

Parliamentary Democracy and the Issue of Institutional Jurisdiction in South Asia (The Case of Pakistan)

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Abstract

Normative form of democracy marks the jurisdiction of its various institutions so that no institution could override the powers of others. But in most of the developing countries state institutions (the legislature, executive, judiciary and the military) outstretch their domain and Pakistan is no exception. This paper is an attempt to understand the concept of institutional jurisdiction with in parliamentary democracy.

In Pakistan, where democracy has tried to establish after years of military rule, the state institutions remained unable to adhere to their jurisdictions. Although, democratic spirit is revived but efforts to assert more dominance by each institution have undermined the parliamentary spirit and its supremacy. Resultantly, an institutional imbalance and chaos has been observed in the politics of Pakistan. For the purpose the study will observe the period of Pakistan People's Party (2008-2013). The study is qualitative in nature which is primarily descriptive and exploratory. The historical description will help to gain familiarity with the constant phenomenon of frequent institutional imbalance which is undermining the democratic growth in Pakistan. The qualitative design will also benefit to provide insights into the problems of the politics of Pakistan, constitutional jurisdiction of each institution; the sanctity of parliamentary system and the reasons of frequent interruption.

Keywords: Food Security, Urbanization, Climate Change, India, Pakistan, Regional Initiative

Introduction

South Asian region is unique in a sense that almost all the countries remained British colony and adopted the same political system after independence. Most of the states have parliamentary democracy and the system works based on the principal of separate jurisdiction of each institution conveyed by the constitution. The spirit of institutional jurisdiction is followed which ultimately strengthening the parliamentary democratic practices. Except Pakistan and the early years of Bangladesh no other country has experienced the unnecessary intervention of judiciary and armed forces in to political affairs.

The political history of Pakistan is filled with constitutional eventualities and extra-constitutional adventurism by the three state organs. Conflicts among the institutions in the exercise of power and sphere of influence are another important issue emerged with the passage of time. A thriving democracy has necessitated an effectual working of the state and societal institutions over a long period of time. It is essential that while being autonomous each institution should not try to override the powers of any other

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institution. Attempts by state institution to outstretch its domain have resulted in an institutional imbalance which does not reflect democracy.

In Pakistan, where democracy has tried to establish itself after years of military rule, the state institutions remain unable to adhere to their jurisdiction in an attempt to expand their sphere of influence. The civilian political institutions have mostly been under the military's strain which has dominated its politics for a long time. Moreover, the superior judiciary has been unable to give impartial rulings and to avoid political considerations.

Parliamentary Supremacy in Pakistan

Parliamentary sovereignty or supremacy explains the extent of unlimited and unconditional powers of the Parliament. It is evident in the parliament of United Kingdom which does not ensure by a written constitution but bounds the parliament to perform its function to legislate. Thus, the Parliament is the focal point of all institutions of the state. The federal government of Pakistan, a parliamentary democracy, also consists of the executive, legislature and the judiciary. The constitution of 1973 distributes powers and demarcates the boundaries of each organ which are further elaborated by the parliamentary acts and amendments. President serves as the titular head while the power of chief executive rests with the Prime Minister who administers the Federal government.

In the judicial hierarchy, the Supreme Court is the apex court followed by four high courts of each province. Along with this, there are district, anti-terrorism and Sharia courts. In the adoption of the British legacy, the parliamentary system of Pakistan enjoins supremacy to the lawmaking body. Constitutionally, the Prime Minister and the cabinet ministers must be the Member of Parliament to which they owe a collective responsibility. The government is dismissed in case of a vote of no confidence and calls for fresh election. The Executive branch is exclusively authorized to manage the state affairs. Notably, the demarcation of separate spheres of influence is fundamental to the principle of separation of powers and an attempt to safeguard the individual liberty.

It is the right of the executive branch to make policies regarding security matters. It is an intricate procedure which requires institutional arrangements. The executive branch is supposed to provide information to the parliament over it as it can deliberate over the security policies.

