Historic Disclosures About Blurry Motives of Politicization in Pakistan’s Judiciary

Muhammad Riaz  
Ph.D. Scholar  
Department of History & Civilization Studies  
Bahauddin Zakariya University Multan, Punjab, Pakistan  
mriaz7541@gmail.com (Corresponding Author)

Turab ul Hassan Sargana  
Associate Professor  
Department of History & Civilization Studies  
Bahauddin Zakariya University Multan, Punjab, Pakistan  
turabsargana@gmail.com

Abstract:

The constitutional role of state institutions is very important for the stability of an independent state. Every independent state has three main pillar Executive, Legislature and Judiciary. While the judiciary being an important pillar in any state, plays a crucial role in maintaining of law and order, and peace along with political stability. In case of Pakistan judiciary as seen under politicization. Thus in Pakistan, there state institutions have been facing inner political interference in every era. Therefor the Constituent Assembly and Judiciary had completely failed to play its own constitutional role. The Constituent Assembly real task is legislation and Executive’s work to implement it. But the work of Judiciary is more important than these two institutions, it reviews and also interprets the laws made by the Constituent Assembly. So that, the supremacy of justice has been established in the country. But the judiciary involved along with the Executive remained the seat of politics for their own benefits. The basic purpose of this research article is to identify historic disclosures about blurry motives of politicization in Pakistan’s judiciary.
The judiciary must be strengthened and released from political interference.

----Aung San Suu Kyi----

**Key Words:** Disclosures, Politicization, Motives, Judiciary, Pakistan

**Introduction:**

In 1206, Delhi Sultanate came into existence as an independence state in this region. (Arif, 2017) At that time, the head of this state was a king. Along with the executive, the king was established the judiciary in the state for providing the justice of peoples. Diwan-e-Qaza was the head of the judicial institution in the state. He managed the system of justice in the empire. According to author of this paper the judiciary was an independent institution in the region of Sultans and they did not any interference in the judicial system. But Sultans had been more powerful and sole authority in the Sultanate. (Sharma, 1988)

In 1526, the Mughal Empire was established in this region. During the Mughal period, there also some new institutions had established like as Delhi Sultanate. Originally, during of Delhi Sultanate had been laid the foundation of judiciary as a better formation. The Chief Qazi was a head of the judicial institution. The various courts established under his supervision in the state. In these courts some Qazis had appointed on District and Village level for to deliver the justice under the supervision of Chief Qazi. At that time, the Chief Qazi along with other Qazis were provided the justice to the peoples according to the Quran, Islamic law, Sunnah and traditions. The king had last authority for hearing the appeals against the District and the Chief Qazi. The king was fully empowered in the state. (Qureshi, 1966)

In 17th century, the British occupied of this region, and laid the foundation of a new state. They made some changes in the mentioned institutions of the Mughals period and also founded some new institutions. At that time in this region, Muslims as well as Hindus, Sikhs, Parsi and Christians were also settled. Therefore, this British Government formed a judicial system on the British pattern. They had formed of the High Courts at the provincial level and also
formed the District Courts in every District for to deliver the justice. The Commissioners and Deputy Commissioner’s Courts had also established for the collecting of revenue in the state. In the beginning, for hearing of appeals against the High Courts, the Privy Council was held in the Britain. At that time, the any Appellate forum of the Privy Council did not exist in India. Under the Indian Act 1935, the British government was established a Federal Court of India in Delhi. Thus, by the British Government was provided an appellate forum for the people of India. This Federal Court became functional on 1st October 1937 in the Prince’s Chamber. (Khan, 2016)

Like this, the British Government had made the judicial system transparent, independent and stronger in this region. This British Government had made a transparent system for the recruitment, promotion, suspension and termination of all judges. At that time, the judiciary had the status of as an independent institution. According to the British Government, the judicial system in some native states of India was intensely untechnical and simple. Usually the Central Government intervened in the abuse of power in this courts. (Arnott, 1907)

In 1947, at the creation time of Pakistan’s state the High Courts and District Courts already existed in the country. The Federal Court had moved to India. At that time, did not exist the seat of the Federal Court in Pakistan. The Federal Court was also establish for completing the judicial system in the country. Therefore, the Governor General of Pakistan was issued an order under Independence Act 1947 for establishing the Federal Court of Pakistan, On 23rd February 1948. Thus, the originally established of the Federal Court in May 1949. The Justice Sir Mian Abdul Rashid Khan was a senior most judge of the Lahore High Court. At that time, he was working as a Chief Justice of the Lahore High Court. He became a 1st Chief justice of Pakistan’s Federal Court. (Khan, 2016) After the formation of the Federal Court the judiciary had been completed as an institution in the country. In this way, the Judiciary had been embarked its work as an independent institution in the style of Executive, and Parliament in Pakistan.
Blurry motives of politicization in Pakistan’s judiciary:

As it has been mentioned before according to the order of the Governor General on 23rd February 1948, the Federal Court was already established. In May 1949, the Federal Court of Pakistan had been formally embarked its work at the building of the Lahore High Court. In addition to the Chief Justice Mian Sir Abdul Rashid Khan, two puisne judges, Justice Abdur Rahman and A .S. M. Akram, had been deputed in the Federal Court. The Pakistan’s Federal Court had been formally started its work with Three Judges. At that time, the Lahore High Court, the East Bengal High Court, the Sindh Chief Court, and the Judicial Commissioners in NWFP and Baluchistan were already working in the country. (Khan, 2016) All the judges of the High Courts and the Federal Court of Pakistan had been good reputation. In early years, by the judiciary had been embarked its work with an organized and efficient position.

