia Report on ‘the crisis of governance’ broadened the concept of good governance by introducing the concept of human governance which is defined as good governance dedicated to people’ empowerment. It
requires effective participation of people in state, civil society, and private sector activities that are conducive to people and their well being.

According to the report of Mahbub ul Haq Centre (2012) the concept, good governance is broadened and refined to go beyond simply explaining the good political governance or good economic management. It is redefined as human governance. While, human governance must lead to broad based economic growth and social development as a means to empower. Human approach to governance gives particular attention to the relationship between good governance and human rights. It is based on the understanding that a truly democratic government cannot exist unless civil and political rights are guaranteed for each and every citizens. Democratic institutions, when led by human rights values create avenues for the public to participate in policy making either through formal institutions or informal consultations. In such a set up, the rule of law is considered a crucial tool for protecting human rights. Good service delivery mechanisms and anti corruption institutions along with a strong judicial and legislative frame work are essential for upholding these rights. (Mahbub ul Haq Centre Report, 2012, p.22)

Efficient service delivery ensures that services are accessible and acceptable to all; while anti corruption institutions guarantee accountability and transparency through monitoring the proper utilization of the public exchequer and the real implementation of the policies. Human governance also advocates the idea of a humble civil service by every branch of the government: the executive, legislature, judiciary, military and bureaucracy.

Empowerment as a concept can also be understood in the perspective of enhancing the capabilities of people through access to resources and assets. People’s empowerment can happen through multiples routes. Political institutions such as the parliament, bureaucracy and judiciary can function in ways to either hamper or promote human development. Economic management, particularly through the adoption of poverty reduction strategies and social protection mechanisms can play a significant role in protecting the marginalized and poor. Similarly social empowerment, determined by
the access to and quality of health, education and sanitation can considerably impact the standard of living of ordinary citizens. (Mahbub ul Haq Centre Report, 2012, p.23)

Generally, writers divide the empowerment into two categories: psychological empowerment and political empowerment. When the internal change occurs on the level of person’s sensations and conscious and is related to the psychological empowerment; while, external change related to political empowerment- the real empowerment that enables a person to take part in the decision making process directly affecting his life. People are politically empowered when they claim their rights. Hence the political empowerment creates the social environment where organizational structure of the society plays a vital role for the participation of the citizens. (Gruber and Trickett, 1987, 353-371)

This environment is created with the flourishing of active democracy, realization of people’s rights to influence important decisions, and in the maximum participation of the citizens in the life of their community. (Sadan, 1997, p.60) Zimmerman (1955) added four conditions for empowering citizens: (1). political openness (2).A strong leadership (3).Access to the mass media (4).Strong link between the formal and informal leadership. (Zimmerman, 1955, p.581-599)

2.15 Theoretical aspects of empowerment

As we have already discussed that the doctrine of separation of powers is an essence of successful functioning of the political system in the modern democracies. It means to an end of tyranny and provides liberty and empowerment to the people in a state. According to the topic of this research (separation of powers and its impact on people’s empowerment: A case study of Pakistan), we shall discuss the term ‘empowerment’ first before moving towards people’s empowerment in Pakistan.

The term empowerment, a postmodern approach, is related to the political development and process because it brings social and political change. This process of change starts from the powerless condition of the people and leads towards the control over their life and destiny. It is generally argued by the thinkers that the state of
powerlessness stems from the inconsistent and malfunctioning system of democracy in the country. Modern democracies with check and balance legitimate and endorse the structured mechanism of empowerment. (Sadan, 1997, p.115, 144-164)

Eyben (2011) has defined the concept empowerment in the following words: ‘...When individuals and groups are able to imagine their ‘world’ differently and to realize that vision by changing the relations of powers that have kept them in poverty, restricted their voice and deprived them of their autonomy that is called Empowerment’. (Eyben, 2011, p.1-13)

Theoretically, the world view concept of empowerment was developed by the Julian Rappaport (1981) that includes ‘empowerment is a social policy and an approach to the solution of social problems stemming from powerlessness.’ The marginalized and oppressed section of the society gained their political, social, legal and economic rights in a state through the process of empowerment. It is the freedom of choice; it increases and enhances the power, capacity and control of the oppressed over the state resources. It is the means to access the decision making process at government level which affects the very survival of the people in a society. When the poor people are enable to hold accountable the institutions of the government that is called the ‘empowerment’. Rappaport, one of the leading theorists in the field of Empowerment, relates the concept Empowerment to the word ‘power’. Whereas, according to the English school of thought, empowerment is perceived in the meaning of ‘investment with legal power’ which means to act for some particular purpose. Above all, it is the participation of the people in the democratic process. The growth and development of the democracies in the political system is generally considered the way to empower the citizens. (Sadan, 1997, p.73)

Most of the writings associate empowerment with personal control. Rappaport opined that “by empowerment I mean our aim should be to enhance the possibilities for people to control their own lives” (Lord and Hutchison, 1993, p.5-22)

In the same way, Staples (1990) referred the empowerment to the word ‘power’ which is gradually developed and obtained through various means. When the general
masses either by themselves manage to get more control over their lives, properties and their daily affairs or with the help of others, they are called empowered people. It is a continuous process through which a relative degree of ability to influence the world is obtained with efforts. (Staples, 1990, p.29-42)

Peter Berger and Richard Neuhaus (1977) viewed Empowerment ‘as a way of improving the welfare services by means of mediating social institutions’. (Berger and Neuhaus, 1977) It is also viewed by many that, ‘empowerment is the liberation of those people who are unable to get social justice from suppression, oppression and deprivation they are subject to’. (Russel Erlich and Rivera, 1986)

According to the planning commission of Pakistan, the process of reconstructing the group identities is ‘Empowerment’. It is what's more the process of gaining new skills, giving consciousness, and raising the knowledge base of the citizens. Empowerment confidently gives the poor and downtrodden strata of the society a new entrance and access to the social and economic power that fashion their lives. In this way, marginalized and poor becomes an active member of the society. It increases the ownership of the poor to secure their adequate and sustainable livelihood. It enhances human capital by improved access to health and education services. Empowerment paves the ways towards pro-poor governance which occurs through changes in political systems of the country, institutions of the state and active participation of the people in decision making process with permanent environment of decentralization. (Anjum, 2001, pp. 845-867)

2.15.1 Ideological Approaches of empowerment:

During eighties, four ideological approaches paved the ways for further discussion of empowerment:

The first is ethnocentric approach. In this approach of empowerment, solution is sought for difficult social problems of ethnicity and minorities. The second is ‘Conservative liberal approach’. This approach revolves around the revival of the ‘community as a social unit’ which has to look after its weak citizens along with other
things as well. The third approach of empowerment is ‘Socialist approach’. In this approach of empowerment, social responsibility and equity is considered the best mechanism to deal with the social problems. The fourth one is ‘Democratic approach’. Rappaport (1981, 1985, and 1987) was the chief and leading advocator and distinguishing spokesman of the democratic approach of the empowerment and presented the progressive democratic world view. According to him the empowerment is a powerful and proficient implementation of the democratic norms and values. He also suggested living in harmony and integration with other approaches of the empowerment. (Rappaport, 1981, 1985 and 1987)

2.15.2 Dimensions of Empowerment

The following are popular dimensions of empowerment:

2.15.3 Economic empowerment

The ultimate aim of all activities of human being is to gain prosperity. It is only achieved when people are economically empowered. People are economically empowered when they are provided by the government the appropriated skills, resources and liberty to access their honorable sources of income.

2.15.4 Social Empowerment

Empowerment is viewed as a process of social change, because people in a society gain control and power over their resources. This power makes them powerful enough to settle their issues by themselves. (Page and Czuba, 1999)

After creating the link between separation of powers and empowerment, the next point is to define the people. People mean the general masses of the country. They are empowered when their representative institution is empowered. Parliament is the institution that represents the people in democracies. Mahatma Gandhi, said on 24 August 1924, “People means parliament and, in our view, whomsoever the parliament approves is a virtuous man or woman. I am suggesting many ways to ensure that the voice of
Parliament is really the voice of the people and not that of hired voters. With this end in view I am looking for a device which will enable us to listen to the voice of the entire people. All systems are bound to be defective. We are looking for a system which will yield maximum benefit to India.” (Axford, et.al., 1997, p.289)
References


Chapter No.3

POWER SHARING IN PAKISTAN:
AN HISTORICAL OVERVIEW

3.1 Introduction

As discussed earlier that the Separation of powers is to divide authority and powers among different organs of the state. Tyrannical and authoritative rules are not welcomed by the citizens and hence liberty and empowerment of the common masses is anticipated in the democratic rule based on separation of powers. Since independence of Pakistan (1947) from the British, political elites have been struggling to manage the governmental powers in one branch (executive) rather than dividing the authority constitutionally among the concerned institutions. The vice-regal system of colonial periods, which is the legacy of the British in United India, had its impact on the subsequent mode of governance and thinking of rulers in Pakistan. Since 1947, the executive branch in Pakistan remained dominant over the legislature and the judiciary. The first constituent assembly was dissolved by the then governor general (executive) and got endorsement from the judiciary for his unconstitutional step. In this way, the succeeding governments were used to be toppled down by the executive and judiciary validated these unconstitutional measures under the guise of law of necessity. Ultimately the constitutionally devised jurisdictions of the constructive relationship could not be developed among the three institutions. It was only the year, 2007, which changed the previous tradition of submissive judiciary to powerful judiciary. General Musharraf, the chief executive of that time, imposed emergency in the country. He suspended the Chief Justice of Pakistan along with other judges. As a reaction, a country wide movement started, which culminated to the restored judiciary. This chapter highlights the relationship between the three branches of the government in Pakistan since 1947 to 2007. The eras of both military and civilian rulers are discussed. Some cases of legal battle are discussed to understand the nature of relationships among judiciary, legislature and executive. Some historical trends of administrative patterns in the united India and their impacts on the subsequent governments in Pakistan are also highlighted.
3.2 Predominant trends of powers sharing in the epoch of united India: Supremacy of Sultan, Monarch and Viceroy

Indian subcontinent was ruled by Muslim from 712 AD till war of independence 1857 AD. During this period, several dynasties of Muslims like, Turks, Afghans, Lodi etc, ruled over the India. The first foundation of Sultanate was laid down by the Qutubuddin Aibak in 1206 AD at Delhi. The Sultan of this Sultanate issued Farman (decrees) to rule the country. According to Symonds (1966), Sultan was the chief executive, chief judge and the sole legislator of the land. He concentrated all powers of the state, whether, judiciary, executive or legislature by himself. (Symonds, 1966, p.20)

Thus Sultans of Delhi were unrestraint powerful in their personalities. Their whims and wishes were the laws of the land. Territory of the Sultan was divided into subas (provinces). Provincial governors/subedars were appointed to govern the provinces. It was the responsibilities of the governors to create lavish and glorious courts, give rewards to the obedient, and suppress the rebels and above all maintaining the environment of fright and fears in the minds and hearts of the subjects. Seeking the consent of the people in the decision making process was not the tradition under the powerful Sultans. (Maluka, 1995, p.83)

Mughal Empire succeeded these Turko-Afghan dynasties in 1526, when Zahiruddin Babur defeated the last ruler of Lodhi Dynasty. The Period (1526-1707) is known as the power and glory of the Mughal emperors. They introduced the modern system of administration and agricultural revenue, which still exists in both India and Pakistan. To run the affairs of the state, empire was divided into provinces and various departments. Although there were heads of departments like, Khan-e-Saman (imperial household), Dewans (imperial exchequer), Mir Bakhshi (the military pay department), Chief Qazi (judiciary), Sadrus Sudur (Religious Endowment) , but the empire was ruled by the decree from the emperor who concentrated all the executive, judicial and legislative powers in himself. There were no concepts of written constitutions during the entire Muslim rule right from 1206 to 1857. Affairs of the Government were run on the principles of monarchy. (Maluka, 1995, p.83)
The British came to India as merchants. They gradually held sway of the whole subcontinent. In 1858, the British formally broke up the Muslim rule. For governing the subcontinent, the British parliament passed the Government of India Acts. The famous acts were: The Government of India Council Act 1861, the Minto-Morley Reforms of 1909, the Government of India Act 1919 and finally the Government of India Act 1935. The 1935 Act drew from previous Acts with some innovations. In this Act, the position of the Governor General (Viceroy) was unique. As the representative of the British crown in India, he enjoyed final political authority and the widest discretionary powers and special responsibilities. The supreme command of the army, navy and air force was vested in him. The Governor General had extraordinary powers of legislation. He could however, seek the advice of a council in all matters except defense, external affairs and the affairs which involved his special responsibilities. Though he could seek ministerial advice, he was not bound to act thereupon. (Khan, 2004, p.21)

3.3 Pattern of Separation of powers in Pakistan after Partition: 1947 to 2007

After partition, three institutions could not function properly within their constitutionally jurisdictions. The ruling elites, somehow or the others, managed to concentrate three powers of the government in the executive branch instead of dividing and sharing it into legislature and judiciary. According to Niaz (2012), since partition of India in 1947, the rulers in Pakistan have been treating the state with support of civil bureaucracy as their personal estate. He further argued that the manners, in which the executive exercised power and authority in Pakistan, have undermined the institutional norms and principles left by the British in the sub-continent. (Niaz, 2012, p.1)

3.3.1 Governor General Dissolved the 1st Constituent Assembly of Pakistan

When Pakistan came into being as an independent state on August, 14th 1947, it had to face a troubled constitutional and political history. According to the Indian Independence Act 1947, Pakistan continued to be governed under an interim constitutional arrangement. Governor General had vast powers under this interim constitution. Later on, this newly born
state had to face Constitutional crisis in 1954 when the Governor General dissolved the 1st Constituent Assembly. He was not happy with the proposed amendments by the constituent assembly. This 1st amendment proposed to repeal the PRODA (Public and Representative Offices Disqualification Act) of 1949 against the abuses of maladministration and corruption in public life. Under this act, Governor General had the power to order the judges of high courts to conduct an enquiry against the ministers, if the strong allegations found in the complainant’s application. On several occasions, governor general misused this authority against the ministers. The underlying purpose of the amendment was to grant relief and favor to some members in the constituent assembly against the unrestraint power of the governor general. (PLD 1954, Central Acts 173)

Secondly, the constituent assembly was going to amended those sections of the government of India Act 1935 under which the Governor General could dismiss the ministers and dissolve the assembly. Before this governor general had once dissolved the cabinet of Khawaja Nazimuddin in 1953. The purpose of these amendments was to dissociate and prevent the governor general from his power to repeat such acts of dismissing the cabinet. Although it could be milestone for the propagation of parliamentary democracy but, it proved to be a ‘constitutional coup’ in Pakistan, because governor general did not want to lose his grip on the legislature at any cost. (PLD 1954, Central Acts and notifications 172) This struggle led the governor general to dissolve the constituent assembly on 24 October 1954, and proclaimed an end to what he described as parliamentary bickering. (Wilcox, 1963, p.79)

Resultantly, the newly born country was thrown into confusion and turmoil, thus reopening the old rivalries, intrigues and controversies among the politicians. The governor general’s action of suddenly dissolving the constituent assembly when it was about to conclude its work of constitution making, clearly indicates that the real intentions of the governor general behind this step was personal and was not based on any democratic norms, traditions and principles. He subsequently attempted to give the country a constitution through the decrees rather than by constituent assembly, also confirms the view that his motivation was purely personal. He also established the supremacy of military power over civilian government when he instructed the Prime Minister Muhammad Ali Bogra to include in his cabinet the two
army generals: Major General Iskandar Mirza and General Muhammad Ayub Khan (who was the commander in-chief of Pakistan army) as the minister for defense. (Khan, 2009, p.79)

The role of the courts at this crucial juncture between the executive and legislature further dismayed the nation. The federal court, which was the apex court in Pakistan under the government of India Act 1935, as adapted in Pakistan, was approached to give verdicts on the dissolution of the constituent Assembly and the proclamation of emergency by the Governor General. The historic judgments, discussed below, of the federal court on this issue raised more questions than were answered. This judgment left adverse effects on the subsequent constitutional developments in Pakistan. Now we discuss the few cases in the political and constitutional development in Pakistan to understand the condition of separation of powers in the Islamic Republic of Pakistan.

3.3.1.1 An assessment of separation of powers in the case of Moulvi Tamizuddin

The case of Moulvi Tamizuddin Khan was the first test and challenge for the judiciary of Pakistan. Judiciary is the third pillar of state and on the base of which, the theory of separation of powers is applied. In the above mentioned case, judiciary failed to augment its position as an independent organ of the state, hence giving the executive more courage to dominate the other two institutions.

The instant case was that the Governor General Ghulam Muhammad dissolved the Constituent assembly. Moulvi Tamizuddin Khan was the President of that Constituent Assembly at the time. He challenged before the chief court of Sindh, the act of Governor General as unconstitutional and asked for a writ of mandamus to restrain the executive from interfering with the exercise of his functions as president of the assembly. The full bench of the Sindh high court unanimously decided in favor of Moulvi Tamizuddin Khan and held that under the ‘Indian independence Act 1947’ the Governor General had “no power of any kind to dissolve the constituent assembly”. It was also held that constitution assembly was a sovereign body created for a particular purpose of constitution making and could not be dissolved until that purpose was accomplished. Thus the chief court of Sindh issued the writ of mandamus restoring Moulvi Tamizuddin Khan as the president of constituent assembly and restraining the
new cabinet from exercising the office of ministers and prohibited the respondents from interfering with his duties and in the exercise of his functions. (Khan, 2009, p.81-82)

3.3.1.2 The verdict of Federal Court on Moulvi Tamizuddin Case

Government filed an appeal to the apex (federal) court of Pakistan against the judgment of the Sindh Court. In contrary to the judgment of Sindh High Court, the decision of the federal court on 21 March, 1955, was in favour of the government and rejected Moulvi Tamizuddin’s petition in which he had challenged the order of the Governor General. (PLD 1955, Federal Court, 240)

The technical grounds on which federal court reversed the judgment of the Sindh court were section 223 (A) of the government of India act 1935 adopted in Pakistan, was not yet a law, because, governor general had not given his assent. The only dissenting opinion came from Justice A.R. Cornelius who stated that constitutional nature laws passed by the constitution assembly are not required to get the assent from the governor general for their operation and legitimacy. Critically speaking, the verdict of the apex court in Tamizuddin khan’s case justified the blatantly whimsical, arbitrary and malicious acts of executive in future on self-serving concepts and theories. In this way the most important institution of the state that sole object was to impartially interpret the laws, caused immeasurable harm through its partial judgment to the constitutional, political and democratic development of Pakistan in its early formative years. Above all, the verdict incalculably damaged the credibility and image of the judiciary as an independent pillar of Pakistan in the public eye. (Khan, 2009, p.84-85)

3.3.1.2.1 Law of Necessity in Pakistan

Law of Necessity was first time introduced in Pakistan by Justice Munir to oblige Governor General Ghulam Muhammad. According to Justice Munir, the crown was placed on the head of Ghulam Muhammad and, consequent thereupon, he was allowed to assume to himself all powers-the powers which only the Kings in the Middle Ages could assume and exercise. Justice Munir took resort to the maxims salus populi suprema lex (the welfare of the people is the supreme law) and salus republicae suprema lex (the safety of the state is the supreme law). He was much impressed by the statement of Cromwell who stated that, “If
nothing should be done but what is according to law, the throat of the nation might be cut while we send for someone to make a law.” This was the basic source of Law of necessity before Justice Munir. (Ahmad, 2012, P.47) He stated on 16 May, 1955 that,

“…subject to conditions of absoluteness, extremeness and immanence, an act which would otherwise be illegal becomes legal if it is done bona fide under the stress of necessity, the necessity being referable to an intention to preserve the continuation of the state or the society…necessity knows no laws and that…necessity makes lawful which otherwise is not lawful. Since the address expressly refers to the right of a private person to act in necessity, in the case of Head of the state justification to act must… Be clearer and more imperative.” (Pirzada, 1995, p.294)

3.3.1.2.2 Justice Munir and Hans Kelsen’s Theory of Legal Positivism

This new principle of justice, introduced by Justice Munir gained for reaching importance in the case of State v Dosso (In this case, validity of the imposition of martial law was challenged and supreme court upheld the martial law). Basically, Kelsen’s theory was by no means a universally accepted theory nor was it a theory which could claim to have become an essential doctrine of the science of modern jurisprudence. Justice Munir, however, took reliance on the doctrine of ‘Legal Positivism’, as enunciated by Hans Kelsen. The application of Kelsen’s theory may be summarized as under:

- It speaks of International Law.
- It does not apply to Municipal Law.
- It applies when the fabric of social order of the society has collapsed or is likely to collapse.
- It applies when there is war between the two countries.
- It is not used to legitimate a regime of a despot who subjugates the people to perpetuate his own rule.
3.3.2 Ayub’s Era (1958-1969): Imposition of Martial law and End of Civilian Rule

In the formative phase of Pakistan, the constant struggle of gaining maximum powers between the judiciary and the executive led to the weak institutions. Resultantly, the viable and strong democratic culture could not be established. The general elections were scheduled to be held on November 1958. Iskandar Mirza, the then President was trying to postpone the elections up to February 1959 on one pretext or the other. He was supported by the political parties favorable to him specially the Republican Party. Some other political parties like, Pakistan Muslim League, declared to boycott the elections and threatened the government for dire consequences if it did not announce a date for elections. Even, direct action day was announced by these political parties in case of government failure to conduct the general elections. This feeble structure and lose control of the president Iskandar Mirza over the political process, provided an opportunity to the opportunist and power ambitious General Ayub Khan to tacitly encouraged his comrades to demand imposition of martial law. President Iskandar Mirza fell into prey of intrigues created by General Ayub. Thus, General Ayub imposed Martial Law throughout the country on 8 October 1958. He at once abrogated the constitution, dissolved the assemblies, dismissed both central and provincial governments, banned all political activities and postponed the general elections to the indefinite period. Consequently, the frequent intervention of the army in politics of Pakistan started. (Jalal, 1990, pp.274-75)

Soon, after the imposition of martial law, the race started between President Mirza and General Ayub Khan (Chief Martial Law Administrator) to gain maximum power. President Mirza wanted to rationalize the power structure and the state framework best suited to him. He therefore, on his behalf tried to appoint Ayub as a Prime Minister on 24 October 1958. But, this arrangement did not satisfy Commander -in- Chief Ayub khan. He had a stronger ambition to become President. (Khan, 1983, pp.8-9)

Khan (2009) described that Ayub had a strong ambitions to become ‘absolute master’ in Pakistan. For this, he decided to get rid himself of President Mirza from the affairs of the
3.3.2.1 Role of Judiciary in the validity of Martial Law

When the legitimacy and legality of the imposition of martial law was challenged before the Supreme Court of Pakistan, it gave its decision in favour of the executive. Chief Justice Munir who had earlier validated the unconstitutional step of Governor General Ghulam Muhammad, once again upheld the martial law and the Laws (Continuance in Force) Order. (The State v Dosso, PLD 1958, S.C.533)

Chief Justice Munir relying on Hans Kelsen’s General Theory of Law and State, held that: “Where a revolution is successful it satisfies the test of efficacy and becomes a basic law-creating fact. On that assumption the Laws (Continuance in Force) Order, however transitory or imperfect, was a new legal order and it was in accordance with that order that the validity of the Laws and the correctness of judicial decisions had to be determined.” Khan (2009) commented on the plea took by Justice Munir, that this leading judgment like that of Tamizuddin Khan’s case, was a retrogressive one because, in Pakistan, it set the clock back in the early democratic and constitutional development. He further argued that in this superfluous and unnecessary alacrity to legitimize the martial law, the judiciary not only loosen the writ jurisdiction of the high court but exposed the citizens of their fundamental rights, only to placate the new masters of the country. (Khan, 2009 p. 122)

3.3.3 President Yahya Khan’s Martial Law (1969-1971)

Pakistan had to face another Martial law on 25 March 1969. Ayub asked the next army chief General Yahya khan to perform his constitutional role to restore the situation. There were country wide agitations against Ayub. Instead of restoring the environment conducive for general elections, he imposed martial law in the country. With this, the national assembly and provincial assemblies were dissolved. Constitution of 1962 was abrogated and in its place he promulgated Provisional Constitutional Order (PCO) on 4 April 1969. It was proclaimed that under the PCO, the maximum efforts would be made to run the state of Pakistan with the previous constitution. Along with this claim, he further announced that any court or tribunal
cannot issue judgment, order, writ, decree or any process, against the CMLA or against any executive exercising powers or jurisdiction under Martial Law. Thus the powers of the courts were curtailed as preemptive measures so that imposition of Martial Law could not be challenged during his tenure. He also made it clear that any judgments, orders, writs or any process issued by the courts, related to the validity of Martial Law would be ineffective. The decisions of the president in all matters of powers or jurisdiction by a military court or a martial law authority thereon would be final. Courts were not even authorized to interpret the orders issued by any martial law authority. (Khan, 2009, p.203)

3.3.4 Separation of Powers under the Civilian Regime of Prime Minister Zulfikar Ali Bhutto’s Regime (1971-1977)

After Yahya, Bhutto became the civilian CMLA. In this period, executive branch of the government remained powerful just like under the previous regimes. Although in the beginning, Bhutto announced in a very democratic way that there would be no palace intrigues in future in Pakistan. He also promised to the nation that military coups would be ended forever and violence and hatred in politics must stop. (Dawn, 15 August 1973) But, within few days after the enforcement of 1973 constitution, Bhutto started his own game of rules against the opposition. He confronted with the opposition in a big way. Khan (2009) argued that Bhutto was so intolerant towards opposition that on 16 August 1973, he arrested Ghaus Bakhsh Bizenjo (former Governor of Baluchistan), Sardar Khair Bukhsh Marri (former chief minister of Baluchistan), and Sardar Ataullah Mengal (MNA from Balochistan) on the charges of corruption, seditious activities, malpractices and nepotism. He further said that this practice of arresting the opposition leaders continued till Bhutto’s ouster from the power. (Khan, 2009, p.287)

3.3.4.1 Fourth Amendment in the constitution of 1973 and the Containment of Judiciary

Bhutto not only remained intolerant towards his political opponents but he started oppressive measures against the Superior Courts of Pakistan. It is recognized fact and practice all over the world that oppressed people always knock the doors of judiciary to get relief. Unluckily, people could not get benefits from the courts; instead, its decisions were almost in favour of the government. In this period, Bhutto and his aides intended to minimize the role of court in interpreting the law contrary to the wishes of government. In this regards, he
introduced Fourth Amendment to the constitution on 25 November, 1975. The clause (3-A) inserted in Article 199 reads as “prohibiting the making of an order for the detention of a person, or for the grant of bail to a person detained, under any law providing for preventive detention.” The underlying purpose of this amendment was to curtail the powers and jurisdictions of the courts for granting relief to the political opponents. (Mahmood, 1997, p.1041)

With the imposition of Fourth constitutional Amendment, Courts were immediately banned to grant bail to the detained persons. It is also pertinent to mention here that the manners in which Fourth Amendment was passed by the National Assembly were undemocratic and most uncivilized. All amendments in the constitution are required to be debated with the presence of opposition in the house of assembly, but this amendment was passed without any debate. When the opposition members (particularly, Chaudhary Zahur Elahi, Mahmood Ali Kasuri, Malik Suleman, Mufti Mahmood, Professor Ghafoor Ahmad, Ahmad Raza Kasuri, Dr. Ghulam Hussain, and Zulfikar Ali Bajwa) tried to have a debate especially regarding the reduction of the constitutional powers of the courts, they were not only denied the opportunity to speak but were physically thrown out of the national assembly by the security personnel. Thus, the amendment was passed in the absence of opposition. (Khan, 2009, p.294)

### 3.3.4.2 Fifth Amendment: disciplining the judiciary

Another blow to the independence of judiciary came in the form of 5th amendment. Bhutto made the Fifth Amendment in the Constitution on 15 September 1976. In this amendment, the period of keeping the judiciary separate from the executive extended from three to five years. Terms of chief justices were fixed. Judges were to compulsory transfer from one court to another. High courts were restricted to grant bail. Obviously, the primary objective was to curtail the powers and jurisdictions of the courts. This amendment made the career of judges insecure as the threat of transfer was hanging over them like a sword. It took away the option of the chief justice or other judges of high court to refuse the elevated post of Supreme Court. The judiciary was affronted and ridiculed as its powers to penalize for contempt of court were withdrawn. Thus, the judiciary was fully chastised by the executive and hence the separation of powers remained dormant like situation. (Khan, 2009, p.300)
3.3.5 Era of General Ziaul Haq (1977-1988)

On 5 July 1977, General Muhammad Ziaul Haq imposed Martial law. He took over the administration of the state by deposing the Prime Minister Zulfikar Ali Bhutto. He placed the Bhutto and his cabinet colleagues under ‘protective custody’. (Dawn, 6 July 1977)

After this, the real tension and anxiety of Zia and his supporters started, because they feared that the judges might create some hurdles to validate and legitimate their rule. It is also important to mention here that early relations between Zia and judiciary were very cordial. He appointed chief justices of the High Court as acting governors of their respective provinces. All the four Chiefs Justices accepted this appointment with pleasure. Ironically, the executive power was not fully delegated to these acting governors but, it was in the real sense vested in martial law administrators of the respective provinces. In spite of this limited powers given to the judges by the Zia, the judiciary accepted all the assignments of the government without any reluctance. The manners, in which the judges accepted all the responsibilities, exposed and undermined the institutional weakness of the judiciary.