The Constitution of Pakistan 1973 is a product of intense compromise in order to maintain institutional balance. Pakistan and India got independence together and adopted the British model but apparently, they have opposing political routes. Indian democracy has kept civilian rules unharmed whereas Pakistan has experienced military intervention in politics which has overthrown the civilian governments and staged military coups. In India, army chief, Joyantho Nath Choudhri, planned a military coup but no military coups have been staged (Nalapat, 2010). Nevertheless,

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the judiciary in India limited the powers of the parliament regarding the constitutional amendments under Article 368 of the Indian constitution. The Indian Parliament and Judiciary have had disagreements within institutional framework.

Moreover, the federal constitution in Pakistan demarcates the sphere of influence of each state organ. Under Article 142 of the constitution of 1973, the parliament can “make laws on subjects enumerated in the federal legislative list and the concurrent legislative list.” (Zaidi, 2009) The legislative authorities of parliament or provincial legislatures cannot be violated. The necessity of judicial review rises due to certain restrictions placed on the legislative power of the Parliament. However, there are certain restrictions as well, according to Article 8 no law shall violate the basic rights of the citizens of Pakistan. Article 227 prohibits any law in contravention to the principles of Islam. In addition to this, the parliament cannot legislate over the fundamental nature of the constitution. Thus, the apex court can declare any act as illegal which outstretches its limits. Articles 238 and 239 confers parliament the right to amend the constitution by a two third majority in both the houses. The parliament can make unilateral amendments except for those proposals which aim to change provincial limits. This requires the consent of the concerned provincial assembly. According to Article 239 (5) the amendments made by the parliaments cannot be challenged. The courts are authorized to only interpret it. Just like there are restrictions over the power of the Parliament to legislate there are limitations over the right of judicial review as well.

The Issue of Institutional jurisdiction in Pakistan (A back grounder)

Since the inception of Pakistan, the principle of institutional jurisdiction has been of significant importance. All the institutions of the state have struggled to safeguard their authority in governance of the state. Democratic experience in Pakistan has been distorted by military coups or it has been deviated by a hyper active judiciary which led to an imbalance in the exercise of the powers. Parliamentary democracy in Pakistan has been under judicial or military intervention which has led to a fragile adherence to the constitutional outline. The Constitution of Pakistan 1973 clearly demarcates the boundaries and sphere of influence of each organ and institution of the state in order to keep the parliamentary spirit intact with separate roles defined for each branch. Nevertheless, the institutions have continued to meddle in affairs of each other in order to maximize its own sphere of influence which stands in contravention to the parliamentary spirit of a democracy. This has heightened increase in the institutional imbalance which has been the product of political deadlocks between the state institutions albeit there had been a structural framework. These clashes, friction and resilience to form consensus among the state institutions date back to the history of Pakistan.

The debate on exceeding the juridical powers by an institution of the state in Pakistan started that jeopardized the working of a parliamentary democracy can be traced back

to 24th October, 1954 from Moulvi Tamizudin Khan's case (PLD 1955 Sind High Court 96). It demonstrates the interference of the executive branch in the legislative affairs of the Parliament which was supported by the judiciary's decision to validate it.

From 1956-1958, there were three prime ministers, Hussain Shaheed Suharwardy, I.I.Chundrigar and Firoz Khan Noon, belonging to different political parties. It mirrored structural conflict between the president and the prime minister. The Constitution of 1962 empowered a single person. General Ayub Khan remained in power until 1969. In the case Miss Asma Jilani Vs the Government of the Punjab, the transfer of powers to Yahya Khan were declared unlawful and unconstitutional which opened avenues for democracy once again. The post Ayub Khan Phase of democratization is mainly the result of his power weariness in the wake of failed military operations against India in 1965.