Unfortunately, in 1951, a politicization had been started in the judiciary when a post became vacant in the Federal Court of Pakistan. Justice Abdur Rahman was retired after completing his tenure. The vacant post, as per superiority was supposed to be filled by the Justice Muhammad Munir. At that time, he was working as a Chief Justice of the Lahore high court. He had first position on seniority bases among the judges of all High Courts in the country. According to the Chief Justice Muhammad Munir the post of Chief Justice of the Lahore High Court was a more powerful and authoritative than as a judge of the Federal Court. In this way, he preferred to continue of his work as a Chief Justice of the Lahore High Court. He himself had retained as such position and apologized for the working as a judge of the Federal Court. Consequently, by the Chief Justice Sir Mian Abdul Rashid Khan of the Federal Court was deputed a junior judge Justice A. R. Cornelius of the Lahore High Court in the Federal Court as a judge, (Ahmad, 2016). Thus, at that time a bad paradigm had set in Pakistan’s judiciary for future.

In this way, Justice Muhammad Munir had played a political role to retaining of himself as such position. At that time, the Lahore High Court was a largest High Court in the country. The major reason it was, after the creation of Pakistan the Lahore High Court was working its same position. At that time, as it is the Punjab was a
largest province on the terms of population in the country. Therefore, the Lahore high Court was considered as a largest High Court. Perhaps, therefor it was considered, to be of a great value the position of the Chief Justice in the Lahore High Court. Its first reason it was, yet was passed a short time to be establish of the Federal Court. The second reason it was, at that time consisting a great number of Punjabis, who were serving of the federal level in whole country and especially had an obvious majority in the Executive.

Perhaps, the Justice Muhammad Munir had decided after evaluating the whole situations of the country. Similarly, on the other side, by the other Chief Justice of the High Courts had decided to retain as their same positions to looking the decision of the Chief Justice Muhammad Munir. In this way, they had succeeded of their mission and allowed their junior judges to be appoint in the Federal Court. This practice had been also undermined the position of the Federal Court and later the Supreme Court. After which a Judge M. Shahabuddin of the East Bengal High Court and Judge Muhammad Sharif of the Lahore High Court were deputed in the Federal Court. In fact, it was at the same time, when started the politicization in Pakistan’s judiciary.

In 1954, the Chief Justice Mian Sir Abdul Rashid Khan had retired after completing his tenure. At that time, the four judges A. S. M. Akram, M. Shahabuddin, A.R. Cornelius and Muhammad Sharif were serving in the Federal Court. According to the seniority Justice A. S. M. Akram was a senior most judge to other three judges. He had worked as a Chief justice in the East Bengal High Court. He also had served many time as an acting Chief Justice of the Federal Court, on the absence of the Chief Justice Mian Sir Abdul Rashid Khan. Apparently, it was precise and legalized for a senior most judge. That time, A. S. M. Akram was to be deputed as a Chief Justice in the Federal Court. Unfortunately, it did not happened, (Ahmad, 2016).

In October 1951, after the death of 1st Prime Minister Liaqaut Ali Khan, Khawaja Nazimuddin had preferred to leave the position of the Governor General and he went back to rejoin the Constituent Assembly. Because, he wanted to replace his post of the Govenor
General into the Prime Minister. Thus, he succeeded to himself nomination as the Prime Minister. A former Punjabi bureaucrat Ghulam Muhammad, who had served as a Finance Minister. He was ready to grab a big political position in the country. He had developed cordial relations with the members of the Constituent Assembly and the military establishment. He had succeeded in getting a nomination as a Governor General of Pakistan. In this way, he had also succeeded in getting the approval as a Governor General of the British Government. Thence he had captured the post of the Governor General, (Jalal, 1995).

Ghulam Muhammad alias Gama as a nickname belonged to the Kakazai tribe. Although the peoples of this tribe were less in number, but the peoples of this tribe had obtained many important positions in the country. Especially the had been in the Executive and the Judiciary, and they included Governors of Provinces, Justices and the Chief Justices of the High Courts. Justice Muhammad Munir also belonged to a Kakazai tribe (Kumar, 2007), and he was known to be close of the Governor General Ghulam Muhammad. It is believed that had hatched a political strategy to directly appoint as a Chief Justice in the Federal Court while he was serving as a Chief Justice of the Lahore High Court. However, yet major barricades were exist, at that time four conscientious judges were present in the Federal court.

It is believed, allegedly that the Justice A. S. M. Akram was a mastermind of this secret plan. A special note had submitted to him through the Ministry of Law referring to the case of some Commonwealth countries. According to this note, by a Dominion was could be appeal to the British Government for deputing a Law Lord as a Chief Justice of that Dominion. Thus, it was requested by the Governor General to the British Government done an order for the appointment of a Law Lord as a Chief Justice of the Pakistan’s Federal Court considering of his appeal. The judge A. S. M. Akram heard of this whole matter, which he was strictly expressed his displeasure because he was a true, loyal, patriot and noble person. He did not want the over lordship of a British Judge again, (Khan, 2016).
The Justice A. S. M. Akram had been already served as a judge in the Calcutta High Court under the British Chief Justice before the Independence. He himself approached to the Governor General Ghulam Muhammad and requested him did not to import a British judge as a Chief Justice of the Federal Court. Because, after a long struggle they had achieved Independence of the British Empire. He himself decided to refuse of the position as a Chief justice of Pakistan’s Federal Court. He said, I have no objection for the nomination of any Pakistani judge as a Chief Justice of the Federal Court. Allegedly, a trick had been laid down for him and he himself got caught in it because of his simplicity, sincerity and patriotism.

As soon as by the Justice A. S. M. Akram refused to the posting as a Chief Justice of Pakistan’s Federal Court. Along with, there was no hindrance to the nomination of the Muhammad Munir as a Chief Justice in the Federal Court to the Governor General Ghulam Muhammad. It was completely political and deceptive aim for keeping a deserving Bengali judge out to the office of Pakistan’s Chief Justice.

At that time, the Prime Minister Muhammad Ali Bogra was also a Bengali but he did not have any political position of his own. Particularly, he was appointed as a Prime Minister of Pakistan only to work for a first leg of the West Pakistani Establishment. Perhaps, that is why he could not claim for the rights of his fellow Bengali. Eventually, by the Governor General Ghulam Muhammad was appointed of the Muhammad Munir as a Chief Justice of the Federal Court. This nomination of the judge Muhammad Munir as a Chief justice of the Federal Court, which consider was a turning point in the judiciary. Originally, it is considered a starting point of politicization in Pakistan’s judiciary. The whole situation was created by the personal interests, and malpractice behaviors of the Governor General Ghulam Muhammad and Justice Muhammad Munir in Pakistan’s judiciary.