3.3.5.1 The Case of Nusrat Bhutto

On 20 September 1977, Supreme Court admitted the petition of Nusrat Bhutto (wife of ZA Bhutto) against the detention of her husband (Bhutto). This independent step of the judiciary rashed the executive. It decided to prevent the judiciary in future for taking such autonomous steps. For this, president Zia amended the constitution just to replace the chief justice with the handpicked justice Anwar-ul-Haq. In addition to this, High court judges were required to take new oath within 24 hours failing which their office would be automatically ceased. In this way, Courts were ready to work in line with the wishes of Executive branch of the state. Subsequently, this coalition was manifested in the ‘disqualification tribunals’. It was mandatory for the judges to sit with the Brigadiers in the cases of disqualifying the politicians. (Khan, 2009, p.343) Thus the judiciary fell completely into the lap of the executive. Interestingly, the members of the judiciary accepted this arrangement without any resistance. (PLD 1977, Central Statutes 437)
Nusrat Bhutto also challenged the Martial Law. She adopted the plea that Zia, as chief of the army staff, had no authority under the 1973 constitution to impose martial law in the country. Her counsel, Yahya Bakhtiar quoted the article 6\textsuperscript{ii} of the constitution 1973 of Pakistan and stressed that Zia’s intervention in the constitution was an act of high treason. So, the detention and arrest of Mr. Bhutto along with his colleagues under the ‘laws (continuance in force) order 1977’ and ‘martial law order number 12’ was unlawful and without legality. He also objected on the justification of the ‘state of necessity’, because according to him, the detention of the crown leaders of the Pakistan People Party (PPP) was highly biased and mala fide. There were deliberate intentions to keep the PPP away from the forthcoming elections. He even pointed out that just one order promulgated by the army chief could not consign him away from the reach of the courts. The constitution of 1973 was there. He maintained that earlier Zia had ensured that the constitution of 1973 was not going to be abrogated. It was declared by the CMLA that only certain parts of it were being suspended to restore the fresh environment for fair elections and for strengthening the democratic institutions in the country. (Khan, 2009, p.327)

Ahmad, (2012), gave his critical analysis on the imposition of Martial Law. He said that it was difficult to reach the solid conclusion about how the Martial Law was validated by the courts. The Martial Law dated 5\textsuperscript{th} July 1977, was imposed upon the people of Pakistan despite the fact that Article 6 had been incorporated in the constitution of Pakistan. He argued that according to Article 6, Zia committed a serious offence of blatant human rights violation, of punishable with death. But it was matter of great concern that the judgment of full court was silent on Article 6 of the Constitution, predominantly when Constitution of 1973 was functioning as a supreme law of the Land. The quite meaningful purpose of silence according to him was to legalize the Martial Law of the usurpers. (Ahmad, 2012, P.75-78)

On the other hand, the remarks of the A.K Brohi ‘the learned counsel for the federation of Pakistan’ were pro government. He contended that the ‘Supreme Court had no jurisdiction to grant any relief in the matter owing to the prohibition contained in the Laws (continuance in force) order of 1977’. According to him, this law clearly reflected ‘that no court, including the high court and the Supreme Court, could question the validity of martial law order or regulation or any other order made there under by a martial law authority’. He pleaded that
under the said law, the right of enforcing the fundamental rights has been suspended. Therefore, he stressed the petition filed by the Mrs. Bhutto was unconstitutional and hence could not be maintainable.

Another Attorney General Mr. Sharifuddin Pirzada, appointed by the CMLA, also supported Brohi’s stance. He pleaded that the imposition of Martial law on 5 July 1977 by Zia, had nothing to usurp the state powers. The real usurper according to him was Bhutto himself. There were massive rigging in the general elections of March, 1977. The government formed both at center and provinces were corrupt and illegal. Therefore, Zia in fact intended to oust the usurper who had illegally constituted the government. In this perspective he maintained that ‘the present situation was not covered by the dicta of the supreme court in the well known cases of Dosso and Asma Jilani.’ He further cleared that present Army Chief intended to conduct free and fair elections for the betterment of democracy. (Khan, 2009, p.327)

After hearing the stances of both parties, Supreme Court of Pakistan, headed by chief justice Anwar-ul- Haq delivered the leading judgment. First, he discussed the history of prior martial laws imposed in Pakistan and the biased role of both A.K. Brohi and Sharifuddin Pirzada. He pointed out their stance on the two important cases, namely Dosso’s case and Asma Jilani’s case, in which court validated the imposition of Martial Laws. Both had strongly opposed the decision of the Supreme Court by contending that a legal system of government always derives and regulates its power from law, not from force and that in Pakistan no single person had the right to become the exclusive repository of state power. The court wondered how Brohi was now pleading that Dosso’s case had laid the correct law and should be followed by the court. The submissions of Brohi with reference to Dosso’s case were not accepted. Secondly, court observed that the massive rigging in the elections was leading towards chaos and anarchy throughout the country. However, Chief Justice concluded that the extra-constitutional step taken by the Army Chief was justified for the requirements of state necessity and welfare of the people. Court also dismissed the petition of Nusrat Bhutto. (Khan, 2009 p.329)

3.3.5.2 Corollary of Nusrat Bhutto case
In the Nusrat Bhutto case, Supreme Court validated the martial law. CMLA was authorized to amend the constitution. Above all, court authorized that he was not bound to announce the deadline for holding the general elections. Thus judiciary provided legal cover to the executive for unrestraint use of power. In this act of kindness to the Military government by the judiciary, chief justices thought that now it was their exclusive right to do and get anything done from the government. First, court assumed the powers of judicial review. But this power was used by the judges very carefully. Court never applied this power in the matters related to martial law. Second, Chief justice started appointing the number of judges to the Lahore high court. Most of these appointees were unknown lawyers only favourit to chief justice Maulvi Mushtaq. President Zia further obliged Chief Justice Anwarul-Haq by making him an acting president during his foreign trips. These favours encouraged the judges to cautiously interfere with the matters of sentences by the military courts, matters of arrest and detention, or in those purely civil matters where armed forces asserted their authority. But, such a limited interference by the courts was not tolerable to the martial law authorities. Military government did not like to have any check on the use of their powers. So, they decided to seize the power of judicial review on acts and all sorts of orders of the martial law authorities from the Courts. Ultimately, government amended the Constitution and inserted Article 212-A to accomplish the said designs. In this way, the cordial relationships between the two branches finally ended. (PLD 1979, Central Statutes, 567)

The Regime of President Zia proved worst for the judiciary in the sense of humiliation and demoralization. For instance, the option of giving oath to the judges was vested in the jurisdiction of the President. He prepared the final list of those judges who were to be taken oath. This list was so confidential that even the chief justices of the Courts were not consulted. The old times favorites to the Zia, like Justice Mushtaq and Anwar-ul-Haq were cornered in the oath taking process. As a result the service careers of the two main leading supporters of President Zia in judiciary met a sad and humiliating end by the person who wanted to accumulate all powers. One can conclude that it was very unfortunate period in the relationships of institutions in Pakistan. Especially for judiciary, as an organ of state it did not consider the integrity and prestige. The humiliation faced by the judiciary in the hands of
executive was due to the weakness of few judges, who altar the honor of the institution at the cost of their personal interests. (Khan, 2009, p.359-60)

3.3.5.3 The Eighth Amendment:

President Zia was obsessed with gaining maximum power. He did not want to see stable political and democratic culture in the country. General Elections were held on non party basis. He used to amend the Constitution according to his wishes. On March, 1985, he introduced Revival of the Constitution of the 1973 Order, known as (RCO), under which, all Martial law orders were validated. Those articles related to the fundamental rights, writ jurisdiction of the Courts and high treason act like Article 6 was suspended. (PLD 1985, Central Statutes 456)

RCO empowered the President to nominate Prime Minister at his prudence from the Parliament. Same power was granted to the governors to appoint Chief Ministers in their respective provinces. In such a party less Assemblies, there was no need to get vote of confidence from the Assemblies, just consent of President and Governors was sufficient for Prime Ministers and Chief Ministers respectively. On 23 March 1985, Zia appointed Muhammad Khan Junejo as a Prime Minister, thus, accumulated all powers in his hands. (The Muslim, 25 March 1985)

However, Junejo had other ideas. His prestige and power started increasing, when he lifted the emergency and restored fundamental rights. A vast majority of the members of the national assembly joined the Muslim league and soon he was elected President of the All Pakistan Muslim League. Gradually, he started running the business of the state. When the Prime Minister or the civilian government is the final authority in the administration of the country, then there remains no justification of Martial Law. But, Zia had no intention of lifting the Martial Law. He had only one objective of augmenting his authority under the constitutional package of RCO from the civilian government. (Khan, 1994, p.47)

Under these circumstances, eighth amendment to the constitution was passed. It provided Zia with the power to dissolve the national assembly at his discretion and to appoint a caretaker government. In this way, the eighth amendment shifted the balance of power in president’s favour. The authority and position of Prime Minister was reduced, while the office
of the President became the fulcrum of power. There was no check and balance on the discretionary power of the president. Thus he retained and obtained maximum power at the cost of national integrity, constitutional democracy, and national institutions. One can conclude that by devising these constitutional devices, Zia exposed himself that he had deep intentions to become lifelong president of the country, who would be above the limitations of the constitution and peculiar to the people of Pakistan. (Maluka, 1995, p.272)

3.3.5.4 Dissolution of Junejo’s Government by Zia and the Verdict of Courts

As discussed earlier that under the Eighth Amendment, Article 58 (2) (b) was added up in the Constitution of 1973. This Article empowered the President to dissolve the cabinet of Prime Minister. So, President Zia, who was weary of the rising popularity and stronger position of the Muhammad Khan Junejo, dissolved his assembly by using the discretionary powers under the Article 58 (2) (b). This step of the President was challenged before the Lahore High Court. Initially, the Court observed that it was a draconian discretion not to be applied against the free people. Later on it gave its verdict in the case titled *Muhammad sharif v federation of Pakistan* that now it was improper to restore the assembly and the cabinet as the people were ready for new general election. (PLD 1988, Lahore 725)

3.3.5.5 Decision of the Lahore High Court was challenged before the Supreme Court:

When this decision was challenged before the Supreme Court, it gave its verdict in the case, titled: *Federation of Pakistan v Hajji Muhammad Saifullah Khan* that the discretionary power of the President under article 58 (2) (b) of the Constitution could not be absolute one and therefore, the exercise of the powers in this regard did not exist and, hence, the action of the dissolving the Assemblies was unlawful. Khan (2009) stated that this decision of the Supreme Court came after the death of Zia on 17 August 1988. Therefore, it could be assumed that if Zia had been alive, such judgment would never come. (Khan, 2009, p.390)

3.3.6 Era of First Term Prime Minister Benazir Bhutto (1988-1990)

After Zia, similar experience of struggle for getting maximum powers, started between President Ghulam Ishaq Khan and Prime Minister Benazir Bhutto. As we saw earlier that the
Constitutional Amendment (Eighth Amendment) made the office of President so powerful that he dismissed on his discretion the civilian Government of Junejo. During the Premiership of Benazir Bhutto (1988-1990), President Ghulam Ishaq Khan tried to apply his discretionary powers on matters like, the appointment of the chief of the armed forces, the chief election commissioner caretaker cabinet government and Chief Justices. When Benazir Bhutto differed on these powers of the President, he dismissed her Government, using the power under the Article 58(2) (b). Once again the discretionary power of dissolving the assembly of Benazir Bhutto by the President was challenged before the Superior Courts. The judgment of the Court, as usual, supported the act of president and justified the dissolution order of the Ghulam Ishaq. (Khan, 2009, p.402-4)

3.3.7 Era of First Term PM Nawaz Sharif (1990-1993)

After the dismissal of Benazir Bhutto in 1990, Muhammad Nawaz Sharif became the Prime Minister of Pakistan, through General Election of 1990. In the beginning, there were smooth working relationship between the President and Prime Minister. Gradually, Nawaz intended to undo the discretionary powers of the president to dissolve the national assembly. Having come to know the designs of Nawaz Sharif, President Ishaq decided to retain his power at any cost. In this way, it became difficult for Nawaz Sharif to sustain, as Ishaq started collecting his advisors like Sharifuddin Pirzada to make his move at the earliest. Before the Nawaz government could take any step to amend the constitution, President Ishaq ordered the dissolution of the National Assembly and dismissed the Prime Minister and his cabinet using his discretionary power. Immediately a caretaker PM was appointed. (Khan, 2009, p.417)

In contrary to the previous traditions, at this time, deposed Prime Minister Nawaz Sharif challenged directly before the Supreme Court the order of dissolution of his government. Court gave its verdict on 26 May 1993. It was held that constitutionally president had no powers to dissolve the government and thus restored the Prime Minister and his cabinet. The government of Nawaz was held entitled to function with immediate effect. (Khan, 2009, p.420)

3.3.8 Benazir Bhutto’s Second Term (1993-1996)
Benazir Bhutto became second time Prime Minister of Pakistan on 1993. As we have discussed earlier that after Zia, who had dissolved the government of Junejo on 1988, Ishaq, as a President had used his power under article 58 (2) (b) twice to dismiss elected Governments of both Benazir on 1990 and Nawaz on 1993. All the three times, Courts validated the act of Presidents. (Although, Courts invalidated the step of Zia in the dismissal of Junejo’s Government, but this decision came after the death of Zia). This role of Superior Courts was not encouraging one. All the times, except in few cases, Courts have been supporting and validating the actions of the Executive. The obvious reason was reciprocal understanding and co-operation between the Judiciary and Executive. In this give and take relationship, appointments of Judges have been on considerations of political affiliations, nepotism and favoritism rather than on merit. Judges in return, obliged them by appointing their relatives and friends. Benazir had long ambitions to change this culture. She promised the nation during General Elections of 1993 that the appointment of judges would be made on pure merit. But, on assuming power, she started inducting those judges, who would favor her Government and

To materialize her objectives, she suddenly changed the old course of history in which the appointments of Chief Justice were made on seniority basis. For instance, on 5 June 1994, Justice Sajjad Ali Shah, junior to Justice Jan, was appointed as the Chief Justice of Pakistan. Benazir rewarded him, because in old times, when Ishaq dissolved her 1st term government, Justice Sajjad had favoured the PPP Government and held that order to dismiss the government was invalid. Anyhow, the whole process ended smoothly without any resistance from the Judges. (Khan, 2009, p.434)

This process of appointing the favourite judges to the Apex Courts continued throughout the Benazir’s government. All those judges, who had sympathies and loyalties to the opposition party, were removed. Most of the Judges appointed by the PPP Government did not fulfill the required qualifications. Nepotism was the basic criteria for the appointment of a judge. President, Governors, Ministers and MNAs had quota for the appointment of judges. For example, Governor of Punjab got his younger brother while, chief minister had one of his old friends appointed, who had never been known to law practice. Thus, docile and subservient Courts were made, recommending and validating all the actions government. (Khan, 2009, p.436)
In spite of such weak and pliant Courts, Benazir could not decrease the discretionary powers of President. This power of president to dissolve the Assembly, bestowed under the Eighth Amendment 1985, was challenged by the various citizens since 1990. The newly appointed Chief Justice by the Benazir, heard all such cases in detail, but upheld the power of president and validated Eighth Constitutional Amendment. As a result, the Government of Benazir was once again dismissed by the PPP President Sardar Farooq Laghari. He used the same discretionary power, under which the Elected Assemblies had been dissolved three times since 1988. (PLD 1997, S.C.426)

3.3.9 Executive, Legislature and Judiciary relations under the 2nd term of PM Nawaz Sharif (1997-1999)

Nawaz concentrated on keeping all powers in his own hands. He further personalized the system of governance by holding open courts instead of strengthening state institutions. Nawaz Sharif ruled the country like private fiefdom. He could trust no one but his own brother, Shahbaz Sharif, for chief minister ship of Punjab. His father, Mian Sharif, interfered with his decision making in a big way. The running of the state became a family concern for Nawaz. His repeated attempts to sack army chiefs resulted in unnecessary confrontation with the army which led to his undoing. (Khan, 2009, p.473)

When Nawaz became Prime Minister second time on 1997, with overwhelming majority in both houses of parliament, he decided to curtail the discretionary powers of the president. For this, he got pass the Thirteenth Constitutional Amendment from the Parliament on 4 April 1997, under which the article 58(2) (b) was omitted. Thus, he became successful Prime Minister to take away the power of dissolving the Assembly from the President. It was general consensus among all the political parties that none of the governments, whether PPP or PML, could complete its term since 1985 due to powerful president. Thirteenth Amendment made the President titular head with only ceremonial powers according to the original constitution of 1973. (Khan, 2009, p.452)

While this Amendment emboldened the Prime Minister to act independently, without the threat of being dismissed from the President. However, Nawaz could not improve his
relations with the Judiciary. During his Government, both institutions remained in constant struggle to assert their power over the other. The first confrontation started between the Executive and Judiciary when some officers of water and sanitation agency in Faisalabad were handcuffed on the verbal orders of the prime minister. Later on Chief Justice Sajjad took the suo motu action to set them free. The second difference was related to the enforcement and the establishment of the anti terrorist Courts by the Nawaz Government. Apparently, the purpose of establishing these parallel anti terrorist courts was to get quick results, but the underlying objective had to some extent, accommodate the PML members as special judges. The third point of difference arose between the Executive and Judiciary when Justice Sajjad tried to elevate five Judges from the High Courts to Supreme Court on 28 August 1997. (Herald, December 1997, p.32)

Nawaz reacted strongly on this recommendation, because two judges were not in good books of PM; one judge decided against his industrial property cases, while other had been Law Secretary in Benazir’s Government. There had one option for the Nawaz to get rid of these unwanted judges and also to defeat the Chief Justice in his recommendations. A notification was issued reducing the total number of Supreme Court judges from seventeenth to twelve. But, Justice Sajjad suspended the notification and asked the President instead of PM, to appoint the five judges by invoking the article (16) of the constitution. At this, Government had to notify the appointment of five judges according to the wishes of Chief Justice Sajjad.

This Confrontation between the PM and Chief Justice further deteriorated the relationship of the two institutions. Each tried to dominate over the other bypassing all the constitutional limits. The victory of Sajjad in the five judges’ recommendation case encouraged him to suspend the Fourteenth Constitutional Amendment. Once again PM showed strong reaction and publically remarked that the suspension orders by the Chief Justice were unconstitutional. The members of the Parliament also lamented that the suspension orders were undermining the sovereignty of parliament. Consequently, PM and his party members had to face contempt of Court, where Nawaz appeared before the supreme court on two times and regretted in a written statement over the derogatory remarks and speeches made by him and his cabinet members in the Parliament. But Justice Sajjad did not satisfy here; instead he initiated contempt of Court Case against Nawaz on 28 November 1997. (Khan, 2009, p.454)
This proved to be very unfortunate day in the judicial history of Pakistan. When Government knew about the contempt of Court case, it planned to stop the proceedings. To accomplish this plan, PML workers along with their respective leaders, from all over the country, especially from Punjab, gathered in front of the Supreme Court and started storming the building of Court. After the shameful assault on the court, the workers with their respective MNAs and MPAs did their lunch at Punjab House Islamabad. The PML leaders also addressed to the workers, in which they encouraged and applauded them as if they had won a big war. *(Dawn, 16 May 1998 p.9)* An enquiry was held about the storming of Supreme Court. Justice Abdul Rehman Khan, the head of enquiry committee, gave verdict on 18th February, 1998 that those persons, who broke into the Court premises and passed derogatory remarks against the judiciary, were guilty of gross contempt of court. Therefore, Court charged contempt of court against seven identified persons including members of Assemblies. It was also held by the Court that assault on the building was pre planned intended to prevent the proceedings of contempt against the PM. Although it was very bold decision on the part of judiciary, but it dismayed the nation, as later on all the accused were set free. *(Shahid Orakzai v Pakistan Muslim league, 2000 SCMR 1043)*

**3.3.10 Era of Pervez Musharraf (1999-2008)**

Chief of Army Staff, General Pervez Musharraf took over the control of government on 12 October 1999 after removing Nawaz Sharif by Military Coup. In the beginning, Musharraf decided to run the affairs of state without imposing Martial Law and declared that the government would function under the existing constitution. So, he took the office of the Chief executive by proclaiming emergency throughout Pakistan. Like the other Military Commanders, he also promulgated Provisional Constitutional Order (PCO). Courts were directed not to make any order or pass judgment, decree or writ against the chief executive. Musharraf ensured the independence of Judiciary provided that it could not touch the jurisdictions of the chief executive or authorities acting under him. *(Khan, 2009, p.480)*

Gradually, the relations between judiciary and Musharraf started deteriorating. Martial Law was challenged before the Supreme Court. Musharraf forced the judges to take oath under the Provisional Constitution Order (PCO). The underlying intentions and objectives of the
Musharraf were to protect and advance his interests. Those judges, who refused to take oath, were placed under house arrest. Chief Justice Saeed-ud-Zaman Siddiqi did not take oath. But some opportunists like Justice Irshad Hassan Khan, took oath as a Chief Justice of Pakistan under the PCO. This decision of Irshad Hassan Khan supported the Musharraf to weak the Supreme Court. Thus Supreme Court under the new Chief Justice not only justified the Musharraf takeover but also allow him to continue his objectives. Subsequently, Court validated the holding of referendum by Pervez Musharraf in 2002 to remain as a president for the next five years. Court also empowered the Musharraf to introduce Legal Framework order (LFO) where he extensively amended the constitution. Later on Musharraf rewarded the Chief Justice by appointing him the Chief Election Commissioner on his retirement. (Khan, 2009, P.507)

3.3.10.1 Executive-Judiciary relationships under the Chief Justice Iftikhar Chaudhry

Iftikhar Muhammad Chaudhry became the Chief Justice of Pakistan on 2005 after Justice Irshad Hassan Khan. He tried to handle the cases with transparent and impartial manners. He even used his *suo motu* powers to provide the justice in some issues related to human rights as well as cases of political and public interests. People took a sigh of relief as he started investigating the matters of human rights violation. The most notable cases of political and public interests were the privatization of Pakistan Steel Mills, presidential elections, postponement of the general elections and the legality of the Musharraf holding dual position at a time, as Chief of Army staff and President. Handling these high profile cases against the wishes of Musharraf, tensed the relationship between executive and judiciary. (PLD 2006 S.C. 697)

These unpleasant relations reached their peaks when Chief Justice was summoned by Musharraf to army house on 9 March, 2007. Along with Musharraf, there were several military officers as well as the Prime Minister Shaukat Aziz present in the Army House. During discussion with Chief Justice, Musharraf charged him of gross misconduct. Therefore, Musharraf stressed on Chief Justice that he should either resign or face the trial. Chief Justice was even forced and constantly insisted by other senior military officers present there to resign. He was assured to be accommodated and adjusted in lucrative post if he agreed to resign. But
he refused to resign. On his refusal to resign, Musharraf ordered that ‘the President does hereby restrain Mr. justice Iftikhar Muhammad Chaudhary to act as Chief Justice of Pakistan and a judge of supreme court, and he is unable to perform the functions of his office…’ (President’s press Release, 9 March 2007)

After suspending the chief justice, Musharraf in his capacity as COAS imposed emergency on 3 November 2007 throughout Pakistan, put the constitution in abeyance and issued the Provisional Constitutional Order (PCO) No.1 of 2007. (Dawn, 4 November 2007, p.4)

Khan (2009) argued that these unconstitutional measures by Musharraf were designed to turn away the Judiciary from hearing the petitions against his qualifications to contest Presidential election. According to him the purpose of this show of power by Musharraf was also to save Prime Minister from contempt of Court, as he forcibly exiled Mian Nawaz Sharif on 10 September 2007 violating the order of the Supreme Court. (Khan, 2009, p. 520)
Conclusion

History reveals that throughout the political and democratic development in Pakistan, the decision making power has been not shared among the state departments. Resultantly, abused of power by the executive has been the order of the day. The apparent reason is regarded the lack of separation of powers and the absence of checks and balances. When political elites direct and decide specific cases, it means there is lack of separation of function and the judicial branch is not independent. It is reflected in a system when judges exercise judicial powers without interference of political forces or executive pressure. There would be a judicial independence when judges of the courts use their own judgment to interpret the laws instead of taking directions from the government or any outside party. In Pakistan, it has been the common practice of Executive, whether civilian or military, to dominate the judiciary. Priorities of the government were to make the judges submissive and subservient rather than independent just to perpetuate their own rule. Same is the case with judges, who never bothered to resist and challenge the power of the executive. They supported the executive by taking resort to the doctrine of state of necessity.
References


15. Federation of Pakistan v Moulvi Tamizuddin Khan, PLD 1955 Federal Court 240.

16. The state v Dosso, PLD 1958 S.C.533

19. Dawn, 2 September 1975
20. Dawn, 6 July 1977
25. PLD 1988, Lahore 725
27. Herald, December 1997, p. 32
29. Shahid Orakzai v Pakistan Muslim league, 2000 SCMR 1043
30. Watan Party v federation of Pakistan, PLD 2006 S.C. 697
31. Dawn, 4 November 2007, p. 4

End notes:
Hans Kelsen (October 11, 1881 – April 19, 1973) was an Austrian jurist, legal and political philosopher. In 1934, Roscoe Pound lauded Kelsen as “undoubtedly the leading jurist of the time.” From Wikipedia, the free encyclopedia 21-02-2015

2. Article 6 of the constitution of 1973 read as “Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason”. from Ahmad, Syed Sami, (2012), The Judiciary of Pakistan and It’s Role in Political Crises, Royal Book Company, Karachi- Pakistan. P.76
4.1 Introduction

The year 2007 is the beginning of judicial independence in Pakistan, which is an essential component for the principle of separation of powers propounded by the Montesquieu. There is sequence of events (the constraint relationship among the three branches of government) between the periods of dismissal, to the restoration of the chief justice of Pakistan. Judiciary during the period 2007-2013, constrained and checked the ruthless exercise of powers by the executive. Seemingly, the constraint relationship between the executive, judiciary and legislature illustrated a relative progress towards the checks and balances. Few examples of Separation of powers in Pakistan seemed when the government had to restore the judiciary- yielding the mass pressure of long march in 2009. This movement of judicial independence started on 9 March 2007, culminated in 16 March 2009. During this period it had to pass through various phases like the suspension of chief justice Iftikhar Muhammad Chaudhry (9 March 2007), then his restoration (20 July 2007) and again the suspension of chief justice along with other judges who refused to take oath under the emergency of 3 November 2007 by the President. After the imposition of emergency by the Musharraf, countrywide movement started to restore the deposed judges, specially the chief justice Chaudhry. It was the consequence of these events that made the judiciary powerful as well as independent organ of the state. This chapter is comprised on three parts. First part of the chapter discusses the constitutional provisions regarding the separation of powers in the three constitution of Pakistan. Second part deals with the movement of judicial independence (2007 to 2009 is the movement for restoration of judiciary). The third part discusses the cases of separation of powers in Pakistan (2009 to 2013-the period of restored and empowered judiciary and hence the separation of powers).
4.2 Constitutional settings of ‘Separation of powers’ in Pakistan (1956, 1962 and 1973)

The word ‘Pakistan’ is derived from the provinces of British India: Punjab, Afghanistan, Kashmir, Sindh and Balochistan. Pakistan a more typically post colonial country, got independence from the British in 1947. This independent country is located in South Asia and has overwhelmingly Muslim population. The Eastern wing of Pakistan, now Bangladesh, was separated from the rest of the country in 1971. The system of government depicts the old fashioned example of authoritarian rule. Civilian and military rule have been oscillating throughout the post colonial history of Pakistan. Up till 2008, four military commanders have ruled the country. (Hague and Harrop, 2004, p.66) The following table will show the pattern of governments in Pakistan since 1947 to 2013.

Table 4-1: pattern of governments in Pakistan since 1947 to 2013

<table>
<thead>
<tr>
<th>Types of government</th>
<th>Duration</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Military Rule</td>
<td>17 year</td>
<td>1958-1962: Ayub Khan (president)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1962-1971: Yahya Khan (president)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1977-1985: Zia-ul-Haq (president)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1999-2002: Pervez Musharraf (president)</td>
</tr>
<tr>
<td>Elected Government under a Military Presidents</td>
<td>15 years</td>
<td>1962-1969: Ayub Khan (president)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1985-1988: Zia-ul-Haq (president)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2002-2007: Pervez Musharraf (president)</td>
</tr>
<tr>
<td>Elected government under a civilian presidents</td>
<td>11 years</td>
<td>1988-1990: Benazir Bhutto (prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1990-1993: Nawaz Sharif (prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1993-1996: Benazir Bhutto (prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1997-1999: Nawaz Sharif (Prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2008-2013: Yousaf Raza Gilani/Raja Pervez Ashraf (Prime Minister)</td>
</tr>
<tr>
<td>Semi-Civilian (non elected) political government</td>
<td>11 years</td>
<td>1947-1951: Liaquat Ali Khan (prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1951-1953: Muhammad Ali Bogra (Prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1953-1955: Chaudhary Muhammad Ali</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1956-1957: Hussain Shaheed Suhrawardy (Prime Minister)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1957-1958: Feroz Khan Noon (Prime Minister)</td>
</tr>
</tbody>
</table>

Source: (Wolf, 2013, p.1-28)
The concept separation of powers in Pakistan was signified and suggested right from the birth of Pakistan. In 1949, Abdul Rashid, the then chief justice of federal court of Pakistan expressed that the independence of judiciary can only be achieved if it is separate and independent from the executive and legislature. Before the partition of Indian subcontinent in 1947, the major political parties of the Indian politics included the slogan of separation of judiciary from the executive in their movement of independence. In view of the fact that the doctrine of separation of powers rests on the independence of judiciary, so both the countries (India and Pakistan) after freedom from the British, recognized the separation of judiciary from the executive control. The constitution of India incorporated in it the provisions related to the separation of powers. The article 50 reads as, “The state shall take steps to separate the judiciary from the executive in the public service of the state.” Same sentiments were manifested in the 1956 constitution of Pakistan. The state policy had its directive principles that, “the state shall separates the judiciary from the executive as soon as possible and practicable.” (Khan, 2005, p.113-114)

There have been three constitutions enacted in Pakistan: the 1956, 1962 and the 1973. The first two abrogated while, the constitution of 1973 is functioning in Pakistan with various amendments. Now we shall discuss the provisions related to the separation of powers in all the three constitutions including objective resolution.