Later on, in the elections of 1970 Zulfikar Ali Bhutto had majority seats in West Pakistan and Mujib ur Rehman had majority seats in the East Pakistan. As soon as the results were announced Mr Bhutto declared that majority rule was not the only consideration in national politics. While Mujib ur Rehman intended to give Pakistan, a new constitution based on his famous Six Point. Negotiations between General Yahya, Bhutto and Mujib ur Rehman yielded nothing. Mujib ur Rehman demanded a Confederation in Pakistan in which the central government would have only few sovereign powers and that gave rationale to Yahya Khan for the use of force. Mujib ur Rehman was arrested. The army had persuaded Yahya Khan to transfer his powers to a civilian but kept on assuming the post of the president and Chief Administrator of Martial Law in late December. General Yahya Khan presided over a ruinous military campaign in East Pakistan, Pakistan's loss to India in the war of 1971, and ultimately the secession of East Pakistan to form Bangladesh.

The Parliament of Pakistan approved the 1973 Constitution in 1974 (Sarwar, 2003). Parliamentary democracy was restored. It was adopted after much deliberations and compromises among all the political parties. It resulted in a parliamentary form of government based on the British model in which the elected Prime Minister being the nerve center of executive power. Moreover, the President is a figurehead. Pakistan continued to be a Federal state, with provincial autonomy. Equal representation was to remain in the upper house to ensure Provincial autonomy and demographic basis was secured for representation in the lower house. The Parliament shall amend the constitution with a two third majority of both the houses. Moreover, "to further avoid the military intervention and 'Article 6' was inserted in 1973 Constitution." (Maluka, 1995) Apart from the fact that 1973 constitution was secured by the founders that it cannot be abrogated by any of the extraconstitutional force, the constitution once again suspended by General Zia-ul-Haq in 1977.

Democracy was de-railed and Pakistan experienced another martial law. The spirit of separation of powers in a democracy was vanished. The Constitution was suspended

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and a Provisional Constitutional Order (PCO) was introduced. This military takeover was declared as valid by the Supreme Court under the Nusrat Bhutto case (1977). The “Doctrine of State Necessity” was invoked to do so. A Parliamentary democracy was substituted by a semi-presidential system by the passage of eighth amendment. It empowered President to suspend the elected government and announce fresh elections. (It was late in 1997 that the Thirteenth Amendment was passed bringing the President back to the position of a titular head) (Khan, 2003). General Zia also followed the path of his predecessor’s and conducted non-party based election to legitimize his rule. He also supported a coalition by the name of Islami Jamhoori Ittehad and tried to develop a new leadership countering the Pakistan Peoples Party. But the democratic set up was rolled back when he himself felt that the parliament wanted to uphold its supremacy. The General Zia regime created an imbalance political system and wishfully amended the 1973 constitution. The controlled democratic set up was finished with the death of General Zia in an air crash in 1988. After his death the next army general Mirza Aslam Baig announced general elections and allowed the democratic forces to participate in it.

In the elections of 1988, the Pakistan People’s Party won under the leadership of Ms Benazir Bhutto. The Leadership developed by General Zia and supported agencies continued to contain the power of PPP. The ISI, which had become more powerful during General Zia’s period, played a dominant role in promoting the opposition to the PPP. The Chief of ISI, General Hamid Gul, persuaded other parties to join him under IJI. Chief of Army staff, General Aslam Beg “brokered a five point compromise in which Ms Bhutto promised not to bother Zia’s family or to change the Afghan policy, the nuclear program or defense strategy” (Jafirrelot, 2010).The military meddled in the political affairs many times. Moreover, dissolution of assemblies and governments under article 58/2-B was also rendered support by the military.

From 1988 till 1999 different civil governments have been made but none of them completed their constitutional period. Every time the governments were sacked by the presidents using article 58/2-B and didn’t allow the parliament to exercise its power. Prime Minister Mian Muhammad Nawaz Sharif in 1991 introduced the 12th Amendment that would authorize the prime minister to take over the administration of a province. This development displeased the then President Ishaq Khan, consequently the President dismissed his government in 1993. He filed an appeal against this decision in the Supreme Court. The Supreme Court declared the dismissal of Prime Minister as unconstitutional. Nevertheless, the triumph of rule of law was short lived.

The October 1993 elections brought PPP back to power. In 1994, Benazir attempted to grab power to nominate eleven judges to the High Courts, including three women who did not have the required seniority criteria and who should have been appointed by the Chief Justice of the High court as per constitutional provision. The matter was taken before the Supreme Court who declared these appointments as illegal on 26 March

1996 (Naqvi, 2010). The system was derailed again accusing Ms Bhutto's government corrupt.