At the same time, the Pakistan’s Constituent Assembly which was busy preparing a Constitution for the country. As soon, the Governor General Ghulam Muhammad came to know that the authorities of the Governor General are being reduced and the Prime Minister is being empowered. (Ahmad, 2017) He had become distraught and he
decided to dismiss of the Constituent Assembly. In this process the Governor General was got a fully support by the Military Establishment, (Jalal, 1990). On 24th October 1954, by the Governor General had dismissed of the Constituent Assembly and declared an emergency in the country after the consultation with the Chief Justice of the Federal Court Muhammad Munir, (Hussain, 2020). With this initiative of the Governor General was created a Constitutional, Political and Democratic crisis in the whole country.

At that time, Maulvi Tamizuddin Khan was a Speaker of the Constituent Assembly, he did not accept to the dissolution of the Constituent Assembly, (Hassan, 2009). He filed an appeal in the Sindh Chief Court under a Section 223-A. On 9th February 1955, accepted the plea of the Maulvi Tamizuddin Khan, by the full bench the Sindh Chief Court and passed an order to restore the Constituent Assembly, (Hussain, 2010). The Sindh Chief Court also wrote a note with fully consensus that the Constituent Assembly is an independent institution and could not be dissolved. So for, it could not achieved its specific goals, the purpose for which this Constituent Assembly came into being, (Nizami, 2006).

The Federation filed an appeal opposed to the judgement of the Sindh Chief Court in the Federal Court. At that time, five judges were serving in the Federal court and Justice Muhammad Munir was chairing to the post of the Chief Justice. The Governor General Ghulam Muhammad himself was appointed of the Justice Muhammad Munir as a Chief Justice in the Federal Court. According to Hamida Khuro the Governor General himself called of the Chief Justice Muhammad Munir and warned him, he will not restore of the Constituent Assembly. The Chief Justice Muhammad Munir had promised of the cooperation with him. Thus, those days the Governor General and the Chief Justice of the Federal Court had been established directly and indirectly communication with each other, (Khuhro, 1998).

Thus, the Chief Justice Muhammad Munir himself had arranged to the bench with the consensus of the Governor General for hearing of this case. The Chief Justice Muhammad Munir was being afraid to the Justice M. Shahabuddin and A. R. Cornelius. According to the Chief justice, they shall not be support in this case and perhaps
the Justice A. S. M. Akram will also a fully support of them. The Chief Justice Muhammad Munir had been recommended to the Governor General for the separation of the Justice M. Shahabuddin to the Federal Court. The Governor General had done as it is. After this, the Governor General had took into confidence and appointed him as a Governor of the East Bengal Province making the reasons of political instabilities, (Amanullah Shah, 2011). Justice M. Shahabuddin was not willing to this appointment, but he was reluctantly accepted the order of the Governor General. According to own desire the Chief Justice Muhammad Munir himself included of the S. A. Rahman as an Ad hoc judge in this bench. At that time, he was serving as a Chief Justice in the Lahore High Court. Thus, the Chief Justice had been succeeded in his political maneuver and he was started hearing of this case after the formation a custom bench, (Shahbuddin, 1965). After ended the strife of the court, the Justice Shahbuddin returned in the Federal Court in October 1955, (Khan, 2016).

According to the Governor General Ghulam Muhammad’s Secretary Qudratullah Shahab, both the Governor General and the Chief Justice of the Federal Justice Muhammad Munir had been established directly and indirectly communication along with each other. One day he said, during the hearing days of Maulvi Tamizuddin Khan’s case in the Federal Court, one of his assistant who often disappeared of the office repeatedly without any notice. When called for his reply, he excused in writing and said verbally. He used to go to the Chief Justice Muhammad Munir with secret messages by the Governor General Ghulam Muhammad, (Shahab, 1992). In this way, these strong evidence were existed, that the Governor General Ghulam Muhammad was exercising the heavy influence during the hearing of this case in the Federal Court.

On 21st March 1955, after the several hearings of the Federal Court had ruled by a majority of one fourth to the favor of the Governor General and also set aside of the order to restoring the Constituent Assembly by the Sindh Chief Court, (Newberg, 1995). The Justice A. R. Cornelius had also wrote a dissenting note in this judgement. According to the Justice A. R. Cornelius in fact, this case did not hear on the legal grounds. Rather than had decided of this case on
the technically grounds. In this judgement this act of the Governor General to dismiss the Constituent Assembly had declared Constitutional. It was a first regrettable decision in Pakistan’s judicial history. The Federal Court had ruled against the survival of the Constitutional, Political and Democratic institutions. The decision of the Federal Court bench that put the running of Pakistan in the hands of the Governor General. By the Federal Court had been sealed on this decision, (Nizami, 2006).

This decision of the Federal Court had been laid its strong and formal foundation the role of politicization among state institutions of Pakistan especially in the judiciary. In 1951, the politicization in the judiciary was started, and this act constantly continued. It could not be finish, rather than by both the Chief Justice of the Federal Court Justice Muhammad Munir and the Governor General Ghulam Muhammad had been done more strengthen and deep. This judgement could not be forgotten till today in the judicial history of Pakistan.

On 7th October 1958, the Governor General Iskandar Mirza had been suspended the Constitution of 1956, and imposed the Martial Law on the pretext of deteriorating conditions of the country, (Talbot, 1998). He had delegated Prime Minister’s powers of the Commander-in-Chief General Muhammad Ayub Khan. At the same time, by the Governor General had nominated of the General Ayub Khan as a Martial Law Administrator in the country, (Hussain, 2010). The Governor General himself was retaining as such position of the President with the consultation of the Chief Justice Supreme Court justice Muhammad Munir. Even though he himself had abolished the Constitution under which he had become a President. At the same time, this matter was reached in the Supreme Court. At that time, Muhammad Munir was serving his duty as a Chief Justice of the Supreme Court. This case is remembered as a Dosso’s case in judicial history of Pakistan. This case was hastily heard in the Supreme Court. The hearing of this case was going on.