4.2.1 Objective Resolution of 1949 and ‘Separation of powers’

Objective Resolution, the draft of the future constitution was framed by the constituent assembly (established on 11 August 1947) of Pakistan in March 1949. Later on it became the substantive part/preamble of all the three 1956, 1962 and 1973 constitutions of Pakistan. It had included in its recommendations that the judicial branch of the government would be fully independent. The text of the objective resolution is:

“In the name of Allah, the beneficent, the merciful… the constituent assembly representing the people of Pakistan resolves to frame a constitution for the sovereign
independent state of Pakistan, wherein state shall exercise its powers through the chosen representatives of the people; wherein the principle of democracy, freedom, equality, tolerance and social justice be fully observed…wherein the independence of the judiciary shall be fully secured…”

Thus the objective resolution indicated the separation of powers and the empowerment of the people as it mentioned the independence of judiciary along with the representative assembly. It did not mention the concentration of powers in one branch. (Constitution 1973, p.1)

4.2.2 Separation of powers under the Constitution of 1956

The first constitution of Pakistan, which was promulgated on 23 March 1956, had 234 articles, 13 parts and 6 schedules. This constitution was based on the parliamentary form of government where it vested the executive authority in the cabinet. Prime Minister in the 1956 constitution had to inform all the decisions made by the cabinet and to communicate the proposals regarding the legislation. (Choudhury, 1956, pp.243-252) Now we discuss the Constitutional provisions related to the separate powers and jurisdictions of the three branches.

4.2.2.1 Executive Power under 1956 constitution of Pakistan

The federal states having parliamentary system provide separate head of state with ceremonial functions. In the first constitution of Pakistan, President was both head of the government and the state, but he was bound to exercise his executive functions with the aid and advice of the prime minister and his cabinet. There was a check on the discretionary powers of the president regarding the removal of prime minister. The first schedule of the constitution dealt with the selection and election of the president who was to be elected by the national and provincial assemblies. The fourth schedule is related to the privileges and remunerations of the president and the governors of the provincial assemblies. The cabinet had the real powers. Prime minister, the head of the cabinet as well as the leader of the house was responsible to the legislature. Moreover, PM holds
office, “during the pleasure of the president”. It was laid down in the constitution that president cannot use his powers unless and until the PM loses the confidence of the majority in the assembly. (Choudhury, 1956, pp.243-252)

4.2.2.2 Judicial powers under the 1956 constitution

There were 31 articles related to the judiciary. Part 9 of the constitution also dealt with judiciary. The third schedule was related to the powers of the courts and the privileges of the judges. The independence of the judiciary was maintained in the constitution through the proper procedures of appointment and removal of the judges. President had to appoint the chief justice, while the remaining judges were to be appointed in consultation with the chief justice. Supreme Court comprised of a chief justice and six other judges. The number of the judges could only be increased or decreased through the act of the parliament. It was entrusted the power of adjudicating and interpreting the constitution in case of disputes between the governments both at federal and provincial levels.

Concerning the removal of the judges, it was provided in the constitution that the president could remove the judge from his office only on the ground of misconduct and insanity of mind investigated and proved when the two third of the total number of the members present in the assembly votes for his removal.

Constitution of 1956 also provided the power of judicial review to the court just like the federal systems of US, Canada and Australia contrary to the nature of parliamentary supremacy in England. Above all the courts (Supreme Court and high courts) were empowered to issue the writs of habeas corpus, certiorari, mandamus, quo-warranto and prohibition to ensure the fundamental rights. Thus the independence of judiciary in the 1956 constitution of Islamic Republic of Pakistan was fully secured. (Khan, 2009, p.108-109)

4.2.2.3 Legislative powers under the 1956 constitution

The federal legislature (parliament) under 1956 constitution comprised on president and national assembly. President had power to dissolve the assembly but on the
advice of prime minister. Unlike the prevailing federal constitutions in the world, this
currency was based on unicameral legislature, one house i.e. national assembly of
Pakistan. Overall, the constitution of 1956 shared the powers and authorities into three
branches. Being the nature of parliamentary form, some powers were overlapping, but it
had structural mechanism of checks and balances. (Khan, 2009, p.105)

Table 4-2: separation of powers in 1956 constitution of Pakistan

<table>
<thead>
<tr>
<th>Branches</th>
<th>Provisions</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>Article 37(6)</td>
<td>“Prime minister shall hold office during the pleasure of the president, but the president shall not exercise his powers unless he is satisfied that the prime minister does not command the confidence of the majority of the members of the national assembly.”</td>
</tr>
<tr>
<td></td>
<td>Article 41(1)</td>
<td>“All executive actions of the federal government shall be expressed to be taken in the name of the president.”</td>
</tr>
<tr>
<td>Judiciary</td>
<td>Article 148</td>
<td>“There shall be a supreme court of Pakistan, consisting of a chief justice of Pakistan and not more than six other judges.”</td>
</tr>
<tr>
<td></td>
<td>Article 149(1)</td>
<td>“The chief justice of Pakistan shall be appointed by the president, and the other judges shall be appointed by the president after consultation with the chief justice”</td>
</tr>
<tr>
<td>Legislature</td>
<td>Article 43</td>
<td>“There shall be a parliament of Pakistan, consisting of the president and one house, to be known as national assembly.”</td>
</tr>
</tbody>
</table>

Source: (Mahmood, 1997, p.256-286)

4.2.3 Separation of powers under the constitution of 1962

Unlike the constitution of 1956, the constitution of 1962 provided the presidential
system, which is generally based on the separation of powers. But the presidential system
adopted under the 1962 constitution, some powers were overlapping. The then President
Ayub, maneuvered to concentrate the powers in his hand. Khan (2009) argued that “the
president under the constitution was like the clock tower of Faisalabad (third largest city of Pakistan) where all bazaars converged.” (Khan, 2009, p.139) Now we look the provisions related to the powers of three branches of the government under the constitution of 1962 introduced by the military president.

4.2.3.1 Power of the Executive (1962 constitution)

Executive powers were vested in the office of the president. He enjoyed the powers of both head of the state and government. He had the powers to appoint the judges of the courts, governors, attorney general and the election commissioner. In other words, president was the repository of all powers. President, selected from the Electoral College comprised of 80000 basic democrats used all executive powers independently. There was a council of ministers appointed by the president to assist him, but he was not responsible to the council of the ministers, as constitution did not clearly define the relationship between the two. He could dismiss and dissolve the council of ministers any time without any reasons.

In contrary to the essence of presidential system, the constitution of 1962 made the executive integral part of the legislature. The legislature had one house known as national assembly and the president. There was check on the unrestraint use of powers on president also. It was the power of dissolving the central legislature. President could dissolve the national assembly at any time but he himself had to leave the office for fresh election of both the president and the national assembly. To this extent we can say that the 1962 constitution contained some provisions to check the arbitrary use of powers by the executive. (Rashiduzzaman, 1969-1970, pp.481-493)

4.2.3.2 Power of the judiciary (1962 constitution)

The constitution of 1962 maintained independence of judiciary like the previous constitution. The constitutional provisions were almost same as mentioned in 1956 constitution. It maintained the power of decision more than the vires of the legislature. It had control over the executive action through judicial review as it was preserved in the common law of England. The constitution also maintained the writ jurisdiction of the
court. There was a supreme judicial council appointed by the president. It comprised of chief justice, two senior judges and the chief justices of high courts. President had the authority to remove the judge but with the recommendations of supreme judicial council. (Khan, 2009, p.149)

4.2.3.3 Power of the Legislature (1962 constitution)

Legislature under the 1962 constitution had one house known as national assembly whose members were indirectly elected through the Electoral College. It was mandatory for the member of assembly to retain one seat, in case he had elected from other assembly. Besides president, speaker could also summon and prorogue the assembly, if one third of the member had requested for. Regarding the passing of the bill, assembly had comprehensive procedure. For instance, if the president did not give assent or withheld his assent or returned it to the assembly for reconsideration, the national assembly had to reconsider it and if two third majorities passed it, the bill would be sent again for the assent of the president. In case the president returned the bill for second time, the process would be repeated. But when the bill presented to the president for second time, either he had to give assent or refer it to the referendum. In this way president had to give assent when the bill got majority vote from the Electoral College. (Rashiduzzaman, 1969-1970, pp.481-493) Thus we can say that under the 1962 constitution of Pakistan, there were separated roles and functions of all three branches. Constitution clearly specified the jurisdiction of the main organs of the state with checks and balances.
### Table 4-3: separation of powers under 1962 constitution

<table>
<thead>
<tr>
<th>Branches</th>
<th>Provisions</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>Article (9)</td>
<td>“There shall be a president of Pakistan, who shall be elected in accordance with this constitution and the law.”</td>
</tr>
<tr>
<td></td>
<td>Article 13(1)</td>
<td>“Not less than one-third of the total numbers of the national assembly may give written notice signed by each of them to the speaker of the assembly that they intend to move a resolution in the assembly for the removal of the president from office on a charge that he has willfully violated this constitution or has been guilty of gross misconduct.”</td>
</tr>
<tr>
<td>Legislature</td>
<td>Article 19</td>
<td>There shall be a central legislature of Pakistan, which shall consist of the president and one house, to be known as the national assembly of Pakistan.”</td>
</tr>
<tr>
<td></td>
<td>Article 23(1)</td>
<td>…the president may at any time dissolve the national assembly, but,</td>
</tr>
<tr>
<td></td>
<td>Article 23(2)</td>
<td>“The president shall not dissolve the national assembly at any time when the unexpired portion of the term of the assembly is less than one hundred and twenty days”.</td>
</tr>
<tr>
<td></td>
<td>Article 23(4)</td>
<td>“When the president dissolves the national assembly he shall cease to hold office upon the president elected as his successor entering upon his office.”</td>
</tr>
<tr>
<td>Judiciary</td>
<td>Article 49(1)</td>
<td>“There shall be a supreme court of Pakistan”</td>
</tr>
<tr>
<td></td>
<td>Article 49(2)</td>
<td>“The supreme court shall consist of a chief justice and so many other judges as may be determined by law or, until so determined, as may be fixed by the president.”</td>
</tr>
</tbody>
</table>

Source: (Mahmood, 1997, p.545-559)
4.2.4 Separation of powers under the constitution of 1973

The constitution of Islamic Republic of Pakistan promulgated in 1973, is based on Parliamentary system of government. According to Sultana (2012), although the executive is the part of legislature under the parliamentary system and being considered the fusion of powers, but constitution of 1973 categorically defines the functions and jurisdictions of three organs, i.e. the legislature, executive and judiciary. Under this form of government in Pakistan, President is a ceremonial and titular head of the state, whose functions are only formal. He has to act upon the advice of the Prime Minister. President can dissolve the National Assembly only on the advice of the Prime Minister. Impedence of judiciary was fully secured under the 1973 constitution. (Sultana, 2012, p.55-71)

While addressing to the International Judicial Conference, Mr. Tassaduq Hussain Jilani expressed that “one of the seminal principle of the constitution of Islamic Republic of Pakistan is the concept of trichotomy of powers between legislature, executive and judiciary. This principle underpins the rationale that framing of a government policy is to be undertaken by the executive, which is in a better position to decide on account of its mandate… The legislature which represents the people enacts the law…The judiciary on the other hand, is entrusted with the task of interpreting the law and to play the role of an arbiter in cases of disputes…” (Ali, 2014) Now we will discuss the constitutional settings of three branches separately to fully comprehend the separation of powers in Pakistan.

4.2.4.1 Judiciary as a separate and independent institution under the constitution of 1973 Pakistan

Judiciary is only independent when it is free from external pressures as well as internal weaknesses. Constitution provides the security of tenure, transparent and fair procedure for selection, promotion policy, accountability of judges, financial autonomy to the courts, and its separation from the executive. (Ahmad and Safdar, 2014, pp.483-
legacy of Anglo American political and judicial development. It was permanently adopted by the Britain in 1688, while USA included it in her constitution in 1789. The underlying objective of the concept ‘judicial independence’ is that it should be effectively, properly and efficiently organized in such a manners that the problems, grievances and claims of general masses may resolve quickly. Public expects fair, impartial and speedy justice. This is only possible when judiciary is strong and independent by structure and behavior. (Shah, Khan and Mahsood, 2011, pp.54-67)

Constitutionally, the power of the government is shared between the judiciary, executive and legislature. Judiciary has its separate composition. Superior judiciary is composed of Supreme Court, high courts and Federal Shariat Court, while Civil, Criminal, Administrative and Special Courts are included in the subordinate court. (Ahmad and Safdar, 2014, pp.483-496)

In the early days, the judicial system in Pakistan had its integrity and sovereignty. It was because of the fact that judiciary under the British rule in India augmented as a comprehensive and separate institution. Competencies and impartialities were the basic criteria for judges. After independence, the Indian Act of 1935 was adopted as an interim constitution with certain amendments in Pakistan. It similarly contained comprehensive mechanism of service structure like salary, pension and services tenure of the judges. (Khan, 2009, p.309)

In the third constitution (1973) of Pakistan, independence of judiciary is the essential part of it like in the previous two constitutions, as discussed earlier. Article 27 of the constitution 1973, is related to the judicial independence. For Impartial and independence of judiciary there is need of fair and transparent selection of Competent Judges. In this regards, article 175 (3) of the constitution of 1973 provides the procedure of judge’s appointment. It separates the judiciary from executive. It states that “the Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day.” Article 190 of the constitution stressed that “all the executive and judicial authorities throughout the country to assist the supreme court in the implementation of its decisions”. In 1994, Supreme Court of Pakistan maintained that
“immediate separation of the judiciary from the executive”. Similarly in 1996, while explaining the article (177) and (193), Supreme Court laid down the procedures of appointing the justices of courts. It was held by the Supreme Court that judges of the high courts would be appointed according to the principle of seniority.(Ahmad and Safdar, 2014, pp.483-496)

The insertion of Article 175 (A) is related to the appointment of judges. It was added to the constitution after the 18th amendment in 2010. It defines the composition of the judicial commission. It reads as: “There shall be a Judicial Commission of Pakistan… for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court …” The composition of the commission would be as,

- Chief justice of Pakistan, (Chairman)
- Four most senior judges of Supreme Court, (Members)
- A former chief justice or a former judge of the supreme court of Pakistan to be nominated by the chief justice of Pakistan, in consultation with the four member judges, for a term of two years. (Members)
- Federal minister for law and justice. (Member)
- Attorney general for Pakistan. (Member) (Constitution of Pakistan, 1973, p.93)

After the nomination of judges from the judicial commission there is parliamentary committee to review and confirm the nominated post by the judicial commission. There are eight members in parliamentary committee. These members are chosen from both houses of the parliament. Finally the president in consultation with the Prime Minister appoints the nominated names of judges. There is also a constitutional mechanism to remove the judges. A judge can only be removed through a reference filed by the president of Pakistan or on the recommendation of the supreme judicial council, comprising of senior judges. Thus the composition of supreme judicial council is a step towards impartiality and independence of judiciary in Pakistan. (Hussain, 2011, p.10-14)

Financial autonomy is one more element necessary for judicial independence. In Pakistan, Courts have been provided the financial autonomy since the ruling of the
Supreme Court in Government of Sindh v Sharaf Faridi case. In this case, Supreme Court gave its verdict that Executive branch cannot use its financial authority over the Judiciary. Quoting Article 175 of the constitution, it was observed in this case that,

“...the separation of the judiciary as contemplated in Article 175 of the Constitution and independence of the judiciary as envisaged in the Objectives Resolution (Article 2A) cannot be achieved without having independent annual budget for the judiciary. In other words, the judiciary should generate its own annual income according to its annual requirements. This may not be practicable. The requirements of Article 175 will be met if the judiciary has effective say in formulation of its annual demands. To put it differently, the executive should place annual funds as per requirements at the disposal of the judiciary for operating it without being interfered with by any agency of the Executive.”(PLD, 1989, Sharaf Faridi and others v/s Federation of Pakistan)

Thus judges were legally and constitutionally authorized to utilize public funds independently without prior approval of the Finance Ministry.

Accountability is also one of the essential elements for judicial independence. In Pakistan this duty is entrusted with the supreme judicial council. It is comprised of senior most judges of the judiciary. Besides, Chief Justice of Pakistan as the chairman of this council, Registrar of Supreme Court is the secretary of supreme judicial council. All the referred complaints are decided by this council. After the decision by the supreme judicial council that a judge is unable to perform his duties or he is involved in gross misconduct, the president then orders the suspension or removal of the guilty judge. (Hussain, 2011, p.10-14) Thus judiciary as a separate and independent institution in all respects is existed in Pakistan.
4.2.4.2 Executive under the constitution of Pakistan of 1973

The original constitution of 1973 provides the executive power to the federal government. The executive branch of the state is comprised of the president, prime minister and the federal ministers. Power of the president is clearly mentioned in the constitution. He has to use his executive authority with the advice of prime minister. Similarly, prime minister along with his cabinet (federal ministers) is collectively answerable to the legislature. Parliamentary nature of the constitution provides the PM as chief executive and head of the government simultaneously, while the president is entrusted with the authority of head of the state. Constitution plainly defines the power and authority of the prime minister along with his ministers. Article 91 (1) reads as, “there shall be a cabinet of ministers, with the prime minister as its head, to aid and advise the president in the exercise of his functions.” Similarly, the Article 91 (6) reads that, “the cabinet, together with the ministers of state, shall be collectively responsible to the national assembly.” (Constitution of Pakistan, 1973, p.52)

President can dissolve the national assembly on the advice of prime minister. But he has to refer the case to the Supreme Court. After the Eighteenth amendment (2010) in the constitution, the provision (3) of the Article 58 was added. It stated that ‘the president in case of dissolution of the national assembly shall, within fifteen days of the dissolution, refer the matter to the Supreme Court and the Supreme Court shall decide the reference within thirty days whose decision shall be final.” (Constitution of Pakistan, 1973, p.30)

4.2.4.3 Legislature under the constitution of Pakistan

Chapter two of the constitution is related to the composition of parliament. Like other parliamentary systems in the world, the parliament in Pakistan is elected by the people through general elections. Executive body is elected amongst the members of legislature, and hence it is answerable to the legislature. It comprises national assembly, senate and president. Law making and amending the constitution is the responsibility of the parliament which is constitutionally powerful branch of the government. Laws are
amended only in the parliament with two third majorities in each house separately. It has the power and capacity to check the working of the executive. The internal procedures to check the functioning of the executive is through the parliamentary debates, reviews, adjournment motions and question hours. There are also standing committees in the parliament to check and ensure the activities of the government within the jurisdictions of the constitution. The upper house (senate) ensures the equal representation of all the federating units of Pakistan. In this way the fundamental rights of the people are protected from the abuse of the government.

Both houses have separate role, functions and composition. For National Assembly of Pakistan under the constitution of 1973, article 51(1) states as, “there shall be three hundred and forty two seats in the national assembly, including seats reserved for women and non Muslims.” The province wise allocation of national assembly seats is 332, besides ten seats are reserved for non Muslims are as:

<table>
<thead>
<tr>
<th>Province</th>
<th>General seats</th>
<th>women</th>
<th>total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baluchistan</td>
<td>14</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>Khyber Pakhtunkhaw</td>
<td>35</td>
<td>8</td>
<td>43</td>
</tr>
<tr>
<td>Punjab</td>
<td>148</td>
<td>35</td>
<td>183</td>
</tr>
<tr>
<td>Sind</td>
<td>61</td>
<td>14</td>
<td>75</td>
</tr>
<tr>
<td>FATA</td>
<td>12</td>
<td>-</td>
<td>12</td>
</tr>
<tr>
<td>Federal Capital</td>
<td>2</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>272</strong></td>
<td><strong>60</strong></td>
<td><strong>332</strong></td>
</tr>
</tbody>
</table>

Source: (constitution 1973, p.26)

Article 59 describes the composition of the senate. It reads as, “The senate shall consist of one hundred members of whom (a) fourteen shall be elected by the members of each provincial assembly, (b) eight shall be elected from FATA, (c) two on general seats and one woman and one technocrat including Aalim (religious scholar) shall be elected from the federal capital, (d) four women shall be elected by the members of each assembly, (e) four technocrats including Ulema (religious scholars) shall be elected by
the members of each provincial assembly.” Senate cannot be dissolved as Article 59(3) states that “senate shall not be subject to dissolution but the term of its members shall retire according to the constitution.” (Constitution of Pakistan, 1973, p.31)

Table 4-5: Separation of powers under 1973 constitution

<table>
<thead>
<tr>
<th>Branches</th>
<th>Provisions</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>Article 41(1)</td>
<td>“There shall be a president of Pakistan who shall be the head of state and shall represent the unity of the republic”.</td>
</tr>
<tr>
<td></td>
<td>Article 90(1)</td>
<td>“Subject to the constitution, the executive authority of the federation shall be exercised in the name of the president by the federal government, consisting of the prime minister and the federal ministers who shall act through the prime minister, who shall be the chief executive of the federation.”</td>
</tr>
<tr>
<td></td>
<td>Article 48(1)</td>
<td>“In the exercise of his functions, the president shall act in accordance with the advice of the cabinet or the prime minister. Provided that (within fifteen days) the president may require the cabinet or, as the case may be, the prime minister to reconsider such advice, either generally or otherwise, and the president shall (within ten days) act in accordance with the advice tendered after such reconsideration.”</td>
</tr>
<tr>
<td></td>
<td>Article 58(1)</td>
<td>“The president shall dissolve the national assembly if so advised by the prime minister; and the national assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty eight hours after the prime minister has so advised.”</td>
</tr>
</tbody>
</table>
|          | Article 58(2) (a) | President can also dissolve the national assembly by using his discretion powers as “a vote of no confidence having been passed against the prime minister, no other member of the national assembly is likely to command the confidence of the majority of the members of the national assembly in

85
accordance with the provisions of the constitution as ascertained in a session of the national assembly summoned for the purpose…”

<table>
<thead>
<tr>
<th>Article 58(2) (b)</th>
<th>“a situation has arisen in which the government of the federation cannot be carried on in accordance with the provisions of the constitution and an appeal to the electorate is necessary”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 91 (5)</td>
<td>“the prime minister shall hold office during the pleasure of the president, but the president shall not exercise his powers under this clause unless he is satisfied that the prime minister does not command the confidence of the majority of the member of the national assembly, in which case he shall summon the national assembly and require the prime minister to obtain a vote of confidence from the assembly.”</td>
</tr>
</tbody>
</table>

**Legislature** Article 50

“There shall be a Majlis-e-Shoora (Parliament) of Pakistan consisting of the president and the two houses to be known as national assembly and the senate.”

**Judiciary** Article 175

“There shall be a supreme court of Pakistan, a high court for each province and a High Court for the Islamabad Capital Territory and such other courts as may be established by law.”

Source: (Mahmood, 1997, p. 855-923)

The above discussion indicates that constitution provides the separation of powers mechanism. The nature of parliamentary form of government rests the authority of the chief executive with the Prime Minister. But, in practice the balance of powers remained in one branch of the government, especially to the favor of President. In this regards, two constitutional amendments were introduced by the military rulers. President Zia-ul-Haq empowered his office through 8th amendment, while Pervez Musharraf introduced 14th constitutional amendment to take power from prime minister. Thus the shape of
parliamentary system of Pakistan changed like a semi parliamentary system. (Mushtaq, 2012 p.60)

Separation of powers is only at the time when judiciary is independent, fully or partially from the other two branches of the government. There should be a sufficient independence of judiciary to check the misuse of authority by the executive and to maintain checks and balances. History reveals that judicial branch of Pakistan did not perform its role independently. (Sultana, 2012, p.55-71) Since 2007, the third wing i.e. judiciary in Pakistan has started exerting its position as an independent institution. And if three institutions function with inbuilt checks and balances system, people are empowered and feel liberty in the existing system. The pattern of separation of powers since 1947 to 2007 is discussed in the chapter three. In the following pages we will discuss this relationship after 2007 separately in to two sections.

4.3 Relation between Executive and Judiciary in 2007 to 2009

The turning point for judiciary came in March 2007 when Musharraf dismissed the Chief Justice of Pakistan on grounds of corruption. The reaction on the suspension of Chaudhry was very strong on the side of civil society and the legal community. A movement started throughout the country to restore the chief justice along with other sacked judges by Musharraf.

The apparent reason behind the suspension was the two important cases of human rights took up by the chief justice. These were, ‘missing persons’ and the ‘Pakistan Steel Mills’. Chaudhry (Chief Justice) highlighted the irregularities and decided against the wishes of the government in a privatization of the Pakistan Steel Mills (PSML). The massive corruption in the case was a financial loss to the national exchequer. The second was the missing persons under which chief justice summoned the high profile police officials and took severe actions against them. In these cases, particularly in (PSML), Chaudhry gained esteem in the eyes of the public who saw this verdict as a necessary check against an uncontrolled form of capitalism that only benefited the government and the wealthiest. Musharraf unwillingly reinstated the highly popular Chaudhry back to office in June 2007 because of public pressure. The return of
the Chief Justice and a newfound popularity with the people emboldened the judiciary against the executive. (Ahmad, 2012, p.310-311)

4.3.1 Removal of Chief Justice - Reference against Chief Justice

Before suspending the chief justice from his seat, Musharraf made a ground in the form of allegations mentioned in the reference. It was March 9th, 2007, when Musharraf filed a Reference to the Supreme Judicial Council. He directed the supreme judicial council to probe into the allegations of misconduct against Iftikhar Chaudhry. Acting chief justice headed the supreme judicial council and ordered that,

“...after examining the reference and having gone through the record the council has taken cognizance of the reference and decided to invite the respondent to appear before it on 13 March 2007”.

It further stated that the “respondent shall not perform functions as judge of the Supreme Court and/or the Chief Justice of Pakistan till the above Reference is answered by the council.” (Khan, 2009, p.511)

It was alleged by the President in the Reference that Iftikhar Chaudhry in his capacity as chief justice of Pakistan supported his son Arslan Iftikhar in the advancement of his career. Arslan Iftikhar started his career as medical doctor with the support of his father (chief justice) and later on he joined the police service of Pakistan again with his father’s influence. Second allegation was related to the use of extra cars and helicopters of governors or Chief Ministers for his travel. He was also alleged that he demanded illegal protocol and insisted on police vehicles to escort him. It was also included in the reference that he demanded senior bureaucrats to meet him at airports. (Khan, 2009, p.511)

4.3.2 Musharraf imposed emergency on 3 November 2007

In the Dawn news published on 4th November, the very next day of the emergency, “we are back to square one. Back to October 12, 1999…The people have
been cheated…one man rule has been reinforced, and there is no light at the end of the tunnel.” (Dawn, November 4, 2007). The apparent factors behind the imposition of emergency of 3rd November are discussed here.

4.3.2.1 Political situation

In the presidential election of 6th October 2007, Musharraf was elected as a president of Pakistan on second time by the parliament and provincial assemblies. Musharraf reelection was challenged by a retired justice of Supreme Court on the ground that simultaneously he could not hold the post of chief of army staff. Supreme Court directed the election commission to stop declaring the Musharraf as a president until court decides the case completely. Court had to decide the legitimacy of Musharraf on November 2007, but rumors spread that verdict might be contrary to the wishes of Musharraf. It was under this fear that Musharraf imposed emergency on 3rd November 2007 and suspended the constitution once again. He stated that,

“whereas there is visible ascendancy in the activities of extremists and the incidents of terrorists attacks…whereas some members of the judiciary are working at cross purposes with the executive and legislature in the fight against terrorism and extremism, thereby weakening the government and the nation’s resolve and diluting the efficacy of its actions to control this menace; whereas some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions…I, General Pervez Musharraf, Chief of the Army Staff, proclaim emergency throughout Pakistan. I hereby order and proclaim that the constitution of the Islamic republic of Pakistan shall remain in abeyance. This Proclamation shall come into force at once…” (Shoeb, B.A, 2008, P.21)

The analysis of different newspapers on the emergency quoted in the thesis of Shoeb (2008) maintained that although Musharraf cited the terrorism and extremism the
main reasons behind the emergency in the country, but actually he wanted to remain in power. He had fears that the vibrant judiciary under the Iftikhar Chaudhry might not maintain his reelection as next term president simultaneously with the Chief of Army Staff. He suspended the constitution and took necessary measures to remove all obstacles in the process of his reelection. Thus he dismissed the judges and replaced them with his loyalist judges from the court. With the immediate effect of emergency, opposition leaders were apprehended and all the opposing venues like media and judiciary were under restrictions. Thus all the cases pending against him were decided in his favor. On 28 November 2007, he resigned from the office of Chief of Army Staff. From the very next day, court confirmed him as a president. (Shoeb, B.A, 2008, P.21)

4.4 Struggle for judicial Independence in Pakistan

Following are few factors contributed to the judicial independence in Pakistan.