In 1997, Nawaz Sharif took over as the strongest Prime Minister for the second term. On 1st April 1997, the two houses passed the thirteenth amendment (Jaffrelot, 2010). It called into question four articles of the eight amendment, Article 58 (2) b, Article 101, Article 112 (2) b and Article 243 (9)(2). In order to secure his authority, Nawaz Sharif got his father's friend, Rafiq Tarar as elected president but The rule was brought to an end with the dissolution of constituent assembly. This time, there was again a military takeover by Genral Pervez Musharaff in 1999 (Jan, 2005).

Former General Musharraf carried out his coup on 12 October 1999 in response to Nawaz Sharif's attempt to replace him as Chief of army staff with Khawaja Ziauddin" (Kukreja & Singh, 2008). The military intervention in this case again challenged before the superior court in Constitutional case entitled, "Zafar Ali Shah and General Pervaz Musharraf Chief Executive of Pakistan" (Naqvi, 2010). In this case the Doctrine of State Necessity was invoked to declare the unconstitutional regime as legal. However, the restrictions were imposed that "General Elections would be held within three years and transferred the power to the elected representatives of the people (Maluka, 1995). General Pervaiz Musharraf conducted general elections in 2002, again supported an engineered party and polls, resultantly central government was in favour of all the amendments wished by General Musharraf.

The Seventeenth Amendment made to the Constitution of Pakistan was passed in 2003. This led to a lot of changes in the President's office. The Legal Framework Order (LFO) 2002, issued by the president was included into the constitution. Article 63(1) (d) prevents a person from obtaining political post and office of profit simultaneously assuring separation of powers. This was to be operational after December 31, 2004 so that President Musharraf could assume powers under both the offices (Khan, 2003). The declaration of military rule as justifiable invoked the belief that the Supreme Court was submissive to the army. The assertive and superior role of army was questioned when there was ahead on between the army and judiciary. It was first time in the history of Pakistan when judiciary refused to perform as subservient to the armed forces and refused to impose emergency. In response the lawyer's movement weakened the authority of General Pervaiz Musharraf. In the subsequent years (2008) general elections were conducted and PPP became legitimate to make its government. After a long martial law and controlled democracy this was the first government wanted to establish parliamentary supremacy and institutional jurisdiction. In 2010 the Parliament passed 18th Amendment to the Constitution of Pakistan. The amendment restored the 1973 constitution and made prime minister as the premier civilian official. The president returned back to the position of a titular head.

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The struggle for parliamentary supremacy and conflict with army and judiciary

Despite the fact that after transition of power in 2008 all the democratic forces wanted to make parliament supreme according to the constitution but the period from 2008-13 is marked by the highest level of confrontation between the civil military and civil-judiciary relationship. Along with the interference of the military and security establishments there was a continuous interruption in the smooth functioning of the state by a super active judiciary which increasingly meddled in the affairs of the state which do not fall within its jurisdiction. Since 2008 the PPP-led Federal Government, the military and security establishment and the judiciary have had a troubled connection accentuated by moments of profound crisis which caused an institutional imbalance in a Parliamentary democracy. This period is marked for the highest level of confrontation between the civil military and civil-judiciary relationship. The judiciary played a hyperactive role by taking suo motu notices over a lot of matters such as human rights abuses, civil appointments, corruption charges and even economic matters. This had created tensions between the Court and other branches of the State blurring the lines of independent roles ascribed to state institutions. Thus, the judiciary had intervened in the jurisdiction of the Parliament administrative agencies and institutions. Moreover, even the government appointments to the regulatory bodies were questioned by the court

Civil Military Confrontation

The general masses did not hold the Army in high esteem after the end of Mushraff regime. The new army chief, General Ashfaq Kayani, made a statement that the army would not interfere in the political matters. The political scenario was ripe for a civilian government to rule. President Asif Ali Zardari successfully took over the rule. He was given amnesty under the National Reconciliation Order 2007, signed as a deal between former General Pervez Musharraf and Benazir Bhutto. Quite lamentably, the civilian government was unable to work independently due to undue interferences from the military. Frequent confrontations between the army and civilian government undermined the civilian supremacy which clearly illustrates the presence of institutional imbalance in the Parliamentary democracy of Pakistan.