On 24th October 1958, the Commander-in-Chief General Ayub Khan as a Prime Minister had announced of his Cabinet. Its cabinet had been consisted of twelve members. In addition to the General Ayub Khan, there were three Military Generals and eight non-
military members, (Ahmad, 2017). At that time, the Supreme Court was a golden chance to correct its previous decisions. But unfortunately, could not possible. On 27th October 1958, the Supreme Court was passed a judgement upheld the tradition of the Maulvi Tamizuddin Khan’s case. By the Supreme Court was presented a reference the theory of Hans Kelsen’s Doctrine of necessity. (Chowdhury, 2019) In this judgement the Hans Kelsen’s theory Doctrine of necessity had been interpreted according to his own desire by the Supreme Court especially the Chief Justice Muhammad Munir. According to Hassan Askari Rizvi, the judiciary declared martial law legal and put its stamp on it, (Rizvi, 2009). At that time, also provided a fully support to the Executive by the judiciary in this judgement.

Originally, it was issued of this judgement relying on the theory Doctrine of necessity. In the country, this military coup was called a peaceful military revolution by the Supreme Court for a first time. In fact, in this judgement the Justice A. R. Cornelius was done fully try to save the basic rights of the humans. Rather than he was totally disagreed to protect the basic human rights despite being a Military Government, (Khan, 2001). The streak of politicization in the judiciary since 1951 should have been stopped now, and the judges were supposed to “repent of their past mistakes”. But unfortunately, it did not possible. Actually, it was made more strengthened on the bases of an important theory’s “Doctrine of necessity” by the judiciary. The judiciary had provided a strong and protective way for the military coup in the country for future as well.

During his tenure as a Chief Justice Muhammad Munir was constantly involved in political activities in the country. As stated before, he had already established the relation with the President directly and indirectly. He targeted of the currently Federal Government and the Parliament. In this way, he was much busy of all time for protecting of all Unconstitutional actions by the President in the country. Originally, as a Chief Justice he should have been fully concentrated his attention on judicial work, but he was much busy in other works. Rather than, along with he was regularly participated in political meetings. According to M. Asghar Khan, the Chief Justice was participated in a political meeting called
by the President Iskandar Mirza on 7th October 1958. In fact, it was as such meeting in which evaluated of all steps to abrogating the first Constitution of Pakistan. In this way, in this meeting all arrangements were completed in advance, (Khan, 2005).

He joined this meeting while maintaining his position and also provided legal support to the President and Army Chief. His action was illegal as well as Unconstitutional. In other words, if this called, it will not be wrong for him, he also involved in an Unconstitutional activities in the country during his service. In fact, the Chief Justice Muhammad Munir greatly used of the judicial system only for his personal benefits. He created the bad traditions of politicization in the judiciary. These bad traditions that he was put in continued to constantly develop in the future. The people who held this position in the future also mostly adopted as same traditions. Due to which the judiciary system in the country got worse instead of getting better.

In 1960, three seats in the Supreme Court became vacant. Legally, the currently Chief justices of the Eastern and Western Pakistan High Courts were to be deputed. But by the currently Federal Government had allowed to retaining as such positions as a Chief Justices of the Western and Eastern Pakistan High Courts. In the contrary, their junior judges were appointed in the Supreme Court. At that time also, it was set a bad tradition for the future in the judiciary. The Justice Shabbir was the most senior, who was to be deputed as a Chief Justice in the West Pakistan High Court after retirement of the Chief Justice Kayani. Rather then, at that time a senior lawyer of the Lahore High Court Manzor Qadir was deputed as a Chief Justice in the West Pakistan High Court by the Federal Government, (Braibanti, 1965). Even though, he had served as Ayub Khan’s Foreign Minister during Martial Law period in the country from 1958 to 1962. He is also called a mastermind of the 1962 Constitution. He worked as a Chief Justice of the West Pakistan High Court only for one year and after resigned then he started Law practice again. Perhaps, this game was played only to keep a capable and honest judge Justice Shabbir away of the position as a Chief Justice of the West Pakistan High court.
Thus, in 1965, the President General Ayub Khan had been deputed several judges in the both High Courts under its political affiliation, but the Chief Justice of Pakistan A. R. Cornelius could not check to these appointments. After the separation of the East Pakistan, High Courts were established in the Peshawar, Sindh and Baluchistan. Justice Waheed-ud-Din was deputed as a Supreme Court judge on 2nd September 1969 immediately after his retirement as a Chief Justice of the West Pakistan High court. Originally, this nomination was against role of Law. In 1971, the Chief Justice Qadiruddin Ahmad in the Sindh and Baluchistan High Court when he retired of his post, Abdul Qadir Sheikh a senior most judge was to be deputed as a Chief Justice in his place. But contrary, a senior most lawyer of Pakistan Tufail A. Rahman was directly deputed as a Chief Justice of the Sindh and Baluchistan High Court, (Pakistan Horizon, 1996). It was second incident in Pakistan’s judicial history, a lawyer was directly deputed as a Chief Justice of the High Court. The Manzor Qadir’s nomination as a Chief justice of the West Pakistan High Court in 1962 was a first example of this.

During the era of Zulifqar Ali Bhutto on 1st December 1976, the separate High Court was established for the Baluchistan. At that time, the Justice Meer Khuda Baksh was deputed as a first Chief Justice of the Baluchistan High Court. In fact, he was fourth number in seniority in the Sindh and Baluchistan High Court. Thus, two others judge namely M. A. Rashid and Zakaullah Lodhi were appointed in the new Baluchistan High Court. They were also ranked on 12th and 13th in the seniority of all. These appointments were clearly illegal in the Pakistan’s judicial history. At the same time, the Justice Maulvi Mushtaq Hussain was serving as a senior most judge in the Lahore High Court, according to law he was to be deputed as a Chief Justice in the Lahore High Court. But a junior judge Aslam Riaz Hussain, who was 8th number in the seniority. He was deputed as a Chief Justice of the Lahore high Court, (Pakistan Horizon, 1996). Perhaps, that is why the Justice Mushtaq Hussain was turned against of the Bhutto, (Wraich, 2007).