4.4.1 Lawyers’ Movement/ Long March:

Despite the fact, that the reference filed by the Musharraf against Chief Justice was dismissed by the majority of the judges under the article of 209, but former did not bother to change his intentions against the later. It was evident from the despotic steps by the Musharraf that he intended to crush the voice of the judiciary; therefore, the legal community came out to defend the rule of law in the country. The slogans like ‘Go Musharraf Go’ were raised by the lawyers throughout Pakistan. Gradually, the movement included the segments of Pakistani urban civil society as well as from the pre urban and rural classes. Judicial independence, which is considered the basic pre requisite for separation of powers, was directly affected by the General Pervez Musharraf when he suspended the constitution and imposed Emergency on November 3 2007. We see that this emergency was not to remove the political government but it had the sole objective of getting rid of those judges who were intended to take decisions contrary to the wishes of Executive. The then chief justice Iftikhar Muhammad Chaudhry along with other sixty judges was not invited to take oath under the new PCO. This extra constitutional measure of the President was directed to remove the independent judges. As a reaction to this curb
on judiciary, lawyers in Pakistan started a movement to restore the judges removed in the result of emergency. (Ahmad, 2012, p.340)

Lawyer’s movement had great contribution which took initiative in bringing the judiciary to its right place. On 16 March 2009, the lawyer’s community, political leaders as well as members of civil society gathered at Lahore under the leadership of Nawaz Sharif PML (N). The PPP government formed in the result of general election 2008 was expected to restore the chief justice along with other deposed judges, but it was proved otherwise. This civilian government ordered the police to seal the capital city (Lahore) as long March was moving towards Islamabad from Lahore. But the protesters came on the street somehow or the other and succeeded to break the siege of the law enforcement agencies. Initially the procession was led by Nawaz Sharif alone but later on Aitzaz Ahsan (President of the Supreme Court Bar Association) also joined the procession. This was the historic long procession. Nearly all TV channels were giving a wide live coverage. It seemed as whole Pakistan was shaking because thousands of people were marching towards Islamabad to restore the judges. The procession hardly covered a few miles distance when it was communicated to Nawaz Sharif in his vehicle that Chief justice Iftikhar Chaudhry along with other deposed judges were going to be restored. With this news, the whole procession was dispersed. Thus on 17 March 2009, all the deposed judges of the Supreme Court and high courts were restored to the position they were holding before 03 November 2007. Subsequently, Mr. Justice Iftikhar Muhammad Chaudhry assumed the office of the chief justice of Pakistan on 22 March 2009, after the retirement of Mr. Justice Abdul Hameed Dogar, chief justice of Pakistan on 21 March 2009. That is how the hard earned victory for the emancipation of the judiciary was achieved. The historic moment was in fact a D-day for the members of the Bar. It was a victory for the rule of law. It was a victory for what was right. (Ahmad, 2012, p.343-345)

The lawyers movement started to restore the chief justice, whom Musharraf had removed, turned into the broader movement for constitutionalism. This movement subsequently led to the failure of Musharraf and forced him down from power. Thus the movement succeeded in its object of judicial independence and to liberate this institution
from the dominance of executive as previously done in the political history of Pakistan. (Kalhan, 2013, p.6)

The significant lesson drawn from the movement is the power of the people. It was observed by the world that people from every walk of life zealously participated in the movement to restore the judiciary. A petition, known as “Ten Million Signature Petition”, was signed by ten million people. This was a single precedent in the history of Pakistan, when people all segment of society joined together for a cause of reinstatement of the judiciary. It was good sign of empowerment of the people in Pakistan. Syed (2013) argued that the participation of the people in the lawyer movement showed that people could be united and stood up for a case. (Syed, 2013, p.117-124)

4.4.2 Judicial Activism

Since 2007, judiciary has decided the high profile cases like judgment against PCO judges, executive persons, media persons parliamentarians, armed forces, intelligence agencies, and Election Commission of Pakistan. Judicial activism started from the appointment of Iftikhar Muhammad as the chief justice of Pakistan on 30 June 2005. He took a lot of decisions to make the judiciary independent from the executive. (Ahmad and Safdar, 2014, pp.483-496) Few cases that set the tone and paved the ground for judiciary to challenge the unlawful use of power by the executive were: In the Hasba bill (2005), Supreme Court ordered the governor of KPK not to approve the bill passed by the provincial assembly. Similarly in the Case of a missing girl, Chief justice ordered the chief secretary of Punjab to replace the superintendent of police Rawalpindi, because the said police office could not recover the girl. In addition to these Supreme Court also addressed the Religious Educational Institutions being run and control by the private sector. Chief justice took notice of these educational institutions as they were run without the sanction of the state. (Zaidi, 2015, p.6)

4.4.3 Pakistan Steel Mills Case

Generally, this case is considered the immediate reason of the first time suspension of Mr. Iftikhar. The issue was the privatization of the Pakistan Steel Mills
(PSMC). It was the largest integrated iron mill, with 100 per cent equity shared by the government of Pakistan, but its shares were sold at inadequate price. It was the government; specially the then Prime Minister Shaukat Aziz had a keen interest in privatizing the PSMC. The approximate value of the property owned by the Steel Mills was Rs.40 billion, but PM insisted on to wind up the project at Rs. 21 billion. Supreme Court took notice of the matter under article 184(3) of the constitution on the appeal of Watan party, a lesser known political party. Court examined that there were many irregularities which could have caused a huge financial loss to the public treasury. For instance, court found that cabinet committee on privatization (CCoP) included the value of total asset against the proposal of privatization board. This committee further approved the discounted fresh cash flow valuation for the privatization of PSMC. In this way, the consortium was declared the successful bidder, but later on the letter of acceptance (LoA) was issued in 31 March 2006 without the notice of CCoP. According to the findings of Supreme Court, the issuance of the LoA was against the rules and norms of the privatization commission and hence badly affected the decisions and policy of successful consortium. Thus on 23 June 2006, the full bench of Supreme Court, headed by Chief justice Iftikhar Chaudhry declared both the LoA and share purchase agreement null and void. (Zaidi, 2015, p.10)

4.5 Restored and Empowered judiciary

Being a third pillar of the state, judiciary has an important role in the progress and development of the country. Through the power of judicial review, it can review the decisions of the legislature and ensures the actions of the executive within the limits of constitution or not. In the subsequent pages, we will discuss the relationship of three institutions, where judiciary asserted its role as an empowered and independent institution.

4.5.1 Role of three institutions in the matter of NRO and PM Conviction

On 26 April 2012, sitting Prime Minister Yousaf Raza Gilani was convicted by a historic verdict of the Supreme Court. This verdict was given by the Justice Nasir-ul-Mulk who headed the seven members’ bench. The apparent reason behind the conviction
of the prime minister is linked with the controversial ordinance of National Reconciliation Ordinance (NRO).

4.5.1.1 National Reconciliation Ordinance (NRO) 2007

General Pervez Musharraf, the then president of Pakistan, promulgated it in 5 October 2007. It was controversial in the sense that Musharraf pardoned off all the cases against high profile politicians and bureaucrats. These people were granted amnesty in the cases of corruption, money laundering and terrorism, from 1st January 1986 to 12th October 1999. Almost 8000 individuals were beneficiaries of this deal between President Musharraf and Benazir Bhutto (ex-prime minister and the leader of PPP). (Rajshree, 2012, p.1-7)

4.5.1.2 Judgment of Supreme Court on NRO

It is no secret that NRO was deal between PPP and President Musharraf. The underlying objective of the Musharraf was to re elect himself as a president. It was only possible when political parties in the assemblies would elect him. PPP being the major political party was the need of Musharraf. To gain the support of PPP, Musharraf had to augment the demands of PPP. There were lot of corruption and money laundering cases against Benazir and her husband Asif Ali Zardari. The situation was going against the wishes of President Musharraf as there had been Charter of Democracy (CoD) signed between PPP and PML (N) at Dubai. Musharraf had not good relations with PML (N); therefore he had to turn towards PPP. Thus, he had to accept the two most significant demands of Benazir: (1) removal of third term bans on PM (2).Withdrawal of all the cases against Benazir and the PPP leaders.

4.5.2 Role of Supreme Court on disqualification of PM

Dr. Mubashir Hassan filed a petition in which he challenged the legality of the NRO, 2007. The petition contained that ordinance was imposed in colorable exercise of legislative powers. It highlighted that most of the provisions in the Ordinance were based on discrimination between common and classified accused. About 3000 cases relating to
murder, corruption, and rape were withdrawn to oblige nearly 8000 accused individuals. The highest profile beneficiary of the controversial NRO was Asif Ali Zardari, the President of Pakistan after Musharraf at that time. There was money laundering cases pending against him in Switzerland. It was alleged that former PM Benazir Bhutto and her husband Asif Ali Zardari were using Swiss banks accounts since 1990s to launder 12 million dollar. NRO had authorized Zardari to request the Swiss authority to close all the cases against him. According to the constitution of Switzerland, a person is immune from the prosecution as long as he remains the head of state. Thus the Swiss authorities stopped pursuing the cases against Zardari with the promulgation of NRO on his becoming the head of state. Being the head of government, it was the responsibility of the PM of Pakistan to write a letter to the Swiss authorities to reopen the cases but, Gilani also refused to comply with the decision of court. (Zaidi, 2015, p.23)

As discussed earlier that NRO was deal, whereby Musharraf would be elected as a president, while, Benazir would return Pakistan to participate in the general election without facing the corruption cases. Supreme Court bench headed by Iftikhar Chaudhry, after lengthy hearings, gave its verdict on December 16th 2009, in which NRO was declared null and void. It was unconstitutional act as according to the court decision, it was against the national interest. It was declared by the court that “all cases in which the accused were either discharged or acquitted under section (2) of the NRO or where proceedings pending against the holders of public office had got terminated in view of section 7 thereof… shall stand revived and relegated to the status of pre 5th of October 2007 position” . (Rajshree, 2012, p.1-7) The judiciary has to check the abuse of powers by the executive and the parliament. Constitutionally court can strike down any laws and conducts that contradict the very essence of the constitution. In the rising trend of judicial activism, Supreme Court in the judgment of legal validity of the NRO 2007 exercised its fundamental check on the executive authority and declared the ordinance illegal.

4.5.2.1 Impact of this judgment- Cause of rift between executive and judiciary

This judgment made the judiciary first time so powerful that it convicted a sitting PM. Supreme Court ordered the PM to reopen the money laundering cases against
President Asif Ali Zardari, who was elected after the resignation of Musharraf. Gilani took the plea that constitutionally no criminal actions could be initiated against the president as he was guaranteed and protected by the immunity. This strong stand and refusal on the part of PM led the judiciary to charge contempt of court against him. Court’s decision was based on the belief that PM intentionally disregarded and disobeyed the orders of Supreme Court to initiate the corruption cases. Therefore, symbolic sentence was imposed on PM by the court on 13 February 2012. The symbolic punishment was “imprisoning him until the court rose”- nearly thirty second duration. Court explained the order as, “…the contempt committed by him is substantially detrimental to the administration of justice and tends to bring this court and the judiciary of this country into ridicule”. It was further stated that “the accused PM Syed Yousaf Raza Gilani, is found guilty of and convicted for contempt of court under Article 204 (2) of the constitution of Pakistan, read with section (3) of the contempt of court ordinance for willful disregard and disobedience of this court’s direction contained in paragraph no. 178 of the judgment delivered in the case of Dr. Mubashir Hassan v. Federation of Pakistan. (PLD 2010 SC 265)” (Rajshree, 2012, p.1-7)

4.5.2.2 Disqualification of PM

The important point in this case was that the supreme court did not disqualify the PM. Supreme court just caused the removal of the head of the executive branch as he disobeyed the apex court for not writing a letter to the Swiss Authorities. The ball was in the court of parliament and the ruling party to remove PM or appoint a replacement. Under the article 63(1) (g) of the constitution, ‘a person shall be disqualified from being elected or chosen as, and from being a member of the Majlis-e- shoora (parliament), if he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan.’ (Rajshree, 2012, p.1-7)

Within thirty days, the government could appeal against the verdict of the court. According to the constitution, it was the will of the speaker of the national assembly to
refer the matter to election commission of Pakistan for the final removal of the PM and any member of the assembly. Speaker of national assembly, Dr. Fehmida Mirza had no intentions of sending the matter to the election commission on the grounds that under the article 63 (1) (g) there was ‘no specific charge regarding the propagation of any opinion or acting in any manners against the independence of the judiciary or ridiculing the judiciary.’ But the opposition parties were pressurizing the Gilani to resign. (Rajshree, 2012, p.1-7)

Ultimately, court ordered on 19 June 2012, the disqualification of Gilani as a member of the parliament and hence he was also disqualified from the head of executive branch.

4.6 Separation of Powers during 2009-2013

Since separation of powers is the sharing of governmental power and authority into three branches i.e. legislature, executive and judiciary. In Pakistan there is partial separation of powers that is only possible when judicial branch is independent of the other two. In the federal parliamentary system of Pakistan executive is the part of legislature and it is responsible to the legislature. The public representatives perform the joint role both as the part of legislature and the executive branch. The function of the parliament is to make law. Its power is based on the principle of responsible government, which requires that laws should be made by representatives who are responsible to the people of the nation. (Robert. 1994. p. 114)

Similarly, the body who administers the laws made by the parliament is called executive. Although the term ‘executive’ have various meanings, but mostly it can be interpreted as the branch of government consisting of the Prime Minister and the Ministry, operating in an administrative role rather than a legislative one. (Robert. 1994. Pp.71-72)

The constitution of 1973 is based on Westminster model. Under this model of government, Prime Minister is the head of Executive branch, which necessarily comes
from the parliament and is answerable to it unlike the US President in the World. In this way, the elected parliament runs the executive organ of the state. (Mirza, 2015, p.41)

4.6.1 Cases related to the separation of powers

There are few cases that are related to the separation of powers in Pakistan. These are (1) SHCBA, (2) Memo gate, (3) Tahirul Qadri, (4) 19th Amendment

4.6.1.1 Sindh High Court Bar Association (SHCBA) v Federation of Pakistan

As already discussed, that President General Pervez Musharraf imposed emergency on 3rd November 2007. At the same time he issued ‘Provisional Constitutional Order (PCO) 2007’ and ‘oath of judges order 2007’, which meant that only those judges would continue who would take oath under the aforementioned orders. Meanwhile, Chief justice Iftikhar Chaudhry headed the seven member bench and issued restraint order that no judge would take oath under the PCO or any other extra constitutional order. In contrary to the order of the supreme court, justice Abdul Hameed Dogar along with four judges, took oath under the PCO and oath of office order 2007, while, many judges including chief justice Iftikhar who refused to take oath under the Musharraf extra constitutional steps, were prevented from performing their duties. Most of the judges were sent to house arrest. Thus Abdul Hameed Dogar became the chief justice of Pakistan. This new court under the new chief justice validated the proclamation of emergency on the doctrine of law of necessity. In this way, Musharraf got the legal protection for his 3rd November 2007 actions. He was also legally empowered to amend the constitution. Court declared him qualified for next term president. General elections were held on February, 2008 and as a result, new civilian government was formed both at federal and provincial level. Later on Musharraf resigned from the seat of president. Civilian leader –the co chairman of PPP, Asif Ali Zardari became the president and the matter of restoring the judges switched over to the civilian government. Ultimately judges were restored in March 2009 to the same status prior to the 3rd November 2007 emergency.
When Iftikhar Chaudhry resumed the office of chief justice of Pakistan, the first major decision of the court was the reversal of Musharraf unconstitutional measures that he took after the emergency of 3rd November 2007. In this case, Sind High Court Bar Association (SHCBA) on 31 July 2009 announced that Musharraf was usurper and all his actions of post 3rd November 2007 were invalid and illegal. Court announced that reason behind the imposition of emergency was the threat of being disqualified of Musharraf as a candidate of presidential election from the ruling of eleven member bench of Supreme Court. It was also held by the court that since the judges could not be appointed without the consultation of the chief justice, therefore all the appointment of the judges with consultation of de facto chief justice (Abdul Hameed Dogar) were unconstitutional. Sixty one judges of the judiciary were restored. In this judgment, it was ordered that new clause be included in the ‘code of conduct’ so that judges might be prohibited from taking oath under any unconstitutional method. The court further held that those judges, who took oath under PCO, violating the orders of the Supreme Court, would be trialed under article 209 of the constitution. (Mirza, 2015, p.62)

However, those ordinances which were implemented during 03-11-2007 (proclamation of emergency) to 15-12-2007 (lifting of emergency) placed before the parliament to decide their validity. Thus, Supreme Court demonstrated the balance of powers by putting the ball in the court of parliament and set the precedent of separation of powers.

4.6.1.2 Nineteenth Constitutional Amendment and resistance of Supreme Court

Another case relevant to the separation of powers is the reaction of the judiciary on the enactment of the eighteenth constitutional amendment. The enactment of 18th amendment in April 19th, 2010 and then 19th amendment on the reaction of Supreme Court is viewed in the perspective of separation of powers case in Pakistan. The independence of judiciary and its position as a powerful institution is also visualized in this case.
In the eighteenth amendment, ninety eight articles were amended with the insertion of new articles also. Among other applaud able achievements; the prime achievement was the empowering of the provinces by abolishing the concurrent list (which had given the overlapping powers to the federal legislature). But, it had curtailed the absolute power of chief justice in the appointment of the judges. Before the enactment of 18th amendment it was the exclusive power of the chief justice to appoint the judges of the courts. Article 175 A\textsuperscript{1}, introduced by this amendment, deprived of the chief justice from the right of appointment. Under the article 175 (A), inserted in the 18th amendment, the powers of the chief justice were shared with the judiciary, executive and legislature. Many judicial experts apprehended these changes as an assault on the independence of the judiciary. Considering this amendment as a threat to independence of judiciary, thus the court sent the matter back to the parliament for reconsideration of the said article along with proposed suggestions. These recommendations of the court were not contrary to the basic scheme of the article 175. The major demands of the court were to gain effective control over appointment process by increasing the strength and power of the judicial members. Parliament accepted this judicial review and resultantly, passed 19th amendment in the constitution on 1\textsuperscript{st} January, 2011. (Mirza, 2015, p.48)

Before this, it was not the jurisdiction of the court to intervene in the parliament constitutional right of amendment, but by showing the relaxation in this case, reflected the positive interaction between the judiciary and the executive. Although many critics see this development as the overstepping in the jurisdiction of the parliament by the court, but it also set the precedent of balance of powers and institutional co existence in Pakistan.

4.6.2 Dr. Tahirul Qadri’s case

The issue was that, Dr. Muhammad Tahirul Qadri, the chairman of Pakistan Awami Tehreek, filed a petition under article 184(3) of the constitution on 7\textsuperscript{th} February, 2013 in which he sought the reformation of the Election Commission of Pakistan (ECP). He challenged that “the appointment of the Chief Election Commissioner (CEC) and selection of four members of the ECP was not according to the article 213 and 218 of the
constitution. And that’s why these appointments are void ab-initio.” Therefore, he claimed in the petition that the appointment of the CEC along with the members of the election commission be made according to the article 213(2) (a) and 218(2) (a) and (b) of the 1973 constitution. (15 March, 2013, the News International)

4.6.2.1 Judgment of the Court

Chief Justice Iftikhar Chaudhary headed the three member bench and dismissed the petition on the ground that “Qadri could neither demonstrate any violation of his fundamental rights nor establish his locus standi to contest the elections given that he was a dual national.” Court found in the concise statement filed by the Qadri that he holds the nationality of Canada also. According to the Canadian citizen’s act 1985, a person has to show loyalty to the Canada. He has to take oath before the Canadian constitution, “From this day, I pledge my loyalty to Canada and her majesty Elizabeth the second, queen of Canada. I promise to respect our country’s rights and freedoms, to uphold our democratic values, to faithfully observe our laws and fulfill my duties and obligations as a Canadian citizen.” On the other hand the citizenship act of Pakistan 1951, section 14(1)reads, “if any person is citizen of Pakistan, and is at the same time a citizen or a national of any other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan.” This disqualifies a person from the membership of the parliament. The article 63(1) reads as, “A person shall be disqualified from being elected or chosen as…a member of Majlis-e-Shoora (parliament), if, under the section(c) of the same article, “he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign state” (15 March, 2013, the News International)

As for as the article 184(3) of the public interest litigation case is concerned, it is pertinent to see whether or not the instant case decided by the court falls under the public interest category. In this regards, the interpretation of the Indian Supreme Court is relevant to quote. It was held in the Ashok Kumar Pandey v state of West Bengal that, “public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest…” It was further held that,
‘it is to be used as an effective weapon in the armory of law for delivering social justice to the citizens…it should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.” (15 March, 2013, the News International)

The appointment of the CEC and other members of the ECP were constitutionally made with the notification on 16th July, 2012 and 16th June, 2011 respectively. These appointments were not criticized by the other population of nearly 189 to 120 million and the people’s representatives in the parliament, including the members of the opposition party. Surprisingly, it was highlighted by the person, who showed his loyalty to the foreign country.

Tahirul Qadri claimed the restructuring the entire electoral process when the next general elections were scheduled to be held after the completion of five years terms of the assembly. People of Pakistan were ready to elect their representative through election. Under such critical circumstances, duty lies on the court to realize the facts about the person approaching the court, as a bona fide and without his personal or political motives or any other indirect concerns in the guise of public interest. It was widely believed that Qadri was supported and backed by the non political entity to affect the democratic process by obtaining the legal cover from the court. However, court dismissed the petition on the ground that under the instant case, there was no matter of fundamental rights violation. Thus court proved its impartiality and augmented its role against the political elite and the military. (15 March, 2013, the News International)

4.6.3 Memogate Scandal

Memo gate scandal was one of the most critical issues that shook the very edifice of the government. It was the direct tussle between the government and the armed forces of Pakistan. It was alleged that on 10 May 2011, Hussain Haqqani, the then ambassador to America, wrote a memorandum to the chairman of the joint chiefs of staff of the US Armed Forces, Admiral Mike Mullen. This caused tense relation between army and the government. The intervention of the court cleared the situation and proved the balance of powers among the state institution.
The instant issue was the memorandum in which Mansoor Ijaz, a Pakistani businessman settled in America, wrote an article in *Financial Times*, exposed that he was asked by Hussain Haqqani (Pakistani ambassador in America) to convey the message of President Asif Ali Zardari. The message was a request from president Zardari to Admiral Mike Mullen that he could convince the General Kayani (commander of Pakistan armed forces) to avoid the intentions of toppling down the PPP government.

4.6.3.1 Military and government

The complication in Osama Bin Laden case provided an opportunity of upper edge to the civilian government over army and intelligence agencies. A few days earlier (2 May 2011), before the memo gate exposed, US attacked and killed Osama bin Laden (commander of Al-Qaeda terrorist network) on his sanctuary at Abbottabad. All quarters concerned specially, the media in Pakistan starting discussing the slow-moving role of armed forces as it failed to trace the whereabouts of Osama. It was also criticized that Pakistan army gave free hand to US in conducting the unilateral operation on Pakistan territory and hence caused the violation of sovereignty and prestige of Pakistan. Therefore, rumors prevailed that president Zardari had backed the memo, considering the possible threat of military takeover in the country.

4.6.3.2 Judgment of the Supreme Court

There were many petitions filed before the Supreme Court under article 184(3). It accepted a petition filed by Mian Nawaz Sharif, the leader of Pakistan Muslim League and recommended to appoint a three member judicial commission to probe into the memo gate scandal. After having extensive inquiries, the commission released its findings in June 12, 2012 that, ‘it has been incontrovertibility established that the memorandum was authentic and Mr. Haqqani was the originator and architect of the Memorandum’.

(www.supremecourt.gov.pk/..const.p.77-78-79%20Memogate detailed. Watan party and others v Federation of Pakistan and others)
Thus the long term political deadlock between army and government was averted by the mediation of the court. The complete blames was put on Mr. Haqqani and thus the military and the civil government were safely rescued from the case. Once again the precedent was set by the court as institutional balance in the democratic system of Pakistan. (Mirza, 2015, p.67)

4.7 Conclusion

Constitution provides the separate role and functions of the three institutions. The role of judiciary remained submissive before the start of judicial activism under the leadership of Chief Justice of Pakistan. To attain the status of practically independent institution, judiciary has to face stern actions from the executive in the form of suspension of the chief justice. The struggle of the legal community along with civil society led the judiciary to the powerful institution. Having got the separate institutional role, it tried to assert its function. There were few decisions on the part of judiciary that proved the separation of powers in the parliamentary system of Pakistan. The conviction of PM, Memogate Scandal and the passing of the 19th amendment are the examples that the three institutions performed their role within their constitutional jurisdictions
References


End notes

175 A, Appointment of judges to the Supreme Court, high courts and the federal Shariat court: “there shall be a judicial commission of Pakistan, hereinafter in this article referred to as the commission, for appointment of judges of the Supreme Court, high courts and the federal shariat court, as hereinafter provided.”
Chapter No. 5

IMPACT OF SEPARATION OF POWERS ON PEOPLE’S EMPOWERMENT

5.1 Introduction

The constraints relationships since 2007 among three institutions led to some constitutional and political development in the history of Pakistan. The new opening of the consolidating democracy and the empowerment of people seems to happen in the form of general elections and the establishment of democratic government along with the ousting of military president General Pervez Musharraf. All this was done with the popular support of the general masses. The thirteenth national assembly of Pakistan (17 March 2008 - 16 March 2013), composed of the elected government had completed its five year term on 16 March, 2013. It was first time in political and democratic history of Pakistan that an elected government was successfully changed through the power of the people (election) Three institutions of the state (judiciary, executive and legislature) performed their functions comparatively better than the previous history within their constitutional jurisdictions. Amendments in the constitution like 18th and 19th were made in the assembly with consensus of all the political parties. The people’s empowerment can be viewed within the performance of three institutions. Legislation in the parliament, actions of the executive branch and the legal support from the courts are the tools to empower the people. Judiciary enhanced its role by introducing the suo motu actions, parliament reset its democratic trends and the executive also tried to act within its constitutional limits. This chapter is divided into three sections: the role and function of the judiciary as an independent institution towards empowering the citizens of the state, the role of parliament towards empowerment of the people and the role of executive as an institution to empower the common people.

5.2 Empowerment of People through judiciary, executive and legislature in Pakistan
According to Haq, (2012) “Every governing institution and every political action should be judged by one critical test: how does it meet the genuine aspirations of the people” The performance of the institutions of the government should be examined from the perspective of people’s empowerment—how the institutions of political, economic and civil society have been providing ordinary Pakistanis with access to justice, income, credit and voice. Empowerment of people depends upon the effective functioning of political institutions, particularly the parliament, executive and judiciary. If the parliament is composed of people with integrity and knowledge; the election commission performs its role to serve people and not rule over them; the judiciary with qualified people and adequate resources to provide justice to all people efficiently and timely, then the political institutions of the country will deliver a humane governance and the people will have been empowered. (Haq, 2012, p.82)

Empowerment of people at government level has been problematic in Pakistan since 1947. The policies of government did not reflect the interest and welfare of the common citizens. As a result, ordinary citizen have lack of trust on the performance and the sincerity of the institutions. Public opinions through different sources like media reports, discussions and debates on the role of the government towards people empowering is not encouraging. People perceive the state machinery whether in the form of parliamentarians, government officials or judges as a corrupt and based on favoritism and nepotisms. Gilani (2015) argued that there was “unlawful appropriation of public property, denial of liberties, harassment of the poor and the week by denying them equal opportunities in business and employment, denial of public goods to the disadvantaged and the weak, and selective application of legal sanctions against the weak while the powerful can escape the law.”(Cheema and Gilani, 2015, p.330)

Since 2007, the situation seems different from the previous trends of government policies. All the three institutions of the state look functioning independently without encroaching in the powers of other. Judiciary constantly exerted its power and took some bold steps to empower the people. Parliament, which is the representative of the people, had completed its five year term and the executive, the most powerful organ of state in Pakistan, also showed flexibility to dominate the parliament by relinquishing the
powerful weapon of dissolving the assembly. This positive change at the government level is a good premonition for the people of Pakistan, but we have to see whether there was actually ‘something good’ for the common Pakistani or not? Our concern is to judge the political empowerment of the people, for this we will discuss how the political institutions of Pakistan are functioning. So, we have to see the performance of these three branches of government separately.