Table 1

Parliamentary supremacy and conflict with army and judiciary

Sr. No.	Decisions by Civilian regime to Acquire Parliamentary supremacy	Conflict with judiciary & Army	Impact on Parliamentary supremacy
1	Notification to control Inter-Services Intelligence agency (ISI) and the Intelligence Bureau (IB) in the year 2008	renunciation of the decision was within 24 hours	Negative
2	the replacement of National	National Security Council continues to	Negative

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	Security Council with that of Defense Committee of the Cabinet (DCC) in 2009	remain as statue on the Constitution of Pakistan.	
3	Memo gate Scandal	highlighting an obvious mistrust between the military and the civilian government, dominance of the military in the politics of Pakistan was illustrated	Negative
4	Kerry Lugar Bill, aimed to diminish the influence of the military	Parliament and government did not accept the bill.	Negative
5	Case to Place Security Establishments under Interior Divisions' Control	Decision generated tension between the government and the security establishment.	Negative
6	Abandonment of National Security Council	Government's decision was not fully maintained as the National Security Council continues to remain as statue on the Constitution of Pakistan.	Negative
7	Memo gate Scandal	A petition was filed in the Supreme Court by the opposition party for the investigation of the matter and it resulted in the removal of the Defense Secretary Naeem Khalid Lodhi.	Positive
8	Kerry Lugar Bill	It required military dominance shall be controlled. Bill was appreciated by the civil society in general and by the opposition politicians	Parliament and government did not accept the bill.
9	Abbottabad Incident	A commission stated it as a joint failure of the state organs. It was the incompetence of armed forces and intelligence agencies.	Weak Collaboration between army and government exposed
10	Extension in the Service of COAS	Terrorism, extremism and radicalization in Pakistan bridged the differences between Judiciary and army.	The trust between civil-military institutions was strengthened during these three years

Source: compiled by the researcher

Civil-Judiciary Relations

The Supreme Court has exceeded its original jurisdiction in a way which could not be identified and expected of its jurisprudence which has weakened the principle of Institutional Jurisdiction in a parliamentary democracy like Pakistan. In Pakistan the judiciary has remained subservient to the military. Martial law has been imposed four times in the country in the year 1958, 1969, 1977 and 1999. These impositions were provided constitutional covers by the Supreme Court. Following are the highlights of civil judiciary conflict from 2008 to 2013.

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Decisions by Civilian regime to Acquire Parliamentary supremacy	Conflict with judiciary & Army	Impact on Parliamentary supremacy
National Reconciliation Ordinance 2007	Supreme Court declared it as illegal in 2009	Positive/negative
Provisional Constitutional Ordinance, 2007	was declared unconstitutional in the Sindh High Court Bar Association in 2009	Positive/negative
The Actions (in Aid of Civil power) Regulations (AACPR) 2011	Supreme Court did not review it under Article 184(3) to nullify the sections	Negative
appointment of the Chairman of OGRA	Court held that allocate an individual who is not up to the mark or merit.	Negative
Contempt of Court Notice to Former Law Minister	the court had denied the Contempt of Court Ordinance, 2003	Negative
	Notices to PEMRA	Negative
Memo gate Case	The prime minster was found guilty of contempt in 2012.	Negative
Ephedrine Case 2012	The court banned transfers in Anti-Narcotics Force.	Positive
Contempt of Court Act, 2012	the Supreme Court quickly struck it down.	
Asghar Khan Case	The court's ruling of investigating the role of retired generals	Negative
Balochistan Law and Order Situation Case 2012	the Supreme Court declared that '...as far as Provincial Government of Balochistan is concerned it had lost its constitutional authority to govern the Province	Negative
18 th constitutional amendment	the government was asked to review this amendment.	Negative
Dissolution of National Reconciliation Ordinance 2007	The Supreme Court declared it as illegal in 2009. This decision created confusion regarding the real controlling power of government in the state	Negative
PCO Judges Case (2009)	Proclamation of emergency and the "Provisional Constitutional Ordinance, 2007 by General Musharraf was declared unconstitutional in the Sindh High Court Bar Association in 2009-/- Extended role of Supreme Judicial Council	Negative
Muhammad Yasin V. Federation of Pakistan (2012)	The court agreed that masses are burdened by indirect taxes which are later used by the regulatory authorities like OGRA.-	Negative