In May 1980, the currently Chief Justice Maulvi Mushtaq Hussain was deputed in the Supreme Court as an Ad hoc judge and Justice Shamim Hussain Qadri was deputed as an acting Chief Justice in the
Lahore high court. Justice Qadri was retired in 19\textsuperscript{th} October 1982. On 20\textsuperscript{th} October 1982, Justice Dr. Javed Iqbal was deputed as a chief Justice in the Lahore High Court in this place. In fact, Justice M. S. H. Qureshi was a senior most judge in the Lahore High Court, legally who was to be deputed as a Chief Justice. Perhaps, Dr. Javed Iqbal was preferred because he was a son of Dr. Allama Muhammad Iqbal. After this, the Justice M. S. H. Qureshi was sent to the Supreme Court as an Ad hoc judge. Where he had continued his work as an Ad hoc judge till 1985, he was not made a permanent judge in the Supreme Court. In the end, he had retired as a High Court judge. Thus, he was wronged in two ways, one is that he could not become a Chief Justice in the Lahore High Court and on other hand, he was not made a permanent judge even in the Supreme Court. It was much bad tactic by the currently government, that one judge was honored and on other judge was oppressed.

On 4\textsuperscript{th} October 1986, the Chief Justice of the Lahore High Court Dr. Javed Iqbal was deputed to the Supreme Court. In his place Justice Ghulam Mujaddid Mirza was deputed as a Chief justice in the Lahore High Court. Although, Justice Saad Saud Jan was a most senior judge, who was to be deputed as a Chief Justice instead of Iqbal. But he was sidelined imposing a label of ‘Ahmadi’ on him and he was deputed as an Ad hoc judge in the Supreme Court, (Khan, 2016).

On 19\textsuperscript{th} October 1993, Benazir Bhutto when the 2\textsuperscript{nd} time assumed the position of the Prime Minister. At that time, she deputed a most junior Sindhi Justice Syed Sajjad Ali Shah as a Chief justice of Pakistan’s Supreme Court following the government’s style of the Governor General Ghulam Muhammad. Although, at that time three senior most judge Justice Saad Saud Jan, Justice Abdulqadir Choudhry and Justice Ajmal Mian were serving in the Supreme Court. In contrary, by the Prime Minister Benazir Bhutto was deputed of the Syed Sajjad Ali Shah as a Chief Justice of the Supreme Court bypassing of three most senior judges, (Pro. Dr. Imran Khalid, 2021). This appointment was purely out of turn promotion in Pakistan’s judiciary.

According to the Justice Syed Sajjad Ali Shah, at that time he was hearing the cases in the Supreme Court, Karachi registry. At the
same time, informed me in writing at around 12:30 PM by that time I was already dealt of Court work. The Law Secretary spoke on the phone and told me to immediately reach at the Airport’s VIP lawn. I was taken to the Rawalpindi Airport around Four o’clock on the Prime Minister special Aircraft. From there, when I reached the Law Ministry, I found out that it had been decided to make me a Chief Justice of Supreme Court. I met both the Prime Minister and the President where I found that all arrangements for my succession have been completed. The Registrar of the Supreme Court M. A. Latif, they brought a special gown for me and that day itself my swearing in ceremony was completed. Thus, I assumed the position of the Chief Justice Supreme Court of Pakistan on 5th June 1995.

During the Benazir’s regime, along with the out of turn promotion of Syed Sajjad Ali Shah as a Chief Justice of Supreme Court and many others judges were recruited illegally. At the same period, the term of “jiale judge” was came into existence. A lawyer Wahab al-khairi, filed a constitutional appeal (CP-29/1995) in the Supreme Court for correcting the deteriorating situation of the judiciary. Finally, a full bench of the Supreme Court, chaired by the Chief Justice Syed Sajjad Ali Shah issued a judgement on 20th March 1996, interpreting the Constitution in an ijtihad manner. In this judgement by the Supreme Court, it was clearly wrote that the point of view of the Chief Justice will be given priority in the process for the judge’s recruitments. The seniority will not be ignored in the Supreme Court promotion or selection of the Chief Justice, (Zafar, 2021). This judgement was given under the supervision of one such judge, whose appointment was itself implemented as a result of violation of this Law. With the implementation of this judgement, nine judge of the Lahore High Court, five judge of the Sindh High Court and three judges of the Peshawar High Court were dismissed of their jobs.

The effects of this illegal appointment started to light during the Nawaz Sharif’s regime. As soon as he assumed the position as a Prime Minister in 1997. The 13th Constitutional Amendment was immediately approved by the Parliament on 1st April. According to this Amendment had been reduced the powers of the President. A
few days after that, on 3rd July 1997, the 14th Constitutional Amendment was approved by the Parliament. In this way, after this Amendment he was became one of a strongest Prime minister. At the same time, conflict of powers between the Prime Minister Nawaz Sharif and the Chief Justice of the Supreme Court Syed Sajjad Ali Shah was intensified. When Syed Sajjad Ali Shah wrote a letter on 20th August 1997, to the Federal Law Secretary. At this time, the five vacancies are vacant in the Supreme Court, an order should be issued for the nomination of five judges of the High Courts on these vacancies, (Cowasjee, 1999). By the Prime Minister Nawaz Sharif did disagree with the Lahore High Court judge a name Justice Munir A. Sheikh. Perhaps, that is why he did not ready of this appointment in the Supreme Court.