5.3 Empowerment of People through Judiciary in Pakistan

Societies cannot survive without free and fair justice. Hazrat Ali’s (Fourth caliph of Muslim) saying is pertinent to mention here. He says, “Societies inhibited by infidels will survive- but a society, where dispensation of justice is denied to the common people, is bound to collapse and wither away.” This is only possible when the people, who are given the responsibility of justice (judges), are appointed on the base of their competency and they decide the cases on merit without being influenced from the external pressure. (Ahmad, 2012, p.346)

The importance of judiciary towards people’s empowerment is felt in the modern democracies more vigorously. The founding father of American Constitution Alexander Hamilton says, “The judiciary must be treated not simply as a branch of government but as agents of the people.” Justice A.S Anand, the former chief justice of India had similar views about the relation between judiciary and the people, he says, “it is because of public opinion that the higher judiciary in the country occupies a position of pre-eminence among three organs of the state.” He further argued that ‘the court has also been aware of, and sensitive to, the changing social, cultural, and environmental needs of the society… law must keep pace with society to retain its relevance.” (Siddiqi, 2015, p.95- 96)

The history of Pakistan is replete with examples when judges were appointed under the unconstitutional means like PCO to validate the military coup. It was necessary to change this tradition on priority basis. Therefore, the most important initiative took by the judiciary since 2007 was to set the example of rule of law. It decided the
constitutional petitions against those judges who took oath under the PCO of President Musharraf and the appointments of judges after the imposition of emergency in the country. This verdict was necessary to prevent the dictator from toppling down the democratic government and then getting the legal cover from the obedient judges. (Zaidi, 2015, p.20)

The precedent of people’s empowerment was manifested in the restoring of the chief justice of Pakistan. When Musharraf dismissed the chief justice of Pakistan in March 2007, a movement of lawyer’s community, later on the active participation of people including politicians, human rights activists, media and even the common citizens at large, started to restore the judiciary. Millions of people from all segment of society signed the joint petition, popularly known as, “ten million signature petition” for the reinstatement of judges. Such a grand participation and marvelous movement was started first time by the people of Pakistan who gathered and united on a wide scale just for a single cause. It was the consequence of this powerful popular movement that judiciary was restored to its previous position in March 2009. Thus judiciary became a stronger and powerful institution with the support of people. In this way, judiciary tried to empower the people by taking the issues overlooked by other institutions. (Syed, 2013, p.117-124)

For empowerment of the people though judiciary, it is necessary to build their confidence in the judicial institutions. There are some cases through which it can be concluded that efforts were made to create powerful link between common people and the judiciary. The Supreme Court of Pakistan since 2007 has been highlighting the high profile matters of corruption where government officials were seriously involved. It is matter of great concern and bad luck for the people of Pakistan that government officials contracted with the foreign or local companies without adopting the proper procedures. On the intervention of court, tens of billions rupees were brought to the national exchequer, which is the property of people of the state and consequently utilized on their welfares. (Zaidi, 2015, p.25)

Supreme Court tried to gain people support. It picked up important cases of general public upon petitions or suo Moto under article 184(3). In other words, these
issues were highly affecting the daily life of the people. These were related to the price hike especially in two areas-Sugar and CNG. It was brought under the notice of Supreme Court that price hike in the sugar had been artificial and it was due to the illegal stock and hoarding in the country. On 3 September 2009, Lahore high court directed the Punjab government to guarantee the sale of sugar at 40 rupees per kg. Similarly in November 2012, Supreme Court agreed with the petitioners about the exorbitant price of the CNG. It highlighted the enormous irregularities in the price mechanism of the CNG. Finally, OGRA had to cut down the price of CNG up to Rs. 30. Beside this, Supreme Court took up hundreds of cases on daily bases to empower the helpless people and tried to address their woes and grievances. (Mirza, 2015, p.59)

Furthermore, it was observed that judiciary started to initiate these sensitive issues of public interests ranged from “kite flying” to “making and breaking the kings” These included high profile cases like contempt of case against PM, loss of lives during kite flying, restoration of civil servant, harassment of peasants by police officials. The positive effects of the decisions in these cases were the collection of penalties worth of one trillion rupees. It helped in checking the widespread culture of corruption, nepotism, unlawful appointments, operation by public servants, and the frequent intervention of the military to override the rule. (Cheema and Gilani, 2015, p.327)

5.3.1 Reviving the public procurement rules

Common people feel empowerment when there is link and lesser gap between the judiciary and the citizens of the state. It is the duty of the court to make realize the people that they are the sole owners of the national exchequer. In this regard Supreme Court of Pakistan intervened in the matters where high order of transparency was essential specially to contract with companies. Generally the rule of law is considered the lifeline and salient characteristics of civilized world. It is maintained when all citizen are equally treated before the law. Common people feel empowerment when the top strata of society are also brought before the court. This was to some extent happened in Pakistan after the judiciary became an independent and separate institution. Few examples of Public procurement rules 2004, revived in this period are mention worthy.
5.3.1.1 LNG (Liquid Natural Gas) Case

In order to meet the requirement of the LNG, the planning commission of Pakistan constructed a project of LNG and pipeline for supply of gas from outside of the country. It seems as if there was massive corruption because it lacked transparency and disregarded the lowest bid to company in awarding the contract of LNG project. When the case brought into the notice of the court, it pointed out that the huge illegality, omissions and commissions in the contract were committed by the government officials i.e. secretary and minister of petroleum. The court referred the case to the prime minister to examine the irregularities in awarding the contract. Resultantly, this heavy loss of public amount was saved and could be used for the welfare of the common people. (Suo Motu case no.5, 2010, www.supremecourt.gov.pk/web/user-files/file/ smcase 5 of 2010, accessed on 25-8-2015)

5.3.1.2 NICL (National Insurance Corporation Limited) Scam

In this corruption case, major politicians were involved. The instant case caused more than Rs. 500 million losses to the national exchequer by the involvement of high profile politicians. Moonis Elahi (the son of ex chief minister Punjab) and Makhdoom Amin Fahim sold land to the National Insurance Corporation Limited at the inflated rates. On 7th May 2011, Supreme Court took notice of the matter and ordered the Executive to probe into the allegations. Hardly Rs.84 million had been recovered up till March 2013. (Suo Moto case no.180 F 2010 final, www.supremecourt.gov.pk/web/user-files/file/s. m.c18of2010.accessed on 25-8-2015)

5.3.1.3 The Hajj Scam

In this high profile corruption case, almost Rs. 36.5 million were embezzled. With the intervention of the court Rs.5.4 were recovered. The personalities involved in this corruption were Hamid Saeed Kazmi (the federal minister for religious affairs) and Abdul Qadir Gilani (son of the then PM Syed Yousaf Raza Gilani). The issue was the corruption and fraud in the accommodation arrangements of the pilgrims to Saudi Arabia during 2010. The pilgrims (hajjis) were accommodated in the cheap hired residential buildings,
which were not only remote from the Kaaba (Harem), but also lacked the basic facilities. It was the responsibility of the said minister to accommodate them in the hotels but third class arrangements were made just to embezzle the money. Supreme Court initiated the proceedings of the case and accused the federal minister Kazmi. As a result, government had to sack the minister from the federal cabinet. (The News, 10 April 2011)

5.3.1.4 OGRA (Oil and Gas Regulatory Authority) Case

In the case of Oil and Gas Regulatory Authority (OGRA) nearly 82 million rupees were embezzled. Supreme Court found that it was due to the appointment of Mr. Tauqeer Sadiq as a chairman of this department. His selection was based on favoritism as he was close relative of the politicians. He did not fulfill the required qualification because he had fake master degree. There was lot of allegations against misuse of authority. He tried to hide himself at UAE, but on the instructions of Supreme Court, NAB succeeded him to bring back to Pakistan and initiated proceeding against him (Mirza, 2015, p.59)

5.3.1.5 Exposing Armed Forces in corruption

The sanctity of armed forces as an institution in Pakistan is very important. It was first time that armed forces of Pakistan were highlighted and exposed in corruption cases. By exposing military involvement in corruption is a positive sign of people empowerment and prove that no section of the society whether military, politicians or any other strong department is above the law. The instant case was filed by Air Marshal (Retd.) Asghar Khan in 1996, but it remained pending in the courts. It was alleged in this case that ISI and MI were involved in rigging the election of 1990 on the instructions of then president Ghulam Ishaq Khan. There were two major political parties at that time: one was Pakistan People Party (PPP) and the second was IJI (Islami Jamhori Itihad). It was alleged that IJI was an alliance of nine political parties, created by the Intelligence agencies. The major allegation was that the then chief of army staff, General Aslam Beg and Director General ISI, Asad Durrani used 140 million rupees to support IJI against

It was the violation of article 17 of the constitution under which people had the fundamental right to participate in the free and fair election. On 19 October 2012, that
Supreme Court gave its judgment that the said persons were liable to prosecution. Court also declared the political cell in the ISI as illegal. (PLD, 2013, SC 1)

5.3.2 Empowerment of people through Public Interest Litigation (PIL)

This novel concept was devised by the judges during interpretation of laws to overcome some formal hurdles in the legal system. The objective of this concept is to help and support the poor, marginalized and all those people who are unable to approach the corridor of the court. In the other words, some section of the society are so poor that they cannot afford or even they have no conscious to adopt the procedure to get justice from the government machinery. Public interest litigation is the concept to provide substantive, speedy and inexpensive justice or litigation for the public at large, particularly the deprived and marginalized. Under the public interest litigation cases, Supreme Court adopts the simple procedure of only one review and without lawyers. Public means, people at large without any distinction of social status, gender, ethnic background or cultural differences. The reason to adopt public interest litigation according to Hussain (1993) “…is to break through the existing legal, technical and procedural constraints and to provide justice … to particular individuals, class or community, who on account of any personal deficiency or economic or social deprivation or state oppression are prevented from bringing a claim before the court of law. ” (Hussain, 1993, p.1-6)

‘Public interest litigation’ is a constitutional remedy devised by the judiciary in the light of interpreting the article of (199) and 184(3) of the1973 constitution. Supreme Court of Pakistan revitalized and reactivated the public interest litigation under article 184(3)\textsuperscript{i} of the 1973 constitution. Supreme Court uses its wide powers under this article to enforce fundamental rights and ensures access to justice to all segments of society. Similar powers are exercised by the high court under article 199. (Hussain, 1993, p.1-6)

First of all it is important to differentiate between issues of public interests and public importance. Those cases related to suo Moto, human rights and constitutional petitions are ‘public interests’ cases while those cases filed by individuals, groups or legal
identity broadly related to personal grievances for the enforcement of fundamental rights under the article 184(3) are called the petitions of ‘public importance’. People are empowered, when there is rule of law and the constitution for all irrespective of their creed, color, tribe, group or religion. People are empowered when they have access to justice without difference. In this period, some examples of rule of law were seen. The article 183(3) was explained and interpreted in its original shape by the judiciary. (Hussain, 1993, p.1-6)

5.3.2.1 Dimensions of Public Interest Litigation

Public interest litigation cases have different forms. These are Suo Moto, Human Rights, Constitutional Petition and Complaints regarding Human Rights Cell:

5.3.2.1.1 Suo Motu cases:

This is the form of public interest litigation in which court initiates on the basis of information published in the newspapers. Public importance cases or issues are highlighted and discussed on the electronic and print media. It was not a new role of judiciary, but Supreme Court reactivated it to empower the people during this period. Court initiated to redress the grievances of the common people and tried to fill the vacuum created by the executive through suo Moto. Legislature makes laws and executive takes actions to implement. Courts have to take suo Moto, when other branches of the government cannot redress the problems of the common citizens. Justice Jawwad S. Khawaja argued in the edited book of Cheema and Gilani that “…if one suo Moto action is able to deliver justice to one hundred and six thousand female health workers, or where a rape incident can provide the basis for laying down rules of general applicability for investigation of such cases…where environmental pollutants adversely impacting hundreds of thousands of people can be dealt with through one Suo Moto action…article 184(3) is fully warranted…” The critics also raise some objections on the exercise of the suo Moto by the court. But many thinkers see this rising trend of judicial independence as an institutional checks and balance rather judicial imperialism. (Cheema and Gilani, 2015, p. xvii)
Table 5-1: Important Suo Moto actions taken by the Supreme Court of Pakistan since 2007

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Case</th>
<th>Main Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Suo Motu case no.14/2007</td>
<td>Polluted water in Dera Ghazi Khan due to D.G. Cement factory</td>
</tr>
<tr>
<td>2.</td>
<td>Suo Motu case no.21/2007</td>
<td>Clash of lawyers, media persons and member of civil society with police and law enforcing agencies outside the supreme court building and in front of election commission of Pakistan on oct.2007</td>
</tr>
<tr>
<td>3.</td>
<td>Suo Motu case no.23/2007</td>
<td>Regarding increase of fare during Umrah season</td>
</tr>
<tr>
<td>4.</td>
<td>Suo Motu case no.24/2007</td>
<td>Regarding remission in punishment</td>
</tr>
<tr>
<td>6.</td>
<td>Suo Motu case no.1/2009</td>
<td>Whipping a seventeen year old girl in Swat</td>
</tr>
<tr>
<td>7.</td>
<td>Suo Motu case no.2-L/2009</td>
<td>Action taken on TV news regarding injurious food</td>
</tr>
<tr>
<td>8.</td>
<td>Suo Motu case no.3/2009</td>
<td>Destruction of forest and illegal acquisition of land by defense housing authority</td>
</tr>
<tr>
<td>9.</td>
<td>Suo Motu case no.4/2009</td>
<td>Evacuee trust-unfazed over losing land worth billions of rupees</td>
</tr>
<tr>
<td>10.</td>
<td>Suo Motu case no.7/2009</td>
<td>Harassment by the Gujranwala police to journalist</td>
</tr>
<tr>
<td>11.</td>
<td>Suo Motu case no.9/2009</td>
<td>Regarding illegal transplantation of human organ</td>
</tr>
<tr>
<td>12.</td>
<td>Suo Motu case no.10/2009</td>
<td>Makro Habib Pakistan limited on account of establishing a commercial store on web play ground</td>
</tr>
<tr>
<td></td>
<td>Suo Motu case no.</td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>13.</td>
<td>11/2009</td>
<td>Disparity in the terms and conditions of employees of an authority and employees of government</td>
</tr>
<tr>
<td>14.</td>
<td>12/2009</td>
<td>Against compulsory deduction of Zakat</td>
</tr>
<tr>
<td>15.</td>
<td>13/2009</td>
<td>Joint adventure agreement between CDA and multi professional cooperative housing societies, Islamabad</td>
</tr>
<tr>
<td>16.</td>
<td>14/2009</td>
<td>Allowing regularization of 50 acres of land in Karachi at throw away prices causing losses of hundreds of millions of rupees to the state exchequer</td>
</tr>
<tr>
<td>17.</td>
<td>15/2009</td>
<td>Corruption in Pakistan steel mills corporation</td>
</tr>
<tr>
<td>18.</td>
<td>16/2009</td>
<td>Dumping solid waste by Safina Sugar mills in the forest land of Chak Bahadur on Sargodha Chiniot road</td>
</tr>
<tr>
<td>19.</td>
<td>20/2009</td>
<td>Against allocation of a valuable piece of land at low price by the revenue department, government of Sindh</td>
</tr>
<tr>
<td>20.</td>
<td>21/2009</td>
<td>Overcharging of tax by the contractors of sand at Multan</td>
</tr>
<tr>
<td>21.</td>
<td>22/2009</td>
<td>Action regarding non issuance of CNIC to a Hindu married girl</td>
</tr>
<tr>
<td>22.</td>
<td>23/2009</td>
<td>Regarding half pension of widows of retired government servant</td>
</tr>
<tr>
<td>23.</td>
<td>25/2009</td>
<td>Cutting of trees for canal widening project</td>
</tr>
<tr>
<td>24.</td>
<td>26/2009</td>
<td>Cutting of thousands of trees for the implementation of multi million rupees gas supply project</td>
</tr>
<tr>
<td>25.</td>
<td>1/2010</td>
<td>Extortion of high fees by a private medical college</td>
</tr>
<tr>
<td>26.</td>
<td>1-P/2010</td>
<td>Police torture on accused persons outside the police station, Bhawana, Chiniot</td>
</tr>
<tr>
<td>27.</td>
<td>3/2010</td>
<td>Regarding implementation of social security laws</td>
</tr>
<tr>
<td>No.</td>
<td>Case Type</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>28.</td>
<td>Suo Motu case no.04/2010</td>
<td>Action regarding implementation of judgment passed by this court regarding national reconciliation ordinance, 2007</td>
</tr>
<tr>
<td>29.</td>
<td>Suo Motu case no.5/2010</td>
<td>Regarding huge loss to public exchequer by ignoring the lowest bid of Fauji Foundation and multinational energy firm Vitol for awarding LNG contact</td>
</tr>
<tr>
<td>30.</td>
<td>Suo Motu case no.7/2010</td>
<td>Illegal use of Pakistani children as camel jokeys in UAE</td>
</tr>
<tr>
<td>31.</td>
<td>Suo Motu case no.8/2010</td>
<td>Regarding martyrs of Mian Channu</td>
</tr>
<tr>
<td>32.</td>
<td>Suo Motu case no.09/2010</td>
<td>Regarding nonpayment of benevolent fund to the applicant, widow of late Syed Yousaf Shah</td>
</tr>
<tr>
<td>33.</td>
<td>Suo Motu case no.10/2010</td>
<td>Regarding Contamination of water of Manchar lake</td>
</tr>
<tr>
<td>34.</td>
<td>Suo Motu case no.12/2010</td>
<td>Regarding transfer of tannery zone in Sialkot</td>
</tr>
<tr>
<td>35.</td>
<td>Suo Motu case no.13/2010</td>
<td>Action regarding supply of contaminated water to Rawalpindi</td>
</tr>
<tr>
<td>36.</td>
<td>Suo Motu case no.14/2010</td>
<td>Regarding torture by Sialkot police on two young persons</td>
</tr>
<tr>
<td>37.</td>
<td>Suo Motu case no.15/2010</td>
<td>Regarding regularization of contract employees of zakat department</td>
</tr>
<tr>
<td>38.</td>
<td>Suo Motu case no.16/2010</td>
<td>Regarding ISAF Container Scam</td>
</tr>
<tr>
<td>39.</td>
<td>Suo Motu case no.18/2010</td>
<td>Regarding violation of public procurement rules 2004 in a procurement loss of billions of rupees to the exchequer caused by national insurance company</td>
</tr>
<tr>
<td>41.</td>
<td>Suo Motu case no.23/2010</td>
<td>Regarding fake encounter by Punjab police held in EME, Colony, Lahore</td>
</tr>
<tr>
<td>No.</td>
<td>Suo Motu case no.</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>42.</td>
<td>24/2010</td>
<td>Corruption in Hajj Arrangement 2010</td>
</tr>
<tr>
<td>43.</td>
<td>24/2010 (2011 SCMR 817)</td>
<td>Matter relates to corruption in Hajj Arrangement</td>
</tr>
<tr>
<td>44.</td>
<td>25/2010</td>
<td>Allotment of plot by CDA to Mr. Hamid Yar Harraj in diplomatic Enclave at a throw away price</td>
</tr>
<tr>
<td>45.</td>
<td>26/2010</td>
<td>Regarding death of eleven year old child in the incident of Drag car racing in Rawalpindi</td>
</tr>
<tr>
<td>46.</td>
<td>1/2011</td>
<td>Regarding land grabbing in Banni Gala</td>
</tr>
<tr>
<td>47.</td>
<td>2/2011</td>
<td>Non supply of gas connection to Mst. Ghulam Fatima of Gujar Khan</td>
</tr>
<tr>
<td>48.</td>
<td>7/2011</td>
<td>Regarding the non transparent procedure for purchase of 150 locomotive by railway ministry, causing 40 billion rupees loss to the national exchequer</td>
</tr>
<tr>
<td>49.</td>
<td>12/2011</td>
<td>Regarding the enhancement of salary to the industrial home teachers, which is Rs. 500 per month</td>
</tr>
<tr>
<td>50.</td>
<td>16/2011</td>
<td>Regarding law and order situation in Karachi</td>
</tr>
<tr>
<td>51.</td>
<td>17/2011</td>
<td>Non constitution of board of directors and nonpayment of salary to the staff of 26 colleges, selected by CM under pilot project</td>
</tr>
<tr>
<td>52.</td>
<td>18/2011</td>
<td>Irregularities and nonpayment of salaries to the workers of Pakistan railway</td>
</tr>
</tbody>
</table>

Source: (Cheema and Gilani, 2015, p.342-357)

5.3.2.1.2 Human Rights Cases

The fundamental rights according to the constitution 1973 chapter (1) are security of person, prohibition of slavery, equality of citizens, protection against retrospective punishment and the like. It is the prerogative and power of the Supreme Court under the
article 184(3) to pass orders on the matter of fundamental rights. The Supreme Court, under the restored chief justice, gave special attention for the enforcement of fundamental rights of the citizens. Human Rights (HR) Cell was consolidated and reactivated in the Supreme Court to provide easy access with the sole object of redressing the grievances of the common people. The function of the Human Rights Cell was to examine those applications rendered by the common people directly to the chief justice of Pakistan. People register their complaints in this Cell. These complaints are converted into judicial cases. The record of all these cases is present at the main website of Supreme Court with the heading of, “Important Human Rights Cases” so that all citizens without distinction would be able to easily approach the Supreme Court. The establishment of Human Rights (HR) cell was considered the way of access to the ordinary people who are mostly hopeless to get justice from any other department especially from the executive. Nearly two hundred complaints per day and fifty thousand in total in a year were received by this cell. During the period from 2009 to 2013, this cell received approximately above two hundred thousand complaints of the people. The striking feature of the HR Cell was that it tried its level best to provide the speedy and inexpensive justice to the downtrodden, poor and underprivileged strata of the society. It was also observed by the applications received by the HR Cell that most of the complaints were related to the highhandedness of the police, jail authorities, courts and the poor response from the executive bodies to the public. The transparency and fairness of the working of the HR cell was specially maintained. Supreme Court of Pakistan developed software to monitor the working of the HR cell. In this ‘particular purpose built software’, all the applications received, are entered and saved where dairy number is allotted in order to easily track the cases. The judicial assistants further assist the chief justice by preparing the fact sheet. After that, chief justice order to issue the notice to the concerned department for comments. Then the other team of judicial assistants summarized the reports received from the various departments. The comments and reports received from the concerned department are scrutinized to prepare the facts sheet with the assistance of Director and deputy directors in the Supreme Court. If the comments and reports of the departments and the authorities concerned fail to satisfy the aggrieved party then the matter is addressed and fixed as a HR cell case in the Supreme Court.(Cheema and Gilani, 2015, p. xx)
Table 5-2: Some important human right cases dealt by Supreme Court

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Case</th>
<th>Main Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Human rights cases 4768-P/2009</td>
<td>Recovery of a minor</td>
</tr>
<tr>
<td>2.</td>
<td>Human rights cases 17070-P/2009</td>
<td>Recovery of an abducted person</td>
</tr>
<tr>
<td>3.</td>
<td>Human rights cases 23032-G/2009</td>
<td>Recovery of an abducted person</td>
</tr>
<tr>
<td>4.</td>
<td>Human rights cases 1356-P/2009</td>
<td>Recovery of a minor</td>
</tr>
<tr>
<td>5.</td>
<td>Human rights cases 7734-G/2009</td>
<td>Alleged corruption in rental power plants</td>
</tr>
<tr>
<td>6.</td>
<td>Human rights cases 432/-2009</td>
<td>Benefit of previous service prior to their regularization</td>
</tr>
<tr>
<td>7.</td>
<td>Human rights cases 1305-G/2009</td>
<td>Promotion of female officer NAB</td>
</tr>
<tr>
<td>8.</td>
<td>Human rights cases 8340-G/2009</td>
<td>Against illegal promotion of BS-22 Officers</td>
</tr>
<tr>
<td>10.</td>
<td>Human rights cases 4181-N/2009</td>
<td>Registration of case against the jirga members</td>
</tr>
<tr>
<td>11.</td>
<td>Human rights cases 12912-P/2009</td>
<td>An acid attack victim prayed for help</td>
</tr>
<tr>
<td>12.</td>
<td>Human rights cases 2148-S/2009</td>
<td>For grant of compensation as vehicle was damaged by the police</td>
</tr>
<tr>
<td>13.</td>
<td>Human rights cases 2041-P/2009</td>
<td>Compensation to the lady as her husband died due to the fall of a wall of official building over him</td>
</tr>
<tr>
<td>14.</td>
<td>Human rights cases 12837-P/2009</td>
<td>Grant of acquired land compensation</td>
</tr>
<tr>
<td>No.</td>
<td>Human rights cases</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>15.</td>
<td>1174-G/2009</td>
<td>Disability of minor due to the negligence of WAPDA Authorities</td>
</tr>
<tr>
<td>16.</td>
<td>4308-P/2009</td>
<td>Renovation of temple</td>
</tr>
<tr>
<td>17.</td>
<td>66-/2009</td>
<td>Murder of applicants husband</td>
</tr>
<tr>
<td>18.</td>
<td>70-/2009</td>
<td>Against highhandedness of police</td>
</tr>
<tr>
<td>19.</td>
<td>1109-P/2009</td>
<td>Against highhandedness of police</td>
</tr>
<tr>
<td>20.</td>
<td>1532-S/2009</td>
<td>Murder of a person in police custody</td>
</tr>
<tr>
<td>21.</td>
<td>2155-P/2009</td>
<td>Highhandedness of revenue department</td>
</tr>
<tr>
<td>22.</td>
<td>10719-S/2009</td>
<td>For arrest of the accused</td>
</tr>
<tr>
<td>23.</td>
<td>11108-P/2009</td>
<td>Against highhandedness of police</td>
</tr>
<tr>
<td>24.</td>
<td>29-/2009</td>
<td>Against NGO misusing his position</td>
</tr>
<tr>
<td>25.</td>
<td>48659-A/2010</td>
<td>Recovery of an abducted person</td>
</tr>
<tr>
<td>26.</td>
<td>11392-N/2010</td>
<td>Recovery of an abducted person</td>
</tr>
<tr>
<td>27.</td>
<td>10785-P/2010</td>
<td>Recovery of a minor missing for the past six year</td>
</tr>
<tr>
<td>28.</td>
<td>8659-S/2010</td>
<td>Against the highhandedness of police</td>
</tr>
<tr>
<td>29.</td>
<td>48012-P/2010</td>
<td>Illegal appointment in EOBI</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Case Number</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>30.</td>
<td>Human rights cases</td>
<td>Request for protection of newly wedded couple</td>
</tr>
<tr>
<td>31.</td>
<td>Human rights cases</td>
<td>Registration of case</td>
</tr>
<tr>
<td>32.</td>
<td>Human rights cases</td>
<td>Death of three persons due to negligence of WAPDA and payment of compensation</td>
</tr>
<tr>
<td>33.</td>
<td>Human rights cases</td>
<td>Request for compensation</td>
</tr>
<tr>
<td>34.</td>
<td>Human rights cases</td>
<td>Pollution matter</td>
</tr>
<tr>
<td>35.</td>
<td>Human rights cases</td>
<td>Request for payment of compensation and implementation of ombudsman order</td>
</tr>
<tr>
<td>36.</td>
<td>Human rights cases</td>
<td>Humiliating of police officials</td>
</tr>
<tr>
<td>37.</td>
<td>Human rights cases</td>
<td>Arrest of accused</td>
</tr>
<tr>
<td>38.</td>
<td>Human rights cases</td>
<td>For development work in a housing society</td>
</tr>
<tr>
<td>39.</td>
<td>Human rights cases</td>
<td>Humiliating of police officials</td>
</tr>
</tbody>
</table>

Source: (Cheema and Gilani, 2015, p.342-357)

### 5.3.2.1.3 Constitutional Petition

In this form of public interest litigation case, people file their cases under the article 184(3).
Table 5-3: constitutional petitions filed under article 184(3)

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Nature of Case</th>
<th>Main Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Constitutional petition no.1-6/2007</td>
<td>Net profit earned through Hydel Power</td>
</tr>
<tr>
<td>2.</td>
<td>Constitutional petition no.45/2007</td>
<td>Against registration of voters in the electoral rolls on the basis of NADRA</td>
</tr>
<tr>
<td>3.</td>
<td>Constitutional petition no.53/2007</td>
<td>Appointment of chairman of FST with consultation of HCJ</td>
</tr>
<tr>
<td>4.</td>
<td>Constitutional petition no.70/2007</td>
<td>Regarding making laws against conversion of any person to change his religion by force</td>
</tr>
<tr>
<td>5.</td>
<td>Constitutional petition no.8 and 9/2009</td>
<td>PCO Judges case</td>
</tr>
<tr>
<td>6.</td>
<td>Constitutional petition no.43/2009</td>
<td>Granting fundamental rights to eunuchs</td>
</tr>
<tr>
<td>7.</td>
<td>Constitutional petition no.47/2009</td>
<td>Free treatment of acute renal failure patients</td>
</tr>
<tr>
<td>8.</td>
<td>Constitutional petition no.51/2009</td>
<td>Against the harassment, violence and intimidation to the petitioner bank</td>
</tr>
<tr>
<td>9.</td>
<td>Constitutional petition no.9/2010</td>
<td>Conversion of public land into residential and commercial estate at Karachi</td>
</tr>
<tr>
<td>10.</td>
<td>Constitutional petition no.30/2010</td>
<td>Corruption in Pakistan steel mills</td>
</tr>
<tr>
<td>11.</td>
<td>Constitutional petition no.77/2010</td>
<td>Regarding protection of life and property of people of Baluchistan</td>
</tr>
<tr>
<td>12.</td>
<td>Constitutional petition no.66/2010</td>
<td>Regarding increase of pension of retired government servants at 50 percent at par with serving government servants w.e.f. from 1st July 2010</td>
</tr>
<tr>
<td>13.</td>
<td>Constitutional petition no.45/2010</td>
<td>Environmental pollution</td>
</tr>
</tbody>
</table>
15. Constitutional petition no.58/2010 Against the appointment of president of national bank
16. Constitutional petition no.65/2010 Disputes on the boundaries of the areas at Diamer Bhasha Dam
17. Constitutional petition no.64/2010 Striking down the concession agreement between government of Pakistan and Singapore authority
18. Constitutional petition no.2/2011 Against leasing out of 141 acres of land in old railway golf club
19. Constitutional petition no.77-80/2011 Alleged memo delivered to Admiral Mike Mulan by Mr. Hussain Haqqani(ex Ambassador)

Source: (Cheema and Gilani, 2015, p.342-357)

5.3.2.1.4 Complaints regarding Human Rights Cell

There are some cases which are not needed to be converted into judicial cases. Applications of individuals, groups or entities are processed by the HRC without converting them to the judicial cases. Besides the public interest litigation cases and the suo Moto actions taken by the supreme court of Pakistan during the period under discussion, Media Cell was consolidated and reactivated to monitor the complaints lodged in the Supreme Court from any corner of the country. (Siddiqi, 2015, p.82)

### Table 5-4: Public Interests Litigation cases dealt by Supreme Court during 2007-2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Suo Motu</th>
<th>Human rights cases</th>
<th>Constitutional petitions</th>
<th>Applications of HR</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>27</td>
<td>77</td>
<td>90</td>
<td>-</td>
</tr>
<tr>
<td>2008</td>
<td>2</td>
<td>4</td>
<td>18</td>
<td>81</td>
</tr>
<tr>
<td>2009</td>
<td>28</td>
<td>79</td>
<td>68</td>
<td>9,879</td>
</tr>
<tr>
<td>2010</td>
<td>27</td>
<td>135</td>
<td>81</td>
<td>59,878</td>
</tr>
<tr>
<td>2011</td>
<td>20</td>
<td>42</td>
<td>92</td>
<td>48,388</td>
</tr>
<tr>
<td>2012</td>
<td>11</td>
<td>69</td>
<td>132</td>
<td>42,99</td>
</tr>
</tbody>
</table>

Source: (Siddiqi, 2015, p.84)
5.3.3 Analyses of people empowerment through judiciary

After having been discussed the positive development in the judiciary to empower the people, it is equally important to discuss the real empowerment of the people. We have already discussed that Pakistan has a strong and best judicial system. There are lower courts, high courts and Supreme Court in Pakistan. But all these courts are unable to provide speedy, free and fair justice to the common masses. The success of the system reflects from the poor, marginalized and downtrodden section of the society. Unfortunately our courts could not redress the injustices to the poor people. Almost 80 per cent cases related to the common man are dealt by the lower courts. The performance of courts is not satisfactory. People’s trust on the courts is very low. The survey of the courts litigation, conducted in 2010-11 shows that 51.5 per cent people do not like to pursue the courts. This is the clear indication that the justice in Pakistan is far reaching for the common man. Resultantly the rate of violence and crimes is increasing. The deprived people trace other ways to resolve their disputes, especially by taking the laws in their own hands. Bail and stay order should be controlled.