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	arbitrariness in the courts code of conduct.	
Contempt of Court Notice to Former Law Minister	The license of concerned person to practice was cancelled. The Senator referred to the Contempt of Court Ordinance, 2003, which permits an apology but the court had denied any such right.	Negative
Memo gate Case	Prime Minister Yousaf Raza Gillani was issued contempt of court charges as he refused to write a letter to the Swiss authorities for the reconsideration of money laundering case against President Zardari. The prime minister had argued of Presidential immunity but was given a jail sentence.	Negative
Contempt of Court Case 2012	The declaration of the NRO as unconstitutional in 2009 by the Supreme Court had opened the pending case against the president.	Negative
Balochistan Law and Order Situation Case 2012	The Federal government had insisted that it does not fall within the jurisdiction of the court to evaluate government's performance. Furthermore, it was argued that this amounted to exercise obsolete powers of Article 58 (2b) the use of which has been discarded by the parliament under 18 th amendment. According to the code of conduct the judges cannot interfere in the political matters.	Negative

Source: compiled by the researcher

Exerting Pressure on National Accountability Bureau (NAB)

An autonomous institution for investigation is absent in the governance of Pakistan. The investigations initiated by the National Accountability Bureau (NAB) have carefully controlled by the Supreme Court. Chairperson of NAB, Admiral Fasih Bokhari, complained to the President in a letter that the Court was intruding and meddling in the functions and affairs of NAB in 2013. (Raja, 2013) He complained that how the judicial probe had hampered the process of independent investigations.

Reaction of the Court to the Constitutional Amendments

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Another testimony to the prevalence of institutional imbalance in the politics of Pakistan lies in the reaction of the judiciary to the 18th constitutional amendment which was passed on 19th April 2010. This led to a petition under Article 184(3) and it was declared that the Parliamentary committee did not possess the competence to determine the eligibility of the nominees or to participate in the Judicial Commissions discussions. The pre 18th Amendment model was kept intact due to the formation of the Judicial Commission of Pakistan Rules 2010, which empowered the Chief Justice alone to introduce the process of nominations. Under the 18th amendment, 98 articles were amended. (Sattar, 18th Constitutional Amendment and Devolution of Labor Ministry, 2011)

The court had intervened in the parliament's jurisdiction of amendment. The parliament is constitutionally empowered to pass an amendment with the support of two third majorities but this was challenged by the judiciary. It suggested some changes in the amendment which was accepted by the Parliament in order to avoid any argument with the Supreme Court. The judiciary over-rides the powers of the Parliament.

Arrest of Prime Minister 2013

Raja Pervez Ashraf was also given arrest orders by the court on the basis of corruption. He was accused of corruption in Rental Power Plant case. The Supreme Court provided an economic analysis of its own by evaluating that the RPP generate a higher cost of production and suggested that rectification of the existing electricity generation and distribution systems provided a cheaper cost. The enunciation of a different economic policy is an obvious disregard of the universally accepted norms of judicial administration.

NILC Scam

This scandal revolves around the purchase of land in Karachi. Contempt of court notices were issued to bureaucrats including Qamar Zaman, Chairman National Accountability Bureau (NAB) for interfering in the investigations of NILC scam. Minister of Commerce was accused of appointing ineffectual chief, Ayazz Khan Niazi for the National Insurance Company Limited, (NICL). This was considered to be an assault of the parliament as the chairman was appointed through mutual consultation of the opposition and the majority party.