On 21st August 1997, the Federal Government was issued a notification for decreasing the number of the Supreme Court judges. According of this notification by the Federal Government done the number of the Supreme Court judges reduced. Now, the number in the Supreme Court judges were reduced from 17 to 12. After this, a writ petition was filed in the Supreme Court by the Supreme Court Bar Association against of this notification. By the Supreme Court was suspended of this notification on same day. Finally, the Federal Government was decided withdraw of this notification. On 10th October a Government Official suddenly announced, (Cowasjee, 1999). Now, the Federal Government had decided for the deputing of these five High Court Judges in the Supreme Court as the recommendation by the Chief Justice of Supreme Court. In this way, on 18th October 1997 by the Federal Government withdrew of this notification but did not issue the notification for the recruiting of these five judges. At the same time, the Chief Justice of the Supreme Court wrote a letter of the President Frooq Ahmad Leghari and complained about the attitude of the Federal Government. (Zafar, 2021)

Thus, a few days later on 24th October 1997, the 14th Constitutional Amendment was challenged in the Supreme Court. On 29th October 1997, by the Supreme Court was suspended of this Constitutional Amendment. Due to the suspension of this Constitutional Amendment, the tension was more intensified between the Federal
Government and the Chief Justice Syed Sajjad Ali Shah. Meanwhile, on 30th October 1997, Additional Secretary Supreme Court Bar Association Muhammad Akram Chaudhry filed a contempt of court appeal opposed the Prime Minister Nawaz Sharif along with the six other members of the Assembly based on the Nawaz Sharif’s media talk. Similarly, another Constitutional request filed by the Syed Iqbal Haider on the behalf of Muslim Welfare Movement. A three member bench of the Supreme Court chaired by the Chief Justice Syed Sajjad Ali Shah was started hearing of these contempt of court petitions.

Finally, on 1st November 1997, the Federal Government passed the Supreme Court Act of judges to the National Assembly again the number of judges were increased from 12 to 17. After the approval of the Senate, on 2nd November, by the Federal Government was issued a notification of these five judges for the nomination in the Supreme Court. After which, on 5th November 1997, Justice Sheikh Riaz, Justice Mamoon Qazi, Justice Munir A. Sheikh, Justice Muhammad Arif and Justice Abdulrahman took the oath as a judge of the Supreme Court, (White Paper on the Role of Judiciary, 2000-2002). Eventually, in this way the issue of judge’s appointments was resolved.

The proceedings of the contempt of court opposed the Prime Minister were still going on. On 26th November, Malik Asad Ali’s petition was heard in the Quetta bench of the Supreme Court. In this hearing requested to the Quetta bench the nomination of the Chief Justice Syed Sajjad Ali Shah declare null and void in the light of the judgement on 20th March 1996. At the same day, by the Supreme Court Quetta bench consisting of Justice Irshad Hassan and Khilur Rahman was suspended the appointment’s notification of the Chief Justice Syed Sajjad Ali Shah through a temporary order. At same day, on 26th November of the Supreme Court Islamabad three member bench chaired by the Chief justice was dismissed the judgement of the Quetta bench through a short order. Declaring it unworkable, this bench was passed an order of the Registrar Supreme Court should not be placed any cases list in front of the Supreme Court Quetta bench. In other words, it was made these judges OSD, (Zafar, 2021). On 26th November, two orders were
came by the Supreme Court one by the Quetta bench another by the Islamabad bench, both were opposite with each other.

On 26th November for the absence of the Justice Nasir Aslam, the Supreme Court Quetta bench was not complete, next day he had returned on 27th November. Now the full bench was existed in Quetta. The Supreme Court Quetta bench passed an order of the Assistant Registrar to put the list of cases before them. When the Assistant Registrar was not available, a clerk of the Quetta registry was presented a list of eleven cases in the court. On the same day, the cases were heard and the lawyers also appeared in the Court and perhaps it was also passed the regular judgement of ten cases.

On 27th November the Senator Behrawar Saeed was filed an application in the Supreme Court Peshawar bench. On this request, by the Peshawar bench was confirmed on 26th November’s judgement of the Quetta bench. Through which the Quetta bench had suspended the nomination’s notification of the Chief justice Syed Sajjad Ali Shah. The Supreme Court Peshawar bench passed an order to the Registrar of the Supreme Court. Now, all cases will be presented to front of a senior judge Justice Ajmal Mian, who will be transfer of these cases in different benches of the Supreme Court. Once again on 27th November, the Supreme Court Islamabad bench under the supervision of the Chief justice Syed Sajjad Ali Shah re-heard to the judgement of the Quetta bench. This bench had upheld its interim order of 26th November and was suspended the judgement of the Quetta bench, (White Paper on the Role of Judiciary, 2000-2002). At that time, it was a remarkable thing, the Justice Mammon Qazi did not agree with the other judges of this bench and he was also wrote a dissenting note in this judgement. Thus, now the Supreme Court was completely divided.

The hearing of the 13th Constitutional Amendment was scheduled on 2nd December in the Supreme Court and all judges were reached in Islamabad Supreme Court building. This time happened what’s was apprehension. The two separate benches were hearing of this case at the building of the Supreme Court in Islamabad for the first time in judicial history of Pakistan. One bench consisted of five judges and it was supervising by the Chief Justice Syed Sajjad Ali Shah. The number of judges in second bench was ten. The first
bench chaired by the Chief Justice Syed Sajjad Ali Shah was dismissed of 13th Constitutional Amendment, (Sheikh, 2023). On contrary, the other bench restored of 13th Constitutional Amendment. Thus, had come two conflicting judgement in the same case. The President was supporting to the judgement of first bench had five judges but the other side the judgement of ten judges bench also was exist. (Malik, 2023)

Thus, due to conflicting judgements of the judiciary, both the President and the Chief Justice had to resign of their positions. The President Frooq Ahmad Leghari resigned on 2nd December and left of president House. In this way, the Chairman Senate Waseem Sajjad took an oath as an Acting President of the country, (Bonner, 1997). Now, after the resignation of the President, Syed Sajjad Ali Shah’s Chief Justice had also ended. On 3rd December 1997, the Federal Government had issued a notification of a most senior judge of the Supreme Court Justice Ajmal Mian as an acting Chief Justice. After took an oath he assumed the position as a Chief Justice of the Supreme Court. After that, on 23rd December, the case of the Chief Justice Syed Sajjad Ali Shah was heard under the supervision of the Justice Saeed Zaman Siddiqui. By this bench suspended the nomination’s notification of the Syed Sajjad Ali Shah as a Chief Justice of the Supreme Court, (Down, 1997). Finally, ongoing crises in the Supreme Court came to end.