The procedure of the court is very time consuming. The judicial process in the courts is so slow and complicated for the common people, that an ordinary case takes a time almost 10 to 20 years to its final decision. There are so many cases pending in the lower courts. This is all due to the prolonged process of justice, especially for the poor and marginalized, who have to contact with the lower courts on daily basis. The following table will show the delaying process in the lower courts of Pakistan.

**Table 5-5: Pending cases in different courts in Pakistan**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Courts</th>
<th>Pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Subordinate courts</td>
<td>1,212,996</td>
</tr>
<tr>
<td>2.</td>
<td>High courts</td>
<td>165,250</td>
</tr>
<tr>
<td>3.</td>
<td>Supreme court</td>
<td>17878</td>
</tr>
<tr>
<td>4.</td>
<td>All courts</td>
<td>1,397,871</td>
</tr>
</tbody>
</table>

Source: (HRCP 20 11b, quoted in Mahbub ul Haq Center report, p.71)
5.4 Empowerment of people through Legislature

Parliament is the exclusive channel through which the powers of the people are reflected. It is the forum of the people. It is the house of the people. The representatives are elected by the people to represent their demands and interests in the parliament. Empowerment of people is happened only when the Government ministries and divisions are accountable to the people. There are various tools through which parliament can present the interests of the people. The commonly recognized means are overseeing, engaging in the debates, question answer, legislation on public issues and budgeting. Parliament in the Pakistan during the period of (2008-2013) has tried to deal the various issues of public concern. The significant achievements credited to this parliament are 18th amendment and 7th National Finance Awards. Another right direction accredited to this assembly is that democratic process strengthened in the form of proper procedure of judicial appointment, separate and independence Election Commission and established the mode of neutral interim government. Parliament had improved its performance relatively better than the previous parliament. The national Assembly of Pakistan passed 20 private and government bills from 2008 to 2011. Likewise, Senate 49 bills during 2008-2011. (Mahbub ul Haq Center report, 2012, p.66-67)

5.4.1 Achievements of the parliament: positive direction to empower the people

Usually the parliament and government are not distinct entities in the parliamentary form of government. The executive branch (PM) is the part of the parliament and hence answerable to it. Here our concern is to see the decisions made in the parliament and the mechanism of checks and balances in the perspective of people’s empowerment.

5.4.1.1 Committees to check the powers of executive

Parliamentary committees in democracies are to strengthen the link between the executive, legislature and people of the state. The committees monitor the function of the government. In the parliament, Committees oversight and oversee the performance of government regarding the expenditure allotted by the assembly. The committees are the “eyes, ears, hands and even the brain of the parliament.”The correspondence between
parliament and the ministries of the federal government are took place through committees. Generally, committees are of two types: standing and ad hoc/other committees. Over the years the parliamentary committees could not performed their due role as the democratic institutions also remained dormant due to the repeated military involvement in the political affairs.

The right of parliament to oversee the executive is mentioned in the constitution. The rules of parliament further elaborate this power of oversight. In Pakistan, the number of committees is according to the number of the ministries in the government. According to the rule no. 198 of the assembly, ‘there shall be a standing committee of the assembly for each ministry of the government.’ The house of the parliament referred the bills to the committees, which have to submit their reports after examining the bills. Public money is monitored by the committees to ensure the better services to the people at large. The role and function of the public account committee (PAC) is to check the audited accounts of the federal government and to present its findings and suggestions on the expenditure of the government. Thus it is the procedure to hold the government officials responsible and accountable before the people and keep ministers alert in spending the public exchequer.


The history of public accounts committees in Pakistan date back to 1948. The first committee constituted on 20th May, 1948 could not perform its function. The proper functioning of the committee system in Pakistan started on the 1951, when the second committee was constituted. Public Account Committee function at federal, provincial and district level to report the head of relevant government. There are twenty three members in PAC including finance minister. Up till 2013, thirteen public accounts committees have performed their functions.

Generally, the chairs in the national assembly are elected from the ruling party. It is observed that Parliament of Pakistan, during the period under discussion, acted to follow the parliamentary traditions. The ruling party appointed eleven committees’ heads amongst the opposition party in the assembly in the first year of the government. Chaudhry Nisar Ali the opposition leader in the house was elected as the chairman of the
PAC. It is claimed that during five years term of the assembly (2008-2013), PAC recovered about Rs.15 billion. This audit is done on the base of reports from the auditor general of Pakistan. In the standing committee, the representation was ensured on the base of party representation including both the representative and the opposition party. For instance, the Public Account Committee (PAC) in the national assembly was headed by the opposition leader.

Another important committee was the Parliamentary Committee on National Security (PCNS). It was also formed through the joint resolution in the assembly on November 2008. Government had a big challenge to secure the homeland from terrorists. Its functions were to oversee the policy of the government regarding foreign policy with US in countering the terrorism. The most important issues related to the foreign policy and defense of Pakistan were addressed in better way. This committee tried to address the sensitive national issues by holding various meetings. From 2008 to 2012, this committee held 63 meetings, where it recommended 16 points. Resultantly, PAK-US relations showed positive improvement. Its 16 points recommendations on national security were adopted by the parliament. Although government did not follow recommendations of the parliament but the positive gesture for deepening democracy was the approval from the government side. (PILDAT, 2013, p.7)

**Table 5-6: The important meetings conducted by this committee**

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Date of Meetings</th>
<th>Major Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>19th April, 2001</td>
<td>Condemning the Drone attacks on Pakistan</td>
</tr>
<tr>
<td>2.</td>
<td>29th April, 2011</td>
<td>Foreign Policy</td>
</tr>
<tr>
<td>3.</td>
<td>19th July, 2001</td>
<td>Raymond Davis Case</td>
</tr>
<tr>
<td>4.</td>
<td>30th July, 2011</td>
<td>Secretaries briefings on National Security</td>
</tr>
<tr>
<td>5.</td>
<td>19th August, 2011</td>
<td>Afghanistan Situation</td>
</tr>
<tr>
<td>6.</td>
<td>11th October, 2011</td>
<td>Refused to attend meetings at DHQ</td>
</tr>
<tr>
<td>7.</td>
<td>3rd December, 2011</td>
<td>Endorsed the Defense Committee Decisions</td>
</tr>
<tr>
<td>8.</td>
<td>9th December, 2011</td>
<td>Pak-US relations</td>
</tr>
<tr>
<td>9.</td>
<td>21st December, 2011</td>
<td>Memo Issue</td>
</tr>
<tr>
<td>10.</td>
<td>24th December, 2011</td>
<td>Pak-US Relations discussed</td>
</tr>
<tr>
<td>11.</td>
<td>10th January, 2012</td>
<td>NATO supply</td>
</tr>
</tbody>
</table>

Source: (Tasleem and Zaidi, 2013, p.26-29)
5.4.1.2 General Election; a Step to Empower the People of the state

“You have the power in your hand, to shape the future of our land,” *Bulla Raha ha Pakistan*, and *Ba Ikhtiar Awam* (Empowered People) and the like were the famous slogans pasted on the posters, displayed at the polling stations during general elections of 2013 held in Pakistan. Since 1970, General elections in Pakistan are being held both under the civilian and military regimes. Our concern here is to discuss the recent two general elections (2008 and 2013) held after the end of military rule. The 2008 election shifted the military to civilian rule, while 2013, held after the completion of five year term under the civilian rule of PPP, enhanced the process of democratization.

Elections are held to change the fate of the people. People manifest their power of vote. Elections are considered the foundation of modern political systems and democracies. Empowerment of people and Political socialization is manifested through repetition of elections in the country. The prominent role of the elections in a country is to bridge the gap between the political elites and common people. They reflect the general behavior and the basic features of government formation in any country. People are empowered when they participate in elections and feel their ‘say’ in the constitution making process. People are empowered when they fully comprehend the importance of elections in the political system. Elections have direct effects on the social, political and economic process of the society at large. Through elections collective decision making is made as all segment of society participate in it. It is unfortunate that in Pakistan, people cast their vote without knowing the value and importance of the vote. Majority of the people in Pakistan do not have liberty and freedom of casting their vote with their free will. The real empowerment would come when poor people selects a member with free will. (Usman, Munawar, Majid, 2013, pp-107-126)

In order to judge the peoples participation in Pakistan, we have to see the results trends in Percentage of general elections held since 1977 in Pakistan.
Table 5-7: Trends of Election results since 1977

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>General Elections</th>
<th>Results in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1977</td>
<td>55.02</td>
</tr>
<tr>
<td>2.</td>
<td>1985</td>
<td>52.93</td>
</tr>
<tr>
<td>3.</td>
<td>1988</td>
<td>43.07</td>
</tr>
<tr>
<td>4.</td>
<td>1990</td>
<td>45.46</td>
</tr>
<tr>
<td>5.</td>
<td>1993</td>
<td>40.28</td>
</tr>
<tr>
<td>6.</td>
<td>1997</td>
<td>35.17</td>
</tr>
<tr>
<td>7.</td>
<td>2002</td>
<td>41.80</td>
</tr>
<tr>
<td>8.</td>
<td>2008</td>
<td>44.55</td>
</tr>
</tbody>
</table>

Source: (IDEA: 2012, quoted in Mahbub ul Haq Center report, p.69)

Up till 2008, voter turnout in elections remained from 35 per cent to 55 per cent. The election of 2008, turnout was 44.5 percent. Public trust in elections has increased gradually in Pakistan. In 2013 general election the voter turnout reached up to 60%. This increasing trend in the election shows the empowerment of people. The report of Gallup Survey conducted in 2013 shows that 57 per cent people of Pakistan believe in election as compared to 33 per cent who believe other means to change the government. (Syed, 2013, p.117-124)

5.4.1.2.1 General Election 2008 and People participation

To reject the authoritarian rule, the elections held in 18th February 2008 provided the best opportunity to the people of Pakistan. The main political parties (PML-N and PPP), previously sidelined by Musharraf, participated in the election with zeal and zest. Both exiled leaders, Benazir Bhutto and Nawaz Sharif had returned to Pakistan on 18 October 2007 and 25 November 2007 respectively. Benazir Bhutto was assassinated in 27 December 2007. Bilawal, her son who became party chairman, along with his father Asif Ali Zardari as a co-chairman successfully spearheaded the election. On the other hand PML-N initially decided to boycott but latter on participated when the PPP announced to contest the election. Three other prominent parties namely, Pakistan Tehreek –e-Insaf (PTI), Pakhtunkhaw Mili Awami Party (PMAP) and Jamat-e Islami (JI)
did not participated in the polls. However, people not only expressed their opinion freely, but also succeeded in setting the civilian government. Comparatively, these elections were held under the transparent manners. The interference of military and other agencies were not reported. There were two state-owned and ten private T.V channels to cover the election campaign and voting process. This was further strengthened by the supervision of international observers belonging to 21 different countries as well as the team of EU Election Observers. To make the election further transparent and faire, modern technologies like email, text messaging, websites and blogs were used by political parties. (Rizvi and Gilani, PILDAT, 2013, p.33-35)

Table 5-8: Ratio of presence of political parties in the parliament of 2008-2013

<table>
<thead>
<tr>
<th>Name of political parties</th>
<th>Members</th>
<th>Share in Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan People’s Party Parliamentarian (PPPP)</td>
<td>127</td>
<td>37%</td>
</tr>
<tr>
<td>Pakistan Muslim League- Nawaz (PMLN)</td>
<td>92</td>
<td>27%</td>
</tr>
<tr>
<td>Pakistan Muslim League</td>
<td>50</td>
<td>15%</td>
</tr>
<tr>
<td>Muttahida Quami Movement (MQM)</td>
<td>25</td>
<td>7%</td>
</tr>
<tr>
<td>Awami National Party(ANP)</td>
<td>13</td>
<td>4%</td>
</tr>
<tr>
<td>Muttahida Majlis-e- Amal (MMA)</td>
<td>8</td>
<td>2%</td>
</tr>
<tr>
<td>Pakistan Muslim League Functional</td>
<td>5</td>
<td>1%</td>
</tr>
<tr>
<td>Baluchistan National Party Awami</td>
<td>1</td>
<td>0.3%</td>
</tr>
<tr>
<td>National People’s Party</td>
<td>1</td>
<td>0.3%</td>
</tr>
<tr>
<td>Pakistan People’s Party-Sherpao</td>
<td>1</td>
<td>0.3%</td>
</tr>
<tr>
<td>Independent</td>
<td>18</td>
<td>5%</td>
</tr>
</tbody>
</table>

Source: (PILDAT, 2013, p.11)

5.4.1.2.2 General Election 2013 and People participation

The civilian government completed its five year on 16th March 2013. Subsequently, Election commission of Pakistan announced to hold election on 11th May 2013. This time elections were held with some positive development. Constitutional and electoral reforms were introduced by the government. The positive aspect was that those political parties, who boycotted in the 2008 election decided to contest the election.
These were Balochistan National Party (Mengal), Pakhtunkhaw Mili Awami Party of Mahmood Khan Achakzai and National Party of Dr. Abdul Malik Baloch. Beside this positive sign of people’s trust in democracy, there were also some depressing factors faced by the people. There were constant security threats from the terrorists. The notorious Tehreek-i-Taliban-i-Pakistan (TTP) declared to disrupt the election process. According to this religious militant group, modern voting system was forbidden in Islam; therefore they had their own mission to impose traditional Islamic laws in the state. Pamphlets were distributed among the different parts of the country to warn the people from taking part in the election process. The militants targeted the political parties specially PPP, ANP and MQM. There were bomb blasts, suicide attacks and assaults on the public gatherings. Many political activists were killed during the rallies. It was reported by the federal interior ministry that 161 killed while, 652 people were seriously injured in the different part of the country due to the terrorist attacks on the election rallies. In some areas, election offices were also destroyed in the result of bombing. However, despite all the terrorists’ threats, people all over the country participated with full confidence in the election to show their power.

According to the Rizvi (2013), there were three distinguished features that made the election 2013 different from the earlier elections held in Pakistan. These were: (1) Eighteenth amendment had made the Election Commission of Pakistan more powerful, transparent and to some extent independent institution. (2) This time’s elections were held under the caretaker governments which were not elected by the president and the governors, but with the new comprehensive procedure. Under the 20th constitutional amendment introduced on 2012, the discretionary powers of the president and the governors to appoint the caretaker government during the election period were curtailed. The consent of both the outgoing Prime minister and the opposition leader was mandatory on the appointment of the caretaker government. In case of disagreement on the nominated prime minister, then two names would be sent to the eight member’s special parliamentary committee, constituted for this purpose. The members of this parliamentary committee would be equally divided between the opposition and the government. In case parliamentary committee failed to agree on the approval of one person as a prime minister, it would present four names to the Election Commission of
Pakistan. Finally the ECP will decide the nomination of caretaker Prime Minister. Same procedure was adopted at the provincial levels. Thus the new procedure had the opportunities to include almost all the representatives of the people and it was near the essence of democracy. (3) The process of scrutiny was introduced first time in the electoral history of Pakistan. Candidates’ scrutiny was made at the time of submitting the nomination papers. Detailed information was also collected regarding the financial conditions, sources of income and the other related details of the candidates and their families. (Rizvi and Gilani, PILDAT, 2013, p.36-42)

5.4.1.2.3 The Emergence of Pakistan Tehreek –I- Insaf (PTI)

Since 1988, the elections held under the civilian rules, PML factions and PPP dominated the polls. Other small parties had not been in the position to challenge the monopoly of the main parties. It was the specialty of the 2013 election that PTI, the third emerging political party not only provided the best opportunity to the people of Pakistan the more options in the presence of two major parties, but also contested and competed strongly with the major parties. PTI, led by former cricketer Imran Khan, gained momentum on October 2011, when a large public meeting was held at Lahore attracting a huge number of youth specially those urban class voters who were absurd of the politics of the PML And PPP. One of the reasons to join the PTI was the failure of service delivery to the people by the two main parties.

Many political parties along with independent candidates took part in the general election. Almost one hundred eleven political parties participated in the election. The most prominent parties were: PPP, PML-N, PTI, MQM, ANP and PML. Overall the manifestos issued by all the political parties were ideologically same. Each agenda forwarded by the political parties had the common features focusing on the bright future of the common masses, better governance, corruption free, merit and professionalism. Welfare of the under privileged, labor, peasants and the improving the status of women and the youth were included in the manifestos of the parties. (Rizvi and Gilani, PILDAT, 2013, p.36-42)
5.4.1.2.4 Comparison of the election results

The comparison will show the people participation and hence the confidence on democratic transition. The following table will show the turnout comparison of the two general elections 2008 and 2013.

Table 5-9: Comparison of percentage in general elections of 2008 and 2013

<table>
<thead>
<tr>
<th>Area</th>
<th>2008 election</th>
<th>2013 election</th>
</tr>
</thead>
<tbody>
<tr>
<td>KPK</td>
<td>34%</td>
<td>45%</td>
</tr>
<tr>
<td>FATA</td>
<td>31%</td>
<td>36%</td>
</tr>
<tr>
<td>Federal Area</td>
<td>50%</td>
<td>62%</td>
</tr>
<tr>
<td>Punjab</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>Sindh</td>
<td>44%</td>
<td>54%</td>
</tr>
<tr>
<td>Balochistan</td>
<td>31%</td>
<td>43%</td>
</tr>
<tr>
<td>Total</td>
<td>44%</td>
<td>55%</td>
</tr>
</tbody>
</table>


The empowerment of people is also gauged through their participation in political process. The two general elections held in Pakistan after the end of Musharraf rule show the people confidence in the democracy. The turnout manifest the people’s participation increased in the general election of 2013.

Table 5-10: Comparison of vote polled in general elections of 2008 and 2013.

<table>
<thead>
<tr>
<th>Provinces</th>
<th>Vote polled in 2008</th>
<th>Vote polled in 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>KPK</td>
<td>3,576,523</td>
<td>5,476,001</td>
</tr>
<tr>
<td>FATA</td>
<td>397,593</td>
<td>508,013</td>
</tr>
<tr>
<td>Federal Area</td>
<td>241,531</td>
<td>389,976</td>
</tr>
<tr>
<td>Punjab</td>
<td>21,442,088</td>
<td>28,760,265</td>
</tr>
<tr>
<td>Sindh</td>
<td>8,612,336</td>
<td>9,782,599</td>
</tr>
<tr>
<td>Balochistan</td>
<td>1,367,001</td>
<td>1,300,628</td>
</tr>
<tr>
<td>Total</td>
<td>35,637,072</td>
<td>46,217,482</td>
</tr>
</tbody>
</table>

Another positive aspect of people empowerment is the inclusion of minorities and marginalized citizens in the election. Participation in elections by all segments of society shows the people trust and confidence on the electoral process. It is one of the indicators of people empowerment in Pakistan. The general election held in 2013 shows the rising trend of participation of all the groups and communities. There are many powerless groups in Pakistan. The most commonly marginalized and underprivileged groups are Hindus, Christians, Buddhists, Sikhs, Parsi and Ahmadis. These groups comprised nearly 3.2 percent of the total registered voters. The census of 1998 shows the proportion of marginalized in Pakistan is 2.5 per cent of the population. To accommodate the marginalized and other minorities, there are reserved seats in the assemblies. These reserved seats were distributed among the various political parties according to the proportion of general seats won by the parties. The table will show the reserved seats won by the different parties.

**Table 5-11: Reserved Seats won by Political Parties**

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Political party</th>
<th>Reserved seat</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PML-N</td>
<td>6</td>
</tr>
<tr>
<td>2.</td>
<td>PPPP</td>
<td>1</td>
</tr>
<tr>
<td>3.</td>
<td>PTI</td>
<td>1</td>
</tr>
<tr>
<td>4.</td>
<td>MQM</td>
<td>1</td>
</tr>
<tr>
<td>5.</td>
<td>JUI-F</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: *(Final report of the joint international election observation mission of NDI and ANFREL, Washington, DC, 2013, p.54)*

Consequently the smooth transfer of one elected government to other took place for the first time in the political history of Pakistan. The national government was formed under the PML-N. This journey towards democracy started with the support of the people of Pakistan.
Table No. 5-12: Overall result of 2013 election and the participation of all the political parties

<table>
<thead>
<tr>
<th>Party</th>
<th>Punjab Genera General</th>
<th>Reserved for women</th>
<th>Sind General</th>
<th>Reserved for women</th>
<th>KPK General</th>
<th>Reserved for women</th>
<th>Balochist General</th>
<th>Reserved for women</th>
<th>FATA General</th>
<th>Reserved for women</th>
<th>Islamabad General</th>
<th>Total genera l seats</th>
<th>Reserved for non Muslims</th>
<th>Total reserved for women</th>
<th>Total party seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>PML-N</td>
<td>117</td>
<td>32</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>126</td>
<td>6</td>
<td>35</td>
<td>167</td>
<td></td>
</tr>
<tr>
<td>PPP</td>
<td>2</td>
<td>1</td>
<td>31</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>33</td>
<td>1</td>
<td>8</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>PTI</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>17</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>28</td>
<td>1</td>
<td>6</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>MQM</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>1</td>
<td>4</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>JUI-F</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>1</td>
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<td>11</td>
<td>1</td>
<td>3</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>PML-F</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>1</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>PkMAP</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>JI</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>4</td>
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</tr>
<tr>
<td>NPP</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>PML-Q</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>ANP</td>
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<td>Total Allotted Seats</td>
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Source: (Final report of the joint international election observation mission of NDI and ANFREL, Washington, DC, 2013, p.29)

Also at http://www.ecp.gov.pk/overallpartypositionPA13062013.pdf
5.4.1.3 Debates and Resolutions on public issues

Debates are the features of parliamentary democracies. Government’s policies are cleared through debates in the parliament. In this way, parliament assesses the performance of government by comparison of the policies announced and their implementation. Through debates on public issues by the people’s representatives in the parliament, people feel empowerment. The parliament of Pakistan since 2008 progressed towards debates on the issues of public concerns. The most important issues discussed in this period were judicial restoration, national security and defense budget. Unfortunately the issues debated in the parliament remained dormant and government could not enforce these decisions effectively. Questions were not properly answered which cast a negative impact on the credibility of the parliament. In the following passages we will discuss the debates in the parliament most relevant to the empowerment of the common people.

5.4.1.4 Debates on Human Rights

Children rights were debated and discussed in the assembly. It was the unanimous decision of the parliament that parliamentary forum would be established to ensure the protection, participation and survival of the children. The issues of target killings were also discussed. It stressed on the government to take necessary actions to stop the target killings in the country. The case of Dr. Aafia Siddiqi was also debated.

5.4.1.5 Debates on strengthening democracy

Issues related to the consolidation and developments of democratic culture in the country were debated. The causes of political instability, center province disharmony and the failure of the rule of law and the trust deficit in the judicial system of Pakistan were. It was resolved by the parliament that national integrity, inter-provincial harmony, socio-economic well being and development of the common people be ensured through strengthening the democratic institutions. The role of free media for public awareness and ensuring the transparency and accountability of the government was also come under discussion. The overall focus of the debates in the parliament remained on judicial independence as it plays pivotal role in order to maintain the supremacy of rule of law.
5.4.1.6 Debates on the creation of new province

The people of southern Punjab had long grievances of disempowerment with the federal government. Their main concerns have been to empower them through economic, administrative and political fields. It was debated in the assembly to create a new province of Southern Punjab for fulfilling the demands of the people in this region. In this regard Assembly passed a resolution asking the provincial assembly of Punjab to initiate a bill to amend the constitution for the creation of Southern Punjab. Unfortunately the government could not succeed to create a new province up till the end of its five years rule.

5.4.1.7 Debates on Petroleum Prices

The price hike on the petroleum product has direct affect on the life of common people. The democratic assembly during this period debated the issue of up rise in the prices of petroleum product in the country. It was maintained throughout the five years debates in the assembly that government should take immediate steps to cut the prices of petroleum product for the interest of public at large. (PILDAT, 2013, P.16)

5.4.1.8 Debates on Drone Attacks

Drone attacks are against the very sovereignty of Pakistan. It is alleged that Drone were permitted by the then Military President Musharraf on January 2008 in a secret agreement with the US intelligence to operate inside the FATA region to target the terrorists. Apparently the drone attacks were intended to hunt for terrorists of the Al – Qaeda, but reports from different sources exposed the reality of 140 civilians’ death against each drone attacks. Almost 90% people were killed who were not the part of terrorism. Butchering the people in the name of war on terrorism was creating serious problem for the government to properly deliver the services. (Mahmood, 2010, p.35-36)

During its five year term, parliament had debated this critical issue. It was unanimous agreement of the parliamentarian during the debates that drone attacks must be stopped. It was also highlighted in the debates of parliament that these attacks were
open violation of the international law and the charter of the UN. Therefore a resolution was passed to stop the supply of NATO forces from Pakistan to Afghanistan. It was implemented by the government immediately. Lists of few issues debated in the parliament:

8. Water and power
9. Radicalization
10. Issue of blasphemy
11. Increase trade deficit
12. Development in agriculture
13. Hajji (Pilgrimage) arrangements
14. Price of flour
15. Increase in the prices of gas and electricity
16. Load shedding
17. Unreleased funds to HEC
18. Fast spreading of Hepatitis disease
19. Sugar crises
20. Dual nationality (PILDAT, 2013, P.18)

5.4.1.9 Parliament websites for general information

People had direct access to the proceedings of the national assembly. For this, Media had access to the live coverage of the proceedings. Websites were created first time in Pakistan to provide the information with transparency. The key information of the national assembly like, daily agenda of the session, legislative business, debates and questions answers are available at the websites of the national assembly. This is considered the positive and right direction towards empowering the people. The open access to the data helps the masses to come closer to the assembly and assess the future planning of the government. (PILDAT, 2009, P.9)

5.4.1.10 Legislation on public issue

The positive trends in the parliament during 2008-13 are that, it passed large number of bills with unanimously. It is a good gesture towards empowering the people,
because with the representation of all political parties decisions are mostly made for people interest. The role of opposition party remained also very constructive as it was decided between the PPP and PML (N) in the Carter of Democracy (CoD)\textsuperscript{ii} to strengthen and consolidate the democracy. During this period of civilian government, parliament passed many bills about the public interests with consensus of all the political parties and public representation: Following are the major legislations made in the parliament during the period under discussion.

74. ‘The Election Laws (Amendment) Bill, 2013’ was passed by the national assembly on March 2012. This bill was related to the submission of nomination papers by the contesting candidates. During Musharraf era, the leaders of main political parties, PPP and PML (N) were in exile. Musharraf made it mandatory for the candidates to personally appear while submitting the nomination papers to the returning officers. It was quite impossible for the candidates who were in exile. Actually these changes were made by the Musharraf to prevent the popular leaders- Nawaz Sharif and Benazir Bhutto to contest the election. This was quite discriminatory law to take personal revenge from the politicians and consequently to block the ways towards flourishing democracy by the dictator. National assembly unanimously restore the original form of this act and stated that “every nomination paper shall be delivered to the returning officers by the candidate, by his nomination or by his proposer or seconder or, if so authorized in writing by the candidate, or by his nominee, and the returning officer shall acknowledge receipt of the nomination paper specifying the date and time of receipt.” (PILDAT, 2013, p.14-19)

75. The Anti Terrorism (2\textsuperscript{nd} amendment) Act, 2013: This bill was related to anti terrorism regime in Pakistan. Under this new legislation, it was declared unanimously by the parliament that passports, licenses and credit cards would not be issue to the banned activists in the country. All those licenses which were earlier issued were cancelled. It was also passed in the bill that those leaders who belonged to the banned organizations would not be allowed to go abroad. The suspects related to terrorism were not to be kept more than 90 days. There
detainees along with their evidences like e-mails, sms and mobile phones were to be produced before the anti terrorism court within 24 hours.

3. ‘The right to free and compulsory education act 2012’ was passed by the assembly. Under this act, every child, irrespective of race, sex or nationality has the fundamental right to get free education in the government school. It was pure people empowerment matter as, according to article 25A of the constitution, to provide free education up to age of 16 year is the liability of the government.

4. “The national commission for human rights Act, 2012”: Parliament passed this act on May 2012. The purpose of the act was to provide the relief in case of violation of any human right to the individual. The commission comprised of ten members, including one member each from four provinces FATA and Islamabad High court. The commission may take suo motu action or become the party of the grievewed person if any violation of human right committed or any officer prevented or showed his negligence in the provision of human right. Commission could also initiate the proceeding of pending human rights cases in the court.

5. ‘The industrial relations act 2012’ was passed by the national assembly 14th March, 2012 to protect the rights of workers. The purpose of the act was to create friendly and conducive relationship between the employees and the employers so that the industrial growth in the country should be developed. Besides, it encouraged the employers in the industries to establish unions and organizations to augment their demands and for the better settlement of their disputes from the mill owners. Such bills related to workers and laborers are positive signs to empower the common masses.

6. ‘The constitution (20th amendment) act, 2012’ was passed by the parliament on 14th February, 2012 to empower the election commission of Pakistan. With the passage of 20th amendment election commission became an independent institution. It was fundamental to strengthen the election commission, as without independent election commission, free and fair election could not be possible in the country. It was also decided in the 20th amendment to make the caretaker government with consensus. The essence of democracy is that the conduct of election should be free and fair. It is only possible when there is neutral interim
government. Under the neutral government fair election can be conducted. So with the passage of 20th amendment in the constitution, the interim government would be established with the agreement of all the political parties. Thus it was the best step towards empowering the people because; the fair and impartial government elected from the transparent manners could only protects the interests of the people. (PILDAT, 2013, p.14-19)

7. ‘The national commission on the status of women Bill’ was passed by the assembly on January 2012. This bill was related to the empowerment of women in Pakistan. Women in Pakistan have been facing discrimination in every walk of life. This bill provided opportunities to the women in Pakistan to empower themselves in the field of social, economic and political.

8. ‘The Anti Money Laundering Bill, 2009’ was a step towards empowering the masses as the influential used to take the national money out of the country. The amount which is to be utilized on the welfare of the common masses has been taken out from the country. This bill prevented the people involved in the heinous crime from taking the public money out of the country. The parliament of Pakistan unanimously passed this public welfare bill on 27 January, 2010. Under the bill, it was declared that the persons involved in money laundering will face a rigorous imprisonment extendable up to ten year along with forfeiture of properly and fine worth of one million rupee.