Accountability of Qualification

The president along with cabinet ministers and provincial law makers had to face the humiliating question that if he was qualified enough or not as the election commission was directed by the court to probe into the qualification certificated of the elected representatives. The degree prerequisite was set by General Musharraf but was struck down by this civilian government in 2008. (Waraich, 2010)

Sugar Price Issue

The court also took action against the rising sugar prices in 2009. It fixed the sugar price at RS 40 per kg after evaluating the marketing process. (Shaheen, 2009) It directed the government to implement its orders and make sure that the sugar was sold at this price. This certainly is not within the jurisdiction of the courts to set the prices of the commodities. The Federal and provincial governments challenged the Lahore court decisions of fixing the price at 40 per kg but the Supreme Court upheld this decision and issued notices to the government to make uniform prices in all the provinces.

Conclusion

The issue of parliamentary democracy and jurisdiction of the state institution has always been a pivotal subject of the studies regarding political system. There are certain standards prescribed by the classical narratives of political system which provide the basis of critical analysis of the political system of developed and developing political system alike. In case of Pakistan, the tussle between judiciary and civilian government has been a serious point of discussion throughout the political phases of the country.

This tussle between the Judiciary and Civilian government gained height in 2012. Prime Minister Gillani was convicted for contempt of court and was later disqualified from the post. His removal led many to criticize the government as being weak and ineffective and labeled this disqualification as a soft coup. It was believed that it was to provide foundational basis for military rule by jeopardizing the civilian authority. The governments' opinion differed from that of the military over many issues such as its quest to improve relations with the West. Supreme Court declared the National Reconciliation Ordinance as null and void which resultantly annulled the amnesty granted to the politicians including then President Asif Ali Zardari. This began the journey of apparent and obvious imbalance in the relations between the civilian government and the Judiciary. Throughout the civilian rule 2008-2013, governments' intentions and decisions had been held inconclusive and questionable by the military. The response of the civilian government in the consequences of the 'Raymond Davis affair' and the Abbottabad Raid reveal that it could seldom act free of any undue interference or political pressure. Military exerted much influence over the decision making power. Moreover, in the aftermath of the incident the Defence committee of the cabinet could not hold the military accountable.

The military and the government had contrasting views which is obvious in the tensions resulting from their differing views over the Enhanced Partnership with Pakistan Act 2009 proposed by US Senators John Kerry and Richard Lugar. As the country was also in aid of finances the President showed interest in the Bill but the dislike towards it by the military molded the popular belief that this was an attempt to

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serve the interest of United States. Only the government's support for the Kerry Lugar bill provoked much fear of a forth coming coup.

After the service extension of General Ahmad Shuja Pasha as DG-ISI Pakistan was separated from pro US policies and the Civilian government and military were left as contending actors. The actual power remained in the hands of the head of the Pakistani army Ashfaq Kayani, the most influential man in the security forces. The court kept a close watch on the PPP government which kept the government unstable. There had been mistrust between the government and the army.

Quite lamentably, the then Chief justice in a parliamentary democracy stated that that the courts will intervene and interfere in any state organ showing little or no regard for the separate and distinctive role each institution has to serve. After the restoration of Chief Justice in 2009 the National Reconciliation Ordinance was annulled. This led to major confrontations between the Judiciary and the Government. The court also took the Memo gate case with full interest and later played a political role in the investigations. In doing so the court violated the universally acceptable principle of Political Question doctrine which states that the courts shall not interfere in Political matters or foreign policies. The court made use of its original jurisdiction unwieldy and took suo-motu notices against issues which do not fall within its jurisdiction.

Way Forward

In case of Pakistan, a smooth coordination and unity of purpose is important for the executive, judiciary and legislature in a Parliamentary democracy... The democratic process must work in its true spirit if it is to flourish and develop in its mature form. This necessitates the existence of institutional balance in the governmental working where each organ of the state holds mutual respect for each other while does not interfere in its working or sphere of influence which shall even ensure the sustainability of the civilian institutions. The civil society should also indulge in the day to day business of the government and give its feedback which will improve the standard of political participation and political socialization which shall trigger the political adjudication as well.

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