The Chief Justice Syed Sajjad Ali Shah also followed to the style of former Chief Justice Muhammad Munir in his tenure. He also already established the relations with the President. Both the Chief Justice and the President together made a lot of insults against the Executive and the Parliament. At that time, both the Chief Justice and the President were done fully try to dissolve of the Federal Government and the Parliament. But perhaps they did not succeed of their mission. Along with, due to the behavior of the Chief justice his colleague’s judges also started opposing him. Due to this reason at that time, the politicization in the Supreme Court had been very obvious. In this way, those days along with the judiciary the country’s situation also continued to deteriorate. According to the S. M. Zafar both the Chief Justice and the President continued to give instructions to each other while looking at the situations of the
Federal Government in the country, (Zafar, 2021). This action of both of them was illegal as well as Unconstitutional.

In Musharraf era, on 26th January 2000, two judges of the Lahore High Court did not take oath under the PCO that is why they were no longer performing judge. The currently Chief Justice of the Lahore High Court, Justice Rashid Aziz Khan had deputed in the Supreme Court. In his place Justice Mian Allah Nawaz was become a new Chief Justice, who was not a most senior judge in the Lahore High Court. Rather then, the Justice Falak Shair was a most senior judge. At that time, also he was ignored, and it was a clear violation of the judgement of judge’s case. When the Chief Justice Mian Allah Nawaz was retired on 13th July 2000, than the Justice Falak Shair was became a new Chief Justice of the Lahore High Court.

In 2002, Justice Falak Shair was serving as a position of the Chief Justice and the Justice Mian Nazir Akhtar was served a senior most judge in the High Court. But with the cahoots of currently Chief Justice Falak Sher and three junior judge Justice Khalil-u-Rahman Ramday, Justice Nawaz Abbasi and Justice Faqeer Muhammad Khokhar had deputed in the Supreme Court. This time, also had been done the clear violation of Law in these appointments. After this, a senior most judge Justice Nazir Akhtar also was deputed in the Supreme Court as an Ad hoc judge on 7th September 2002. A junior judge Justice Iftikhar Hussain Chaudhry was deputed as a Chief Justice in the Lahore High Court, ignoring the senior most female judge Justice Fakhr-ul-Nisa Khokhar, (Khokhar, 2018). At that time, this woman judge was ignored because of her alleged affiliation with a political party in the country.

According to the Justice Fakhr-ul-Nisa Khokhar, she instead of deputed as a Chief Justice in the Lahore high Court, orders were issued to appoint him as a Chairman Environment of Pakistan. I challenged the order of this appointment in the Supreme Court. At that time, the currently Chief Justice Sheikh Riaz had been gone to Delhi to attend a conference. In his place Justice Munir A. Sheikh was serving as an acting Chief Justice of the Supreme Court. My petition was heard a division bench of acting Chief Justice Munir A. Sheikh and the Justice Faqeer Muhammad Khokhar. This Supreme Court bench suspended this orders as a Chairman Environment of
Pakistan and passed the order of the Lahore High Court Chief Justice to restore my cases list, (Khokhar, 2018). The most important thing here is that our judicial system had been so poor condition, a female judge of the Lahore High Court had to approach of the Supreme Court for protecting of herself rights.

During from 2002 to 2010 in Pakistan’s judiciary the many junior judges were deputed in the Supreme Court bypassing the senior judges of the High Courts. In 2004, two junior judges Justice Javed Butter and Justice Tassudduq Hussain Jillani of the Lahore high Court were deputed in the Supreme Court bypassing a currently Chief Justice Iftikhar Husain Chaudhry. Like this, on 14th September 2005 other two junior judges Chaudhry Ijaz Ahmad and Syed Jamshed Ali of the Lahore high Court were deputed in the Supreme Court bypassing a currently Chief Justice Iftikhar Hussain Chaudhry. Thus, on 7th September 2009, Justice Khilji Arif Hussain of the Sindh High Court was deputed in the Supreme Court bypassing a senior judge Justice Sarmad Jalal Usmany, (Siddique, 2022). Like this, on 18th February 2010, the furthermore other two junior judges Justice Mina Saqib Nisar and Justice Asif Saeed Khosa of the Lahore High Court were deputed in the Supreme Court bypassing a currently Chief Justice Khawaja Muhammad Sharif of the Lahore High Court, (Iqbal. 2021).

Justice Iftikhar Muhammad Choudhry was the first Chief Justice of the Supreme Court in judicial history of Pakistan. He started interference in the work of state institutions (Executive and Parliament) under guise of article 184/3. He took of lot Suo Motu notices as a Chief Justice of the Supreme Court instead the former Chief Justices of Pakistan, (Farah Amir, 2022). Along with this, he run the system of the Supreme Court on the style as a one man show. The looking his behavior, the later Chief Justices also adopted the same behavior. He providing the justice to the peoples, instead repeatedly interfered in the work of state institutions (Executive and Parliament). You will see the same behavior clearly in other Chief Justices who is coming in the judiciary. These traditions introduced by him in the judiciary are still being perpetuated. In fact, these same traditions have tarnished the true character of the judiciary in Pakistan.
As adopting the same pattern during from 2011 to 2022 in Pakistan’s judiciary the many junior judges were deputed in the Supreme Court bypassing the senior judges of the High Courts. On 14<sup>th</sup> February 2011, two junior judges Justice Gulzar Ahmad and Justice Amir Hani Muslim of the Sindh High Court were deputed in the Supreme Court bypassing a senior judge Justice Mushir Alam, (Saddique, 2022). Thus, on 15<sup>th</sup> April 2018 Chaired by the Chief Justice Mian Saqib Nisar Judicial Commission of Pakistan recommended nomination of another junior judge Justice Mounib Akhtar of the Sindh High Court in the Supreme Court. Justice Akhtar was the son-in-law of the former Law Minister Khalid Anwar, (Asad, 2018). Perhaps, that is why he was decided to be deputed in the Supreme Court. On 8<sup>th</sup> May 2018, Justice Akhtar was deputed in the Supreme Court bypassing of three senior most judges of the Sindh High Court. Like this, on 21<sup>st</sup> October 2019, another judge Amin-ud-Din Khan of the Lahore High Court was deputed in the Supreme Court bypassing a currently Chief Justice Sardar Muhammad Shamim Khan. Thus, on 16<sup>th</sup> March 2020, another judge Syed Mazhar Ali Akbar Naqvi of the Lahore high Court was deputed in the Supreme Court bypassing the currently Chief Justice Mamoon Rashid Sheikh, (Saddique, 2022).