9. ‘The protection against Harassment of Women at workplace Act, 2010’ was passed by the parliament of Pakistan on 21st January, 2010 to empower the women. Mostly women in Pakistan have to face a lot of harassment in the workplace. Under this act it was declared that the culprits would be imprisoned along with the fine. This act was to protect the women employees in their workplaces.

10. ‘The transplantation of Human Organs and Tissues Act 2009’ passed by the national assembly on 12th November, 2009. People used to donate their organs to the foreigners. It was decided that donation related to organs of body would be fully banned and only recognized doctor could remove the organ of the body just for the purpose of treatment. The act declared the punishment up to the ten years
imprisonment along with fine of worth one million for the persons involved in removing the organ of the body.

11. ‘The Domestic Violence (prevention and protection) Act 2009’ was passed by the national assembly of Pakistan on 14th August 2009. This act was related to the women, children, and families who were vulnerable to the violence. It was declared in the act that there would be constituted protection committees at Tehsil level to protect the victims from the domestic violence. The committee comprising sub divisional police officer, a female SHO and two lady councilor. The culprits would be punished under the criminal law. (PILDAT, 2013, p.14-19)

The following table will depict the important legislation regarding people empowerment through parliament in Pakistan.

Table 5-13: Important Legislations during (2008-2013)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Legislation</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>2.</td>
<td>The anti terrorism(amendment) acts, 2013</td>
<td>20th February, 2013</td>
</tr>
<tr>
<td>3.</td>
<td>The right to free and compulsory education act 2012</td>
<td>13th November, 2012</td>
</tr>
<tr>
<td>5.</td>
<td>The industrial relations act 2012</td>
<td>14th March, 2012</td>
</tr>
<tr>
<td>6.</td>
<td>The constitution(20th amendment) act, 2012</td>
<td>14th February, 2012</td>
</tr>
<tr>
<td>8.</td>
<td>The Election Laws(amendment) act, 2011</td>
<td>18th April, 2011</td>
</tr>
</tbody>
</table>

(PILDAT, 2013, p.32)

5.5 Empowerment of people through Executive

Empowerment of people through executive is judged at the time of implementation of the decisions and rules passed by the parliament. Parliament makes the laws with people’s participation. Now it is the duty and responsibility of the executive branch to implement those acts, devised by the people’s assembly. Unfortunately in
Pakistan, there are rare examples when executive acted upon the directions and decisions of the parliament. The transition from military to civilian government took place in Pakistan, following the general election held in 2008. The civilian government was formed with coalition of the various political parties excluding the PML-N. Military president Musharraf also stepped down and civilian president Asif Ali Zardari became the president through indirect election.

Under the new government of PPP (2008-2013), executive branch of the government tried to confine its powers within the constitutional parameters. The President gave up extra powers contrary to the previous military rule of Musharraf. There can be no hesitation in boast of saying that it was the first occasion for the people of Pakistan that a president had voluntarily quit the powers in favor of the Prime Minister. The longstanding issues in Pakistan related to the provincial autonomy, electoral reforms and judicial independence were resolved. Independent media is providing latest information and updates to the people at large. Its performance is applauded and appreciated as an institution of accountability in the state. To this extent we can say that developments are going to the right directions and leading towards people empowerment. But still the chronic hurdle in the way of empowerment is the implementation of the rules in true letter and spirit. (Mahbub ul Haq Center report, 2012, p.24)

5.5.1 Reset the Democratic Order

In the modern democracies and under the nation state systems, constitutions have central importance. The defined rules in the constitution are meant to run the affairs of government and the relationships among the state institutions with checks and balances. It is those set of rules and procedures under which the people at large compromised to lead their life smoothly. The set of rules and basic principles of the constitution are not the rigid documents and thus can under go to the amendment if the people of the state so desire. The 1973 constitution of Pakistan based on parliamentary form of government, contrary to the 1962 constitution which had presidential form of government. The special credit to the 1973 constitution is that it was made by the elected government. Since its promulgation, it has undergone several amendments by both civilian as well as military governments. The original constitution of Pakistan vested the power of chief executive to
the Prime Minister while, the president remained the titular head who has to act upon the advice of the Prime Minister like the British Monarch. When General Zia took the reign of government through Martial Law in 1977, he introduced the Eighth amendment in the constitution to curtail the powers of the prime minister. He got the power of dissolving the assembly under article 58 (2) (b) and thus the parliamentary nature of the constitution shifted to the presidential form of government. This amendment proved fatal for the growth of parliamentary system. Presidents used this discretionary power four times from 1988 to 1996 to sack the elected Parliament. The civilian government of Nawaz Sharif reversed the article 58 2(b) under the 13th amendment in order to set the true nature of the parliamentary system in the country. Again the military rule of Musharraf invoked the article 58 2(b) under 17th amendment and thus the discretionary power of dissolving the assembly shifted to the president. (Nuri, Hanif and Khan, (Etd.), 2011, P.ii)

When Musharraf took the reign of government in 1999 by toppling down the civilian government of Nawaz Sharif, he introduced Legal Framework Order (LFO) of 21 August 2002 and 17th amendment in the constitution, implemented on 30th December 2003 to gain maximum power in his hand. The main feature of the LFO adopted by the Musharraf in spite of strong opposition from the political parties was the revival of the article 58 (2) (b). With the revival of this article, president regained the power to dissolve the assembly with his discretion. Governors were also empowered under the article 112(2) (b) to dismiss the provincial assemblies. The retaining of discretionary power with the president at the federal level and the same power of the governors at the provincial level was against the parliamentary nature of the government and the provincial autonomy respectively. Another serious blow to the parliamentary nature of the government was the revival of article 152 A. It was related to the composition of National Security Council (NSC). With this provision, NSC now included the chairman of the Joint Chiefs of Staff committee and three chiefs of armed forces. The motive was to bring the civilian authority under the military. (Khan, 2009, p.487)

5.5.2 18th Constitutional Amendment

The above discussion concludes that up to seventeenth amendment in the constitution, the shape of the state structure changed into hybrid of presidential and
parliamentary, contrary to the original constitution. The power of the executive under Musharraf was unrestraint. There was the dire need of constitutional reform for the success of democracy. General election held in 2008, and as a result the civilian government of PPP under the leadership of Zardari was established. It was unanimous agreement of all the political parties that the parliamentary nature of constitution must be restored in order to the smooth functioning of democracy. To materialize this objective, a parliamentary committee was entrusted the task of introducing the new amendment i.e. 18\textsuperscript{th} amendment in the constitution. The committee, comprising 26 members from all major political parties, was constituted by the government. The recommendations of the committee were endorsed by the national assembly and the senate on 8\textsuperscript{th} and 15\textsuperscript{th} April 2010 respectively. Afterwards, on 19\textsuperscript{th} April 2010, president of Pakistan signed the 18\textsuperscript{th} amendment bill and thus it became law. It was a positive step towards people empowerment as it restored the original constitution with unanimous agreement of all the stakeholders in the country.

The 18\textsuperscript{th} amendment restored the powers of PM bestowed under the original constitution. The power of president to dismiss the assembly was curtailed. The other powers like appointing the Services Chiefs, judges, the election commission and the chairman of federal public service commission were made in consultation with the prime minister. Under the amended Article 46 of the constitution, now it is not the duty of the PM to inform the president on all the internal and external matter. Likewise, the article 48 states that the president is bound to act upon the advice of the PM. Thus the president cannot dissolve the assembly on his discretion.

There was one real motive behind the 18\textsuperscript{th} amendment and that was empowering the parliament by restoring the real power of the PM. This power of the PM indicated the power of the parliament which is true representative of the people. Pakistan moved towards Westminster style political system. The 18\textsuperscript{th} amendment not only empowered the leader of the house but the role of opposition leader in the assembly was also enhanced. The opposition leader can use his role in the important matters like the appointment of judges and other posts. He was also allowed to show his due role in the formation of
caretaker government. The grievances of provinces were also tried to redress by increasing the power of senate. (Nuri, Hanif and Khan, (Etd.), 2011, p.65-66)

There is lot of measures adopted by the 18th amendment in order to consolidate and strengthen democracy in Pakistan. Now we will discuss the salient features of this amendment. The 18th amendment amended 102 article of the constitution. The most important features of the amendment were the revival of the Islamic republic nature of the constitution, its parliamentary form of government, federal structure which was embodied in the original constitution and independence of judiciary was also retained in the amendment. The controversial provisions of the constitution which were incorporated by the military president to dissolve the assembly were deleted. New mechanism to appoint the judges through judicial commission was incorporated. The condition of graduate for the contesting candidates was also abolished in the 18th amendment. It redressed the longstanding demands of the federating units by abolishing the concurrent list. The demand of the NWFP was also accepted by renaming it according to the wishes of the people of the province i.e. KPK (Khyber Pakhtunkhaw).

Moreover the irregularities of the power of parliament created in the previous governments were removed. For instance, previously, holding of the referendum was not the power of the parliament. It could only lay down the procedure and process of maintaining the records of the referendum. Now with the implementation of the 18th amendment, the joint sitting of the parliament can decide the holding of the referendum. The role of the mediation committees to control the legislative process is also removed. With this power, parliament can pass the legislation independently. Further, the president will have to reconsider the bill passed by the assembly within ten days contrary to the condition of thirty days, previously set in the constitution. The power of the president to impose emergency was also brought under the control of parliament. Now with the passage of 18th amendment, president has to present the suggestion of imposing emergency before the parliament. President can only impose the emergency in the country if it is approved by the both houses of the parliament within ten days. (Hassan, 2012, p-81-88)
5.5.3 Empowering provinces: Renaming of NWFP

Empowering the provinces means empowering the people in that province. The grievances of the provinces with the central government were tried to address in the 18th constitutional amendment. In this amendment the legislative power was divided between the parliament and the provincial assemblies. The fourth schedule of the 1973 constitution contained the federal legislative list and the concurrent legislative list. By abolishing the concurrent list from the constitution enabled the provinces to deal their subjects.

The upper house of the parliament, which is the representative of the units of the federation, has also empowered. Under the military regime, President used to present the report of principles of public policy only before the lower house of the parliament. The positive development in the parliament of 2008 to 2013 was to bring down the powers of president to the both houses of the parliament. Now the president is bound to present the implementation reports of its policies before the senate also. The working periods of the senate is also increased from 90 to 110 days. This is the development through which the long standing grievances of the federating units can be addressed. The empowerment of the senate means the empowerment of the provinces, which ultimately empower the common people. (Hassan, 2012, p-81-88)

5.5.4 Aghaz –e- Huqooq –e- Balochistan (beginning of the rights of the Balochistan)

Huqooq means, ‘rights’ and Aghaz means, ‘beginning’. Federal government presented the package for the people of Balochistan in the parliament to address the long standing grievances. Balochistan, in spite of being the largest province of Pakistan remained economically underdeveloped, politically isolated, and natural resources expropriation since 1947. The Aghaz –e- Huqooq e Balochistan was a social, political and economic development package for Baluchistan province. The text of the package presented by the senator Raza Rabbani in the joint sitting of the parliament on 25 November, 2009 is,
“… Conscious, that the provinces have a sense of deprivation, in political and economic structures of the federation recalling that the provisions of the 1973 constitution…the financial assistance given by the present federal government in terms of Rs. 4.6 billion PSDP support, Rs. 28 billion paid as arrears of royalty for Uch pending since 1995, Rs. 17.5 billion overdraft of Balochistan written off, realizing that this is not a substitute to provincial autonomy… mindful of the tumultuous history of the province in the affairs of the federation, … the present government has withdrawn cases and released political workers and helped in identifying the places of detention and release of some of the missing persons, determined to correct the wrongs of history by conferring the political, economic and cultural rights of the province…” (Haq, 2010, IPRI Fact file, p.56)

5.5.5 Council of Common Interest (CCI):

The purpose of the CCI is to maintain cooperation and harmony between the federating units. The 18th amendments strengthened the CCI in the light of federal legislative list, under which it was empowered to formulate and regulate its policies. To make the CCI more reliable and functional, 18th amendment made it compulsory that PM would be the Chairman along with the three nominated members of the federal government. It was also compulsory for the CCI to present its report to both the houses of the parliament. (Magsi, 2011, p.68)

5.5.5 Inclusion of parliamentarian in the judicial commission

By the inclusion of parliamentarian in the judicial commission was a step towards empowering the people as it will show their presence. We see the composition of the judicial commission under the 18th amendment was not confined to the judicial
community. It included the law minister, Attorney General and the advocate from the Bar Council. It also maintained the good example of the balance of power between the president, prime minister and the parliament.

5.5.6 **Strengthening Chief Election Commissioner (CEC)**

Former Chief election commissioner, Justice Fakharud din G Ibrahim said that, “free and fair elections will change the fate of the country.” Therefore, some tangible reforms were necessary in the Election Commission of Pakistan. CEC is a post that needs more transparency and fairness in selection. The impartiality of the CEC guarantees the fair and transparent elections. This post should be subjected to the parliamentary oversight. Before the induction of the 18th amendment in the constitution, CEC was elected by the President. It was generally believed that CEC is the handpicked of the president. This was not the democratic way of electing the CEC. With this amendment the power of appointing the CEC shifted to the prime minister. Now it was the power of the PM to nominate three persons in consultation with the opposition leader in the assembly. The list of three people would be presented before the parliamentary committee. This committee which comprises the members from both the treasury as well as opposition benches would select the name of CEC from the list forwarded by the PM. The members of the committee were increased from eight to twelve under the 19th amendment, introduced in 2011. To further strengthen the post of CEC, it was incorporated in the amendment that the tenure and service of the said post should be extended up to five years. In this way, the impartiality of the CEC would be monitor and checked, because it had selected by the people representative forum. (Magsi, 2011, p.70)

5.5.7 **Strengthening Political Parties:**

In order to boost up the democracy, the 18th amendment strengthened the political parties by amending the article 63(A) and incorporated in it that all elections would be held through secret vote, except the selection of PM and CM. The party leader may inform the senate chairman or the CEC about the members who do not follow the party
discipline during the important voting of the selection of the PM and CM. To stop the
defection from the members, it would on division basis. (Magsi, 2011, p.67)

5.5.8 Right to Information

For smooth and transparent functioning of the democracy, it is necessary that the
people of the state should be aware of the decision at governmental level. It was pertinent
to enhance the fundamental rights of the citizens. In the 18th amendment two articles
were added to increases the number of fundamental rights. The right to information
should be provided within the constitutional parameters. The article 19 (A) provided the
‘right of access to information’ to the people regarding the matters of public importance
in order to give the public transparent and fair decisions. Secondly, article 25 (A) was
related to the free education. It is now the responsibility of the state to provide free
education up to sixteen year. This is considered the best tool to empower the common
citizen. (Nuri, Hanif and Khan, (ETD.), 2011, p.32)

5.5.9 7th National Finance Commission (NFC) Award

Provinces in Pakistan have deep rooted multiple complaints from the central
government. Before partition (1947), resources were allocated among the federation of
British India under the ‘Niemeyer Award of 1936’. It maintained financial equilibrium of
each provinces of British’s India. It also clearly demarcated the revenues of federal and
provincial governments. (Prasad, 2006, p.2)

After partition of India, Government of Pakistan followed this Award with some
modifications until 1952. Among many other reasons of grievance by the Eastern wing of
Pakistan with the central government at that time was getting fewer shares from the
national finance pool. This discrimination in the allotment of resources resulted in the
revolt by the people, which ultimately led to the separation of East Pakistan and became
independent country named Bangladesh. So, the demise or breakup of Pakistan in 1971 is
generally attributed to the distribution of resources. It was in 1955, when government of
Pakistan created one unit, merging the four provinces of West Pakistan into one province
and the East Pakistan as another province. In this way the resources from the central
divisible pool were distributed into two provinces i.e. East Pakistan and the West Pakistan. The criteria set for the distribution of resources between the two wings were not the population. If the distribution of resources were based on ‘population’, then the share of the East wing, owing to large population, would have been more than the Western wing. The one unit scheme was abolished in 1970 and the status of four provinces of West Pakistan was restored. (Mustafa, 2011, p.1-14)

After the bitter experience of breakup in 1971, federating units had been getting their share from the national divisible pool on the basis of population. The NFC Award presented by the civilian government of PPP in 1974 included the criteria of population. This was the main friction between the federating units and the federation since the termination of one unit in 1970.

Smaller provinces like Balochistan, Sindh and KPK had serious objection on these criteria as Punjab having the largest population, gained much share from the national finance. The distribution of resources on the single formula of population base has never been the standard in the world. The economic development in one part of the universe or within the country provided the opportunities to the people in underdeveloped areas to migrate for better livelihood. For instance, when the development took place in Malaysia and Middle East countries, people around the world started migrating. Similarly people in the underdeveloped western China migrated towards developed eastern China. Therefore, other factors of infrastructure, prosperity, backwardness, environment, poverty and revenue generation should also keep in mind while devising the distribution criteria for the resources.

In the perspective of Pakistan, we saw that during the one unit scheme, government did not follow the population criteria and faced the dire consequences in the shape of breakup Pakistan. National Finance Commission is constitutionally created body to address this problem. The article 160 of the 1973 constitution is about the setting up of NFC. Under this article it is mandatory on the government to implement NFC award with the interval of not exceeding five years. This share of resources taken from
the central government is further distributed among the smaller tiers of the provinces. The aim and objective of the NFC is to,

1. Distribute the income of taxes between federal governments to provincial government
2. It distributes the grants in aid to the provinces from the federal government.
3. To exercise the borrowing powers by the federation and provinces within the constitution
4. To deal the matter of finance referred by the president.

This fiscal decentralization also results in accountability and transparency. Transfer of resources up to local level through NFC award had direct link to the empowerment of the people in the provinces. Resources spent on the under developed areas, uplift the socio, economic and political backwardness of the poorest of that region. The historic 7th NFC Award in the political history of Pakistan has to some extent addressed the grievances of people in all the provinces. It increased the resources of the provinces, specially the smaller provinces. Initially, Punjab did not retreat from the principle of sharing the national finance on population base, while other smaller provinces maintained their demands of considering the other factors too. Sind maintained the demand of getting maximum share in the revenue collection being the larger source of income for national finance in the form of customs duties from Karachi port. Similarly Punjab’s share was also more than other provinces in the field of tax collection. KPK demanded more share to alleviate poverty in the province. Balochistan demanded to get more share emphasizing on the inverse population density. Considering these demands of the provinces, for the first time in the history of Pakistan government tried to accommodate the demands of all the provinces.

In the perspective of above mentioned controversies, it was imperative for the government to devise a mechanism to satisfy all the stakeholders in the national finance. On December 2009, Prime Minister Syed Yousaf Raza Gilani signed the 7th NFC and came into effect in the financial year of 2010-2011, when President also signed on it in 18th March, 2010.
It was unanimous agreement of the representatives of the four provinces. Provinces agreed to cut the rate of collection charges from 5 per cent to just 1 per cent. It was considered the positive gesture from the provinces, because, this sacrifice would boost the share of finance from the central pool. The demands of the smaller provinces to increase their share were fulfilled in this award. The traditional criteria of sharing the national finance on population bases replaced with the *Multiple-Criteria* formula. According to this new formula, provinces would get the share on the basis of population 82%, allocation on the base of poverty and backwardness was 10.3%, on revenue collection provinces would get 5%, while, on IDP (Inverse Population Density) funds would be allocated to the federating units with percentage of 2.7. While, the total share of the provinces from the divisible pool was increased from 47.5% to 57.5% in the remaining years of the award. (Mustafa, 2011, p.1-14) The following table will clear the share of the provinces under the 7th NFC award:

**Table 5-14: Funds allocation criteria under 7th NFC award**

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Poverty</th>
<th>Revenue</th>
<th>Inverse Population Density</th>
<th>Total share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weight</td>
<td>82.0</td>
<td>10.3</td>
<td>5.0</td>
<td>2.7</td>
<td>100</td>
</tr>
<tr>
<td>Punjab</td>
<td>57.36</td>
<td>23.16</td>
<td>44.0</td>
<td>4.34</td>
<td>51.74</td>
</tr>
<tr>
<td>Sind</td>
<td>23.71</td>
<td>23.41</td>
<td>50.0</td>
<td>7.21</td>
<td>24.55</td>
</tr>
<tr>
<td>KPK</td>
<td>13.82</td>
<td>27.82</td>
<td>5.0</td>
<td>6.54</td>
<td>14.62</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>5.11</td>
<td>25.61</td>
<td>1.0</td>
<td>81.92</td>
<td>9.09</td>
</tr>
</tbody>
</table>

Source: (Mustafa, 2011, p.1-14)
5.6 Conclusion

There is no doubt that there were some landmark achievements of the government during 2008-2013. The constitutional amendments like 18\textsuperscript{th}, 19\textsuperscript{th} and 20\textsuperscript{th} were the agreements on the part of the government to further the process of democracy. Unrestraint power of the president was curtailed and real parliamentary characteristics were set. Human Rights issues were also addressed, but still government failed to address some critical issues related to terrorism, economic problems, law and order situation and the implementation of local self government.
Reference


xix (In the supreme court of Pakistan, Original jurisdiction, suo motu case no.5, 2010, [www.supremecourt.gov.pk](http://www.supremecourt.gov.pk))


End notes:

i “Without prejudice to the provisions of article 199, the supreme court shall, if it considers that a question of public importance with reference to the enforcement of any of the fundamental rights conferred by chapter 1 of part 2 is involved, have the power to make an order of the nature mentioned in the said article.”

ii Charter of democracy was signed between Nawaz Sharif and Benazir Bhutto, the two prominent leaders of main political parties in London on 14, May 2006. It was resolved by the both leaders in the CoD that, “ We the elected leaders of Pakistan have deliberated on the political crisis in our beloved homeland, the threats to its survival, the erosion of the federation's unity, the military's subordination of all state institutions, the marginalization of civil society, the mockery of the Constitution and representative institutions, growing poverty, unemployment and inequality, brutalization of society, breakdown of rule of law and, the unprecedented hardships facing our people under a military dictatorship, which has pushed our beloved country to the brink of a total disaster.....Calling upon the people of Pakistan to join hands to save our motherland from the clutches of military dictatorship and to defend their fundamental, social, political and economic rights and for a democratic, federal, modern and progressive Pakistan… have resolved to (1) restore The 1973 Constitution as on 12th October 1999 before the military coup ...(2) code of conduct to free and fair election...” Text of the Charter of Democracy, Dawn , May 16, 2006 (available at http://www.dawn.com/news/192460/text-of-the-charter-of-democracy)
Chapter No. 6

PEOPLE’S EMPOWERMENT AS A POLICY RECOMMENDATION: PUBLIC OPINIONS BASED ON A SURVEY

6.1 Introduction

We have previously discussed the empowerment of people through the role and functions of the three institutions of the government separately. The discussion revealed that even though the positive trends to empower people with the emerging principle of separation of powers but overall people’s empowerment is not happened in Pakistan. This chapter is an attempt to explore the support for empowerment through separation of powers devices with public opinion survey. The surveys like this have certain limitations in Pakistan due to poor literacy rates, lack of time and resources. The survey comprises on sample of 1120 people from all over the country, including Islamabad, the capital city of Pakistan, where it was convenient to find the people from the four provinces of the country as well as an easy access to the educated community. The results might differ in comparatively larger sample. It is also a matter of fact to recognize that survey is confining a moment in time. Anyhow, survey is equally important. There is also meager some effort to make the survey as a national survey because, empowerment of people and political liberty is an essential element to strengthened the democratic system taking roots for the first time in the history of Pakistan. Though minimum, survey has achieved its purpose. It has supported the central argument of this study that only separation of powers is not necessary for empowerment, because majority of the people are not satisfied with the performance of the judiciary, executive and legislature. People believe in democratic ideals not their rulers.

6.2 Sampling

The survey was conducted during 2014-2015 from different parts of the country. Efforts were made to target the population of four provinces of Pakistan. It was difficult
to find the response from people, because majority did not know the separation of powers in the perspectives of empowerment. The minimum number of respondents for each province was 100. For getting better response, however, the number of respondents was extended. Punjab, having the largest province, therefore the respondents taken from this province was comparatively more than the other provinces.

Table 6-1: Breakup of the respondent’s province wise

<table>
<thead>
<tr>
<th>Province</th>
<th>Male</th>
<th>Female</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KPK</td>
<td>164</td>
<td>72</td>
<td>236</td>
</tr>
<tr>
<td></td>
<td>69.5%</td>
<td>30.5%</td>
<td>100.0%</td>
</tr>
<tr>
<td>BALOCHISTAN</td>
<td>106</td>
<td>96</td>
<td>202</td>
</tr>
<tr>
<td></td>
<td>52.5%</td>
<td>47.5%</td>
<td>100.0%</td>
</tr>
<tr>
<td>PUNJAB</td>
<td>200</td>
<td>192</td>
<td>392</td>
</tr>
<tr>
<td></td>
<td>51.0%</td>
<td>49.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>SINDH</td>
<td>134</td>
<td>156</td>
<td>290</td>
</tr>
<tr>
<td></td>
<td>46.2%</td>
<td>53.8%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
The number of respondents from the Punjab was more than the respondents from the smaller provinces. There were 392 respondents from the Punjab, out of which 51% male and 49% female were selected. Similarly, out of 290, 46.2% were male and female (53.8%) were relatively more than male respondents from Sindh. Likewise, the respondents from KPK were 236 in total, from which, male were 69.5% and female 30.5%. Balochistan being the less populated province, the total respondents were 202. Out of which, there were 52.5% male and 47.5% were female respondents.

6.3 Education of the Respondents

Initially, the sample was devised to get information from all segments of society, but only the educated community responded. For this, survey was conducted in the offices and the educational institution. Even then, under graduate people did not respond. Thus, out of the 1120 sample, there were 56.4% graduate or above respondents, 33.6% having professional education, while religiously educated were 10.0%.

Table 6-2: Education of the Respondents

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Graduation or Higher</td>
<td>632</td>
<td>56.4</td>
<td>56.4</td>
</tr>
<tr>
<td>Professional Education</td>
<td>376</td>
<td>33.6</td>
<td>33.6</td>
</tr>
<tr>
<td>Religious Education</td>
<td>112</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>
6.4 Methodology

The survey was conducted in various regions of the country. For convenience, educated community from the four provinces was interviewed. Initially, efforts were made to interview maximum people, but owing to less response even from educated section, the size of sample had to reduce. The total number of interviews conducted throughout the country was 1120. Questions were asked in both Urdu and English. Electronic devices like e-mail were also utilized during survey. Interviews were conducted both by the author and the persons on behalf of the author from the different areas of the four provinces. SPSS software was used to analyze the codified data.

6.5 Questionnaire

The questionnaire was proposed to get the information about the central question that whether or not the people of Pakistan are empowered in the light of changes took place as a result of separation of powers. The questionnaire had two sections:

76. The first part of the questionnaire was meant to gather some basic information of the respondents. The qualifications of the respondents, their names and regions were asked in this section.

77. The second part of the questionnaire had three objectives: (a) the empowerment of people through parliament. (b) The empowerment of people through executive. (c) the empowerment of people through judiciary

The results of these three objectives of the questionnaire are enumerated in the subsequent sections.

6.6 Findings concerning of legislature

It is generally believed in the modern democracies that parliament is forum of people. The participation of the people in the decision making process is gauged through the functioning and performance of the parliament. The laws made in the parliament reflect the interests of the common citizens of the state. The election process,
composition of the assembly, the qualifications and behavior of the members of the parliament and the passing of the bills with the presence of all the political parties are essential components for the people representative institution. There are seven questions related to this section. These set of questions aimed to evaluate the perception of the people from all over Pakistan about the role and function of the parliament during 2008-2013 towards empowering the citizen.

6.6.1 People’s power to elect their representatives through election

This question was asked to check the views of the general public towards the basic step of empowerment in the political system. This question is related to the right of people in electing their representatives. The elected representatives are meant for the representation of the people in parliament. The result shows that large number of respondents (39.9 %) agreed that they have the powers to elect their representatives. However, 29.8% showed their disagreement on the power to elect. There were also 15.2% respondents who were strongly disagreeing with the argument. Equally, 15.0% were strongly agreed with the argument. Overall the majority of the respondents were agreed with the point that they have the power to elect their representatives.

Table 6-3: People’s power to elect their representatives

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>168</td>
<td>15.0</td>
<td>15.0</td>
<td>15.0</td>
</tr>
<tr>
<td>AGREED</td>
<td>440</td>
<td>39.3</td>
<td>39.3</td>
<td>54.3</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>334</td>
<td>29.8</td>
<td>29.8</td>
<td>84.1</td>
</tr>
<tr>
<td>STRONGLY DISAGREE</td>
<td>170</td>
<td>15.2</td>
<td>15.2</td>
<td>99.3</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>8</td>
<td>.7</td>
<td>.7</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>
6.6.2 Participation of People in elections wholeheartedly

People’s power is manifested in elections. Elections meant for change of government. When People believe in the election process, it is the actual empowerment in the democratization. The question was asked to check the opinions of the people about their trust in elections. The result shows that majority of the respondents (47.5%) are agreed with the argument. There are 32.9% respondents who disagreed with the argument. Strongly agreed respondents were 12.0%. However, 6.2% respondents were strongly disagreed with the point. Thus overall, the respondents were agreed that people in Pakistan take part in the elections with zeal and zest.

Table 6-4: Participation of people in elections

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>134</td>
<td>12.0</td>
<td>12.0</td>
<td>12.0</td>
</tr>
<tr>
<td>AGREED</td>
<td>532</td>
<td>47.5</td>
<td>47.5</td>
<td>59.5</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>368</td>
<td>32.9</td>
<td>32.9</td>
<td>92.3</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>70</td>
<td>6.2</td>
<td>6.2</td>
<td>98.6</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>16</td>
<td>1.4</td>
<td>1.4</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>
6.6.3 System of election is fair and transparent.