Like this, on 16<sup>th</sup> August 2021, another judge Muhammad Ali Mazhar of the Sindh High Court was deputed in the Supreme Court bypassing of four senior most judge namely currently Chief Justice Ahmad Ali Sheikh, Justice Irfan Saadat Khan, Justice Aqeel Ahmad Abassi and Justice Hassan Azhar Mirza, (Iqbal, 2021). Thus, on 5<sup>th</sup> January 2022 another junior female judge Ayesha Malik of the Lahore High Court was deputed in the Supreme Court bypassing the currently Chief Justice and two other most senior judges. She was on the 4<sup>th</sup> number in seniority list of the Lahore High Court, (Saddiqui, 2022). Like this, on 28<sup>th</sup> July 2022, the Judicial Commission of Pakistan was approved of two other junior judges Justice Shahid Waheed of the Lahore High Court and the Justice Syed Hassan Azhar Rizvi of the Sindh High Court for the nomination in the Supreme Court. In fact, both of them were on the 4<sup>th</sup> number of seniority list of their High Courts, (Iqbal, 2022). After this, on 11<sup>th</sup> November 2022, they assumed the office as a Supreme
Court judge after taking the oath. Actually, all these appointments were totally opposed of Law.

The Chief Justice of the Supreme Court Justice Saqib Nisar continued to interference among other state institution (Executive, Parliament) under the guise of Article 184/3 during his service. He took of lot Suo Motu notices as a Chief Justice during his service. He was adopted the shameful attitude with peoples during the hearings of these cases. He consistently stood against the currently Federal Government. He staying as same position done many visits of the Schools, Colleges, Hospitals, jails and many other public places in the country. In addition, especially he derailed to the Punjab Government’s project of PKLI in Lahore. He run a pre-planted campaign for construction of the Dams in the country. Along with, he also collected the Dam Fund as a serving Chief Justice of the Supreme Court. In this way, at the same time looking of his role came into being a term of (Baba Rehmata) for his, (Abdul Rasheed, 2020). He himself involved in the affairs of the other state institutions (Executive and Parliament) but he could not do anything for his institution (Judiciary). Due to which the number of cases in the Supreme Court further increased. He played a political role in the country as a Chief Justice of the Supreme Court. Thus, his role established a bad tradition in Pakistan’ judiciary for future.

The Chief Justice Umar Ata Bandial also passed many arbitrary judgements under the guise of 184/3 to following the style of a former Chief justice Saqib Nisar. His role came into being front of peoples when he passed remarks “Good to See You” during the hearing of a former Prime minister Imran Khan’s Arrest case in the Supreme Court. After this, some Constitutional and sensitive cases filed in the Supreme Court. Among these cases, Punjab and KPK Election Case, Judges Audio Leaks Case, NAB Amending Ordinance Case, The Supreme Court Review of Judgement Case and some other cases. The currently Government of Pakistan, Pakistan Bar Council and all political parties repeatedly requested to the Supreme Court made a Full Court Bench or Larger Benches for the hearing of these cases. Along with this, during the hearing of these cases the other Supreme Court Judges kept giving remarks about the Full Court and Larger Benches. But despite this, the Chief
Justice making the custom benches, continued the hearing of these cases. He had included to the some specific junior judges in these benches. In these benches the Chief justice preferred to the junior judges and consistently ignored of the senior most judges, (Hussain, 2022). Due to this, among the division of the Supreme Court’s judges more increased. In this way, the role of the Chief Justice Umar Ata Bandial undermined the prestige of the Supreme Court and more increased the politicization in Pakistan’s judiciary.

**Conclusion:**

Justice Muhammad Munir, while to maintaining his personal interests and powers, was made a tradition to the appointments of junior judges in the Supreme Court of the High Courts. Actually, this point which became the base of politicization in Pakistan’s judiciary. Later, the Governor General Ghulam Muhammad had directly appointed of the Lahore High Court Chief Justice Muhammad Munir as a Chief Justice of the Federal Court. In this appointment he had ignored of law and preferred of his personal benefits. In the same way, the Chief Justice Muhammad Munir trampling of law and to preferring of his personal benefits had passed a judgement to the favor of the Governor General in Maulvi Tamizuddin Khan’s case. Even in 1958, the judgement of *Dosso*’s case was also a link in the same chain. In fact, at that time both the Justice Muhammad Munir and the Governor General Ghulam Muhammad had laid down the strong foundation of politicization in Pakistan’s judiciary. Along with this, the appointments of junior judges constantly continued on the senior positions in the judiciary. During the General Ayub’s regime a senior lawyer Manzor Qadir was directly deputed as a Chief Justice of the Lahore High Court. Like this in 1971, another senior most lawyer Tofail A. Rahman was directly deputed as a Chief Justice of the Sindh and Baluchistan High Court. In 1995, during Benazir’s regime a most junior judge Syed Sajjad Ali Shah was deputed as a Chief Justice of the Supreme Court bypassing of three senior judges. After this, in spite the judgement of judge’s case in 1996, the appointments of junior judges were continued in the Supreme Court of the High Courts. Rather then, these appointments are constantly continue. Along with this, the role of both the Chief Justices Justice Saqib Nisar and the
Justice Umar Ata Bandial have also adversely affected the structure of the Pakistan’s judiciary. In fact, these motives were became the cause of politicization in the Pakistan’s judiciary. Recently past, what is happening in the judiciary is not a product of today. Rather than, its links are found to the past and these trends are constantly continue till today. If these trends are not stopped, every new researcher will be discuss of these same motives like us. Yet it is not clear how long all these motives will be correct. We leave it also of readers to decide.
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