Fair and free elections is the responsibility of the government. With the free and fair elections, power of the vote by the common man is reflected. Unfortunately in Pakistan, the traditions of free and fair elections could not take its roots. The public opinion sought in this question was transparency of the elections, because the rigging in the elections means the manipulation of the people’s power. The result shows that majority of the respondents (41.6%) are disagreed with the fair and transparent elections. While 30.7% were strongly disagreed. Only 15.9% were agreed that in Pakistan the elections are fair and transparent. The strongly agreed respondents were 5.7%. Thus, majority of the respondents are not agreed with the election process in Pakistan.

Table No. 6-5: Fair and transparent elections.

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>64</td>
<td>5.7</td>
<td>5.7</td>
<td>5.7</td>
</tr>
<tr>
<td>AGREED</td>
<td>178</td>
<td>15.9</td>
<td>15.9</td>
<td>21.6</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>466</td>
<td>41.6</td>
<td>41.6</td>
<td>63.2</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>344</td>
<td>30.7</td>
<td>30.7</td>
<td>93.9</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>68</td>
<td>6.1</td>
<td>6.1</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>
6.6.4 The proceeding of the parliament can be watched by people.

The empowerment indicates when general public have access to watch the proceedings of the parliament. The purpose of live proceedings is to openly debate the public issues by the people’s representatives. Most of the people have no access to the electronic media. The response of the various segments of the society is in negative. The majority of the respondents (42.3%) do not agree with the opinion that people in Pakistan can watch the live proceedings of the legislature. There were 23.6% respondents who were strongly disagreeing. However, 25.6% were agreed and 6.8% were strongly agreed with the opinion. Thus overall, majority of the respondents were disagreed that people can watch the live proceedings of the parliament.
Table 6-6: Proceeding of the parliament watched by people

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>76</td>
<td>6.8</td>
<td>6.8</td>
<td>6.8</td>
</tr>
<tr>
<td>AGREED</td>
<td>280</td>
<td>25.0</td>
<td>25.0</td>
<td>31.8</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>474</td>
<td>42.3</td>
<td>42.3</td>
<td>74.1</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>264</td>
<td>23.6</td>
<td>23.6</td>
<td>97.7</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>26</td>
<td>2.3</td>
<td>2.3</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

6.6.5 Public representatives (parliamentarians) listen and solve the problems of people.

People empowerment is manifested when representatives know the problems of the common people. Mostly the candidates meet the masses during elections to get vote, but after the election, they never bother to visit their respective constituencies. People feel empowered when their representatives are within them.
There were 22.9% respondents who were agreed that the public representatives listen and solve the problems of common people. The respondents strongly agreeing were 7.0%. On the other hand, 41.4% were disagreed and 26.6% were strongly disagreed. Thus the majority of the respondents were not agreeing that the representatives of the people listen and solve the problems of the common people after the end of election.

**Table 6-7: Public representatives listen and solve the problems of people.**

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>78</td>
<td>7.0</td>
<td>7.0</td>
<td>7.0</td>
</tr>
<tr>
<td>AGREED</td>
<td>256</td>
<td>22.9</td>
<td>22.9</td>
<td>29.8</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>464</td>
<td>41.4</td>
<td>41.4</td>
<td>71.2</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>298</td>
<td>26.6</td>
<td>26.6</td>
<td>97.9</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>24</td>
<td>2.1</td>
<td>2.1</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

6.6.6 Parliament is composed of people’s true representatives.

As already discussed that parliament is the forum of people. Decisions, which are made in the parliament, have direct affect on the life of the people. Empowerment is linked with the laws, rules and regulations. It is unfortunate phenomenon in Pakistan that some representatives buy offices at high costs and thus little interest to safeguard the welfare of the people. This is equally undeniable fact that parliamentarians remain busy to garner their status instead of the interests of the masses. Law makers keep in view the
needs of the masses in general. Only true representatives have the vision to facilitate the citizens. (Rehman, 2015, p.8) To check the opinions of the people about this perception, interviewees were asked whether or not the parliamentarians are the true representatives of the people. The findings show that 32.5% were agreed on this perception and only 5% respondents were strongly agreed, while the majority of respondents (41.6%) were disagreed. There were 17.1% respondents who were strongly disagreed on this perception.

Table 6-8: composition of Parliament

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
<td>56</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>AGREED</td>
<td>364</td>
<td>32.5</td>
<td>32.5</td>
<td>37.5</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>466</td>
<td>41.6</td>
<td>41.6</td>
<td>79.1</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>192</td>
<td>17.1</td>
<td>17.1</td>
<td>96.2</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>42</td>
<td>3.8</td>
<td>3.8</td>
<td>100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1120</td>
<td>100</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

6.6.7 People repose full trust in parliament.

Trust on the institution only develops when the voice of people is heard. The role of the parliament is to represent the people. General masses sent their representatives in the parliament by electing them. Generally people perceive the parliament is not the institution where the voice of the people is truly present. The representatives belong to the elite class. They have little concern about the problems of the people. Laws and
decisions made in the parliament are only in the interests of the ruling class. The findings show that majority of the respondents (48.6%) were disagreed with the perception that people have full trust on the laws made in the parliament. There were 20.2% respondents who were strongly disagree while, 21.2% showed their agreement that people have trust in the parliament. Only 3.6% was strongly agreed that people in Pakistan believe in the parliament. Thus the majority of the respondents were disagreed.

Table 6-9: People’s full trust in parliament.

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
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<tr>
<td>STRONGLY AGREED</td>
<td>40</td>
<td>3.6</td>
<td>3.6</td>
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<tr>
<td>AGREED</td>
<td>238</td>
<td>21.2</td>
<td>21.2</td>
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<tr>
<td>DISAGREED</td>
<td>544</td>
<td>48.6</td>
<td>48.6</td>
<td>73.4</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
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<td>1120</td>
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</tr>
</tbody>
</table>

6.5.8 People face no difficulty in meeting their representatives.

People are empowered in true sense when they have an easy access to their representatives. Generally it is observed that candidates mingle with the common citizens during elections just to get the vote. After winning the election, the candidate makes it quite difficult for the lay man to meet them. To get information from public about this perception, interviewees were asked whether or not they face difficulty in meeting their
representatives. The majority of the respondents (42.3%) were disagreed on the perception that people have no difficulty in meeting their representatives. There were 40.7% respondents who were even strongly disagreed. The number of respondents agreed on that people in Pakistan had no difficulty in meeting their representatives were 9.5%. Thus findings show that majority of the people face difficulty to meet their representatives. The following table and chart explain the response.

### Table 6-10: People face no difficulty in meeting their representatives.

<table>
<thead>
<tr>
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<th>Frequency</th>
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<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
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<td>106</td>
<td>9.5</td>
<td>9.5</td>
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<tr>
<td>DISAGREED</td>
<td>474</td>
<td>42.3</td>
<td>42.3</td>
<td>55.5</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>456</td>
<td>40.7</td>
<td>40.7</td>
<td>96.2</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>42</td>
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<td>1120</td>
<td>100.0</td>
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<td></td>
</tr>
</tbody>
</table>

6.5.9 Common man can contest election and win as a representative for the people.

People are empowered when a lay man can contest and win the election as a representative for the people. The expenditure on electioneering is too huge to be bear by the common man. It seems as if elections in Pakistan are confined to money game. The cost of national assembly/ senate seat has reached up to crores of rupees. This cost of
electioneering is not less even at local bodies elections. The recently conducted local bodies’ election is the glaring example of this fact. It is reported that Rs.25 millions were spent on the seat of chairman at Lahore. (Rehman, 2015, p.8) People were asked to give their opinion about this perception. The response came from the interviewees was against the perception. Majority of the respondents (31.4%) were strongly disagreed. There were 29.6% respondents who were disagreed, while, 26.9% were agreed that common man in Pakistan can contest and win as a representative. Thus overall, opinions were against the perception. The following figure shows the detail.

Table 6-11: common man can win as a representative for the people

<table>
<thead>
<tr>
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<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
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<td>33.5</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>327</td>
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<td>29.2</td>
<td>62.7</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>352</td>
<td>31.4</td>
<td>31.4</td>
<td>94.1</td>
</tr>
<tr>
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</tr>
</tbody>
</table>

6.5.10 People’s representatives in parliament are truthful and honest.

Only truthful and honest leaders pursue the public policy. They should fulfill the promises and honestly utilized the public exchequer. Interviewees were asked to give their opinions about this perception. It was very strange that the findings were against this
perception. There were 43.0% respondents who were disagreed on the point. Equally, 42.9% respondents were strongly disagreed. There were only 6.8% respondents who were agreed with the opinion. Thus majority of the respondents perceived that people’s representatives in parliament are not truthful and honest. Rehman (2015) stated the real picture of the representatives in parliament. He says that, “their expertise lies in changing their party labels at the most opportune moment. Dissent with the party leadership’s policies is a risk they vigorously reject. Besides they are sitting ducks for the establishment’s marksmen who are always present in the wings.” (Rehman, 2015, p.8)

Following figure will explain the general perception.

**Table 6-12: people’s representatives in parliament are truthful and honest**

<table>
<thead>
<tr>
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<th>Percent</th>
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<th>Cumulative Percent</th>
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<td>76</td>
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<td>DISAGREED</td>
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<td>43.0</td>
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<td>STRONGLY DISAGREED</td>
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<td>42.9</td>
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<td>97.9</td>
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<tr>
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<td>2.1</td>
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<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>
6.5.11 People’s participation is kept in view in decision making

Finally the public opinions were sought whether or not people’s participation is considered in decision making. People are empowered when they participate in the decision making process. In democratic government, the form of people’s participation is the parliament. The decisions are made in the parliament with the presence of all the political parties. Issues are debated and with consensus the bills are passed in the assembly. Sometimes the decisions are made without consensus and even the consent of the party members is ignored. This is the form of dictatorship. It is through assessing the public transparency that legislatures consider the outreach activities. It is worldwide recognized duty of the parliament to engage the citizen through different approaches. Assemblies conduct public petitioning and open period for getting input from the masses. Public committee hearings are held to get feedback from the people about the issues under discussion. This procedure stimulates the public interests in the process of legislation. In the modern word, many governments resort to electronic devices to seek and ensure public participation. People use online tools to edit their suggestions on the legislation. (Mandelbaum, 2015, p.11, PILDAT)

The views of the majority of respondents (38.9%) in the interviews were disagreed and strongly disagreed (27.3%). However, 22.9% respondents agreed that the decisions in parliament are made with the participation of public. But, overall findings reveal that people’s participation is not kept in view in the parliament of Pakistan.

Table 6-13: People’s participation is kept in view in decision making

<table>
<thead>
<tr>
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<tr>
<td>DISAGREED</td>
<td>436</td>
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<td>38.9</td>
<td>69.1</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>306</td>
<td>27.3</td>
<td>27.3</td>
<td>96.4</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
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<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
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</tr>
</tbody>
</table>
6.7 Recapitulation

The first objective of the questionnaire was to find the response of the people on the empowerment through legislature. It is revealed in the public response that people in Pakistan are not empowered. People are not satisfied with the sincerity and honesty of the parliamentarians. Majority of the common people cannot meet with their representatives. However, there are some indicators like the participation in election, the power to change the government through elections and contest the election; one can assume that the people in Pakistan are empowered. But overall people in Pakistan are not empowered enough to take part in the decision making process.

6.8 Findings concerning the Empowerment of people through executive

The second objective of the survey was to gather information from the respondents about the empowerment of people through executive. It is important in the sense that common man has to face the executive branch of government in different forms. Police station and bureaucratic structure in Pakistan have direct affect on the life of a common man. In this section the central question was asked whether or not people are empowered through executive. There are secondary questions related to this objective. The secondary questions asked in this section are discussed below.
6.8.1 People and government are in communion with each other

In the democratic government, the connection between the government and the citizens is considered important for the legitimacy and the smooth functioning of the business of the government. Similarly, parliament fosters link with the citizens for getting support other then the government. (Mandelbaum, 2015, p.11, PILDAT)

The grievances of the people are addressed when the government officials try to listen and solve. To discover the opinions of the people on this perception, interviewees were asked whether or not officials of the government are in contact with the citizens. The majority of the respondents (45.2%) were disagreed with this perception. The 26.6% respondents were strongly disagreed with this. The respondents who were agreed with this perception were 18.9%. Thus the findings suggest that there is lack of communication between government and the public at large.

Table 6-14: People and government are in communion with each other

<table>
<thead>
<tr>
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<td>45.2</td>
<td>68.4</td>
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<tr>
<td>STRONGLY DISAGREED</td>
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<td>1120</td>
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<td></td>
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</table>
6.8.2 Institutions of the executive do not use unfair force on people

This perception is related to the misuse of authority by the officials, where common man faces many troubles. The question was asked to get opinions of the public about the change in the behavior of the law enforcement agencies and other officials. Opinions were sought whether or not the government officials use unfair force on the people. The findings suggest that executive misuses authority. The majority of respondents (40.9%) were disagreed with the opinion. The strongly disagreed respondents were 31.1%, while 19.5% were agreed with the statement that executive do not misuse their authority on public. Thus findings reveals that people has to face unfair use of force from the executive branch of the government. The results of the survey are presented below.

Table 6-15: Institutions of the executive do not use unfair force on people

<table>
<thead>
<tr>
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<th>Percent</th>
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<tr>
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<td>19.5</td>
<td>19.5</td>
<td>24.5</td>
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<tr>
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<td>40.9</td>
<td>65.4</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
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<td>31.1</td>
<td>96.4</td>
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<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>
6.8.3 Common man feels respect in police station or court

This is also related to the above perception of misuse of authority. Opinions were sought from different segment of the society. It revealed that majority of the respondents (46.2%) were disagreed with the suggestion. The respondents showed strongly disagreement with the opinion were 17.3%. Those who agreed with the statement were 15.7%, while, 18.6% were strongly agreed. But overall the respondents were disagreed and opined that people in Pakistan are not feel respect in both police station and in the court. The following table highlights the suggestion.

Table 6-16: Respect of Common man in police station or court

<table>
<thead>
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<th>Cumulative Percent</th>
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</thead>
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<td>34.3</td>
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<td>518</td>
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<td>80.5</td>
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<tr>
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<tr>
<td>Total</td>
<td>1120</td>
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<td>100.0</td>
</tr>
</tbody>
</table>
6.8.4 Criticism on the policies of government

Criticism on the policies of government is considered the basic right of the people. Generally, people use this right in the democratic regimes more than under the military regimes. To discover this opinion from public, interviewees was asked whether or not people in Pakistan are empowered enough to criticize the policies and functioning of the government. The findings showed that people in Pakistan can criticize the policies of government. There were 38.25% respondents who agreed and 23.8% were strongly agreed with the perception. The 21.6% respondents however, disagreed with the perception. Strongly disagreed respondents were 12.9%. Thus people in Pakistan are empowered in this sense that they can criticize the policies of the government.

Table 6-17: people can criticize the policies of government

<table>
<thead>
<tr>
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<th>Percent</th>
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<th>Cumulative Percent</th>
</tr>
</thead>
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<td>21.6</td>
<td>83.6</td>
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<tr>
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<td>12.9</td>
<td>96.4</td>
</tr>
<tr>
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<td><strong>100.0</strong></td>
<td></td>
</tr>
</tbody>
</table>
6.8.5 In Pakistan, people considered ‘democracy’ to empower them

People of Pakistan had experienced both military and civilian rules. Interviewees were asked whether people have been empowered through the democracy. The findings show the mix response from the interviewees. However majority of the respondent favoured democracy to empower the people. The respondents agreed with the perception were 35.9% while 32.0% were disagree. The mix response shows that democratic government has just completed its five year term. Besides, during the five year term government did not introduce local bodies, which is considered the base to empower the people at grass root level. It is observed that contrary to civilian government, Devolution plan was introduced under the military rule. Anyhow, comparatively majority of the respondents supported the democracy to empower the people.

Table 6-18: Democracy and empowering the people

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
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<td>13.6</td>
<td>13.6</td>
</tr>
<tr>
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<td>35.9</td>
<td>35.9</td>
<td>49.5</td>
</tr>
<tr>
<td>DISAGREED</td>
<td>358</td>
<td>32.0</td>
<td>32.0</td>
<td>81.4</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>184</td>
<td>16.4</td>
<td>16.4</td>
<td>97.9</td>
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<tr>
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<td>2.1</td>
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<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>
6.9 Recapitulation

The second section of the questionnaire was related to gather opinions of the public about the empowerment of the people through executive branch of the government. The findings of this portion are same as were in the first section of the survey. The general behavior of the bureaucrats is not people’s friendly. Often, people are not respected in the most visited department, i.e. the police station and the court. Therefore the findings of the survey indicate that people are not empowered through the executive.

6.10 Empowerment pertaining to Judiciary

The litigation in Pakistan is complicated and expensive for the common man. The suo motu actions taken by the judiciary during this period were positive steps to empower the citizens. Here we will check the empowerment up to the grassroots level through judiciary. The remaining four questions are related to seek the third objective of the survey.

6.10.1 People’s trust in judiciary

People have to contact with the judicial branch of the government some way or the other. Recently, Judiciary had asserted its position as an independent and empowered institution. The performance of judiciary is judged by the opinion of the people. To check this perception, interviewees were asked whether or not the people in Pakistan have trust in the judiciary owing to its performance. The majority of the respondents (34.3%) were disagreed and 26.4% were strongly agreed with the perception. The respondents who showed agreed were 28%. The strongly agreed respondents were only 7.1%. Thus the majority of the respondents were not agreed with the perception that people repose trust in the judiciary due to its performance.
Table 6-19: People’s trust in judiciary owing to its performance

<table>
<thead>
<tr>
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<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<td>34.3</td>
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<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

6.10.2 People do not have to face much trouble for acquiring justice

People empowerment is seen when they have easy and speedy justice to their door steps. When public were asked about this perception, it was revealed that majority of respondents (41.6%) were disagreed with the perception. Equally, 30.9% were strongly disagreed. The agreed respondents were 15.4%. Thus majority of respondent show that people in Pakistan are not empowered enough to acquire justice easily at their door step.
Table 6-20: people do not have to face much trouble for acquiring justice

<table>
<thead>
<tr>
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<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
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<td>23.4</td>
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<tr>
<td>DISAGREED</td>
<td>466</td>
<td>41.6</td>
<td>41.6</td>
<td>65.0</td>
</tr>
<tr>
<td>STRONGLY DISAGREED</td>
<td>346</td>
<td>30.9</td>
<td>30.9</td>
<td>95.9</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>46</td>
<td>4.1</td>
<td>4.1</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1120</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
<td></td>
</tr>
</tbody>
</table>

6.10.3 Judiciary, executive and legislature are working to empower common people

When the public opinions were sought regarding the working of three main institutions, it revealed from the response of the respondents that the performance of all the institutions is not up to the expectations of the people. Majority of the respondents were disagreed with the perception that the working of the institutions in Pakistan is meant to empower the common people. The respondents’ majority (42.2%) was disagreed with the working of the institutions. Even 27.3% were strongly disagreed. The agreed respondents were 21.1%. Thus the findings show that people in Pakistan are not empowered through the major institution.
Table 6-21: Judiciary, executive and legislature are working to empower common people

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRONGLY AGREED</td>
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<td>5.9</td>
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<tr>
<td>AGREED</td>
<td>236</td>
<td>21.1</td>
<td>21.1</td>
<td>27.0</td>
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<tr>
<td>DISAGREED</td>
<td>474</td>
<td>42.3</td>
<td>42.3</td>
<td>69.3</td>
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<tr>
<td>STRONGLY DISAGREED</td>
<td>306</td>
<td>27.3</td>
<td>27.3</td>
<td>96.6</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>38</td>
<td>3.4</td>
<td>3.4</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1120</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

6.10.4 People of Pakistan are well aware, free and empowered

Finally the overall perception was sought from the public. This is the ultimate aim and objectives of all the activities of the government. To gather the opinions of the public on the perception that after the positive trends in Pakistan regarding the beginning of democratic rules, whether or not people in general empowered. It revealed from the response of the respondents that people in Pakistan are not well aware and empowered. Majority of the respondents (43.0) were disagreed with the perception that people are empowered and well aware. Even 21.1% were strongly disagreed. The agreed
respondents were 23.9%, while just 8.0% were strongly agreed. Thus final observation shows that people in Pakistan are not free, well aware and empowered.

Table 6-22: People of Pakistan are well aware, free and empowered

<table>
<thead>
<tr>
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</thead>
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<tr>
<td>STRONGLY AGREEED</td>
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<td>8.0</td>
<td>8.0</td>
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<tr>
<td>AGREEED</td>
<td>268</td>
<td>23.9</td>
<td>23.9</td>
<td>32.0</td>
</tr>
<tr>
<td>DISAGREEED</td>
<td>482</td>
<td>43.0</td>
<td>43.0</td>
<td>75.0</td>
</tr>
<tr>
<td>STRONGLY DISAGREEED</td>
<td>242</td>
<td>21.6</td>
<td>21.6</td>
<td>96.6</td>
</tr>
<tr>
<td>DO NOT KNOW</td>
<td>38</td>
<td>3.4</td>
<td>3.4</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1120</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
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</table>

6.11 Conclusions

The results of the third objective were also remained like the previous one. The empowerment through judiciary could not happen still in Pakistan. The litigation is unaffordable for the citizens.
References

Chapter No. 7

FINDINGS AND CONCLUSION

Absolute separation of powers is easier said than done in the political system of Pakistan, as under the Westminster model of government, executive is the part of the parliament. The partial separation of powers depends on the independence of judiciary. In Pakistan, the independence of judiciary, which is essential component for separation of powers, is seen at the time of first reinstatement of the chief justice on 20th July 2007 under the military president. The full bench of Supreme Court restored the chief justice by striking down the ‘reference’ filed by the president against him. Another example of its independence is imagined when the parliament had to pass 19th amendment considering some reservations of the judiciary on certain clauses under the 18th amendment. Likewise the SHCBA declared the military president as usurper and hence affirmed the 3rd November, 2007 emergency illegal.

No doubt, Pakistan inherited a strong and independent judicial system. It gained its recognition and popularity in the field of integrity and honesty. But with the passage of time, it lost its integrity. This decline started when governor general dissolved the first constituent assembly and the judiciary legalized his unconstitutional step. To regain its honorable status, judiciary has to clash with the executive branch. Under the leadership of chief justice Chaudhry it regained its independence. There is strong movement behind the judicial independence in Pakistan. When Musharraf dismissed the chief justice of Pakistan in March 2007, a movement of lawyer’s community, later on the active participation of people including politicians, human rights activists, media and even the common citizens started to restore the judiciary. Millions of people from all segment of society signed the joint petition, popularly known as, “ten million signature petition” for the reinstatement of judges. Such a grand participation and marvelous movement was started first time by the people of Pakistan who gathered and united on a wide scale just for a single cause. It was the consequence of this powerful popular movement that judiciary was restored to its previous position in March 2009. Thus judiciary became a stronger and powerful institution with the support of people.
It is also fact that judiciary took some bold steps to empower the common citizens. It is observed that Judiciary had adopted the course of PIL and suo motu actions to empower the people. This judicial activism has to some extent changed the previous tradition of submissive judiciary. Fundamental rights of the common people were also pronounced. Previously, the common people, who had to incline towards military for the redressal of their grievances, now built their expectations from the judicial branch of the government. In this way the confidence of people in the courts was restored. It is also fact that these positive developments were made on the part of judiciary during the weak democratic government. It highlighted the corruption of political elites, resulted in direct conflict with the executive branch of the government. The convicting and then disqualifying a sitting PM was criticized by many as the overuse of authority by the judiciary. It is also fact that the journey of transition from authoritarian to democracy has just started. After all, the consolidation of democracy depends on the performance of the three institutions.

The other two branches of the state also tried to empower the people at large. The legislature during the period of (2008-2013) has tried to deal the various issues of public concern. The significant achievements credited to this parliament are 18th amendment and 7th National Finance Awards. Another right direction accredited to this assembly is that democratic process strengthened in the form of proper procedure of judicial appointment, separate and independence Election Commission and established the mode of neutral interim government. Parliament had improved its performance relatively better than the previous parliament. The 2008 election shifted the military to civilian rule, while 2013, held after the completion of five year term under the civilian rule of PPP, enhanced the process of democratization.

Under the new government of PPP (2008-2013), executive branch of the government tried to confine its powers within the constitutional parameters. The issues created by the long absence of the democracy and the denial of provincial autonomy were tried to address. President gave up extra powers of dismissing the assembly conferred under the 17th amendment. There can be no hesitation in boast of saying that it was the first occasion for the people of Pakistan that a president had voluntarily quit the powers
in favor of the Prime Minister. The longstanding issues in Pakistan related to the provincial autonomy, electoral reforms and judicial independence were resolved. Forcefully stepping down the General Musharraf, restoring the judiciary and the inclusion of 18th amendment are the glaring example of people’s empowerment on the part of the executive. In the constitutional development this is described as a paradigm shift to claim some extent the genuine spirit of federation in Pakistan. It is also described by political experts that these upheavals have immensely changed the country’s federal nature. New division of powers between federating units were delineated. Thus making the representative institutions of the country repositories of powers and responsible to the fundamental rights of the masses. Political maturities from the politicians were also seen. They unanimously adopted the new amendments in the constitution. Independent media is providing latest information and updates to the people at large. Its performance is applauded and appreciated as an institution of accountability in the state. To this extent we can say that developments are going to the right directions and leading towards people empowerment. However it is still definitely not a panacea for all the problems in Pakistan. But despite of these political developments, still the chronic hurdle in the way of empowerment is the implementation of the rules in true letter and spirit.

As for as the question whether or not the people in Pakistan are empowered is concerned, it is difficult to find answer in positive. Anywhere, the people of the state are the central actors in the development process. The desired results of any progress can be achieved only through the empowerment of people in the social, economic and political fields. Unluckily, the majority of the people in Pakistan are not satisfied with the performance of the three institutions. It is strange enough to find during the study that the political culture and political developments took place in Pakistan, serve only the interests of the few. The survey conducted to get information from the educated community about the liberty and empowerment of the people. The only reason of selecting the educated community to respond is that they have sound opinions about the political and constitutional development happened in Pakistan.

The findings of the study indicate that people in Pakistan are not empowered.
This is because the three institutions have failed to deliver the fundamental rights of the people. Most of the parliamentarians meet their masses only during the election days. The glaring features of parliamentary democracy are still missing in Pakistan. To ensure good governance, it is imperative to promote and strengthen accountability and transparency at the institutions of the government. People’s empowerment is ensured with the propagation of people’s inclusion across the board in the political process. The litigation process is so expensive and complicated that lay man hardly gets justice. The fundamental rights of the people are not protected. It is commonly observed in Pakistan that a lay man cannot face a SHO (Station House Officer). Both military and civilians rules cared least for the empowerment of the people and hence could not succeed to deliver the services at grass root level. It seems as if the entire government machinery is collapsed. The despotic rulers failed to consolidate democratic institutions. That’s why the majority of the people have no trust on the performance of the three institutions.

Finally, the central work of this study suggests that only the separation of powers is not enough to empower the people in Pakistan. Besides, the rule of the law and the democratic consolidation, there is need of efficiency and sincerity on the part of the political elites. Mostly, people are fed up of the term politics as the performance of both the political parties and political elites is not satisfactory. Because the public policies made at the governmental level are not in the interests of the general masses. The study indicates that people empowerment is just confined to the slogans of the politicians. In the real sense, people are not politically empowered. The policies are made just to perpetuate the autocratic rule.

People’s empowerment is linked with the control of abuses of the powers. The need is to demonstrate the principle separation of powers in its proper context. New rules and conventions are needed to ensure empowerment of people. Pragmatic thinking should be developed to adopt the process and structure on the base of separation of powers realizing that it can protect the masses from tyranny and dictatorship. The political elites along with political system should be vigilant to protect the liberty of the people. Again the separation of powers is base for the whole process. The consolidation of democracy requires times. The transition from authoritarian to civilian rule has started since 2008.
The majority of the people trust in democracy- manifested their participation in the general elections. People believe in democratic ideals not in their rulers. Therefore, democratic culture is needed to be developed. Quaid-e- Azam, the founding father of the nation categorically stressed that, ‘democracy would be the constitutional setup for Pakistan’. Any ways, this requires an additional study to judge the democracy in Pakistan. Here the basic objective was to contribute an analysis in the study of empowering the people through constitutional settings of separation of powers. This is up to the readers to judge whether or not the efforts of the author are in the right directions.
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Appendix - I

QUESTIONNAIRE

This questionnaire has been devised for PhD thesis from Department of political science BZU, Multan and has nothing to do with any other institution.

Name: ------------------------- Province: -------------------------

Gender: ------------------------- Education: -------------------------

You are requested to keep in view the political and democratic changes taken place in Pakistan since 2007.

Please tick only one option.

1. People have the power to elect their representatives through election.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

ii People of Pakistan take part in elections wholeheartedly.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

3. The system of election is fair and transparent.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

4. The entire live proceeding of the parliament can be watched by people.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

v Public representatives (parliamentarians) listen and solve the problems of people.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

6. Parliament is composed of people’s true representatives.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

7. People repose full trust in parliament.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know

8. People face no difficulty in meeting their representatives.
   A. Fully agreed    B. Agreed C. Disagree D. Fully disagree E. Do not know
9. Does Common man can contest election and win as a representative for the people?
   A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
10. In parliament, people’s representatives are truthful and honest.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
11. People’s participation is kept in view in decision making.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
12. People and government are in communion with each other.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
13. Institutions of the executive do not use unfair force on people.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
14. Common man feels respect in police station or court.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
15. Can people criticize the policies of government?
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
16. Does people consider ‘democracy’ to empower them.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
17. The masses repose full trust in judiciary owing to its performance.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
18. People do not have to face much trouble for acquiring justice.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
19. All the three main institutions of Pakistan (judiciary, executive and legislature) are working to empower common people.
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know
20. Are People well aware, free and empowered?
    A. Fully agreed  B. Agreed  C. Disagree  D. Fully disagree  E. Do not know