



Graduate School of Development Studies

**How Does a Single Professional Issue Become  
Social Movement Discourse?  
Case of Lawyers' Movement in Pakistan**

A Research Paper presented by:

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(Pakistan)

in partial fulfillment of the requirements for obtaining the degree of  
MASTERS OF ARTS IN DEVELOPMENT STUDIES

Specialisation:

**Development Research  
(DRES)**

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The Hague, The Netherlands  
November, 2009

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## Acknowledgment

I feel an immense gratitude to my supervisor, Dr. John Cameron, whose persistent guidance and intellectual rigor was a major inspiration for my research. I am extremely grateful to my second reader, Dr. Amrita Chhachhi, for her valuable comments and guidance.

Many thanks to the ISS and the NUFFIC for letting me have such a momentous experience. I am grateful to my family for their unconditional love and support, especially to my father who is always a source of motivation for me. Thanks to my wife and son for their great patience.

Thanks to my friends and colleagues in ISS who provided every possible support in my research and studies. Thanks to my colleagues and friends back home, for their wishes and for their contributions in my career.

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## List of Acronyms

BBC	British Broadcasting Corporation
CJ	Chief Justice
DBA	District Bar Association
FGDs	Focus Group Discussions
HCBA	High Court Bar Association
IT	Information Technology
NRO	National Reconciliation Ordinance
NWFP	North West Frontier Province
PBC	Pakistan Bar Council
PCO	Provisional Constitutional Order
PEMRA	Pakistan Electronic Media Regulatory Authority
PFUJ	Pakistan Federal Union of Journalists
PLD	Pakistan Legal Code
PM	Prime Minister
PMLN	Pakistan Muslim League Nawaz
PLPBCA	Pakistan Legal Practitioner and Bar Council Act
PPP	Pakistan People's Party
PTV	Pakistan Television
SCBA	Supreme Court Bar Association
TBA	Tehsil Bar Association
TCA	Theory of Communicative Action

## **Abstract**

This paper explores the modification of a discourse in the context of emergence of social movement from a single issue professional campaign through a framework of Habermasian communicative action theory. The paper analyses the communicative acts in the movement discourse through argumentation, modification of legal discourse into social discourse, and structural aspects of lawyers' organisation. The single professional issue was the deposition of Chief Justice of Supreme Court of Pakistan on March 9, 2007 by the then President/General. The lawyers started a movement for restoration of Chief Justice and with due coverage from the newly founded private electronic media in Pakistan it attempted to become a populist movement linking to wider reform of Pakistani society. The research also explores why the movement was not sustained as a mass social movement.

## **Relevance to Development Studies**

Participation and social movements are important themes in development discourse. The analysis of discourse of social movements can help understand the forces instrumental in participation in a social movement. The research is an attempt to explore how a single professional group may or may not lay a foundation for a social movement through discursive communication within an organisation and between that organisation and wider society.

## **Keywords**

Theory of Communicative Action, Lawyers' movement, Discourse Analysis, Public Sphere



# Chapter 1

## Introduction

This research is an effort to have deeper understanding of role of communicative discourse in a social movement. The role of communicative discourse is a critical entry point to understand the dynamics of social movement based on a professional issue and led by a professional group having coded and complex language. The research assumes it a challenge for legal complex to transform legal discourse into social discourse, which was required for transformation of a legal issue into a social movement, while the availability of communicative means in the form of mass media is assumed to be an opportunity. The reflection of mix of challenge and opportunity on participation in and sustaining of a social movement is a subject matter of this research.

### 1.1 Background

#### *Lawyers' Movement*

The lawyers' movement started on 9 March 2007, the day the Chief Justice (CJ) of Supreme Court Iftikhar Muhammad Chaudhry was deposed by General/President Pervez Musharraf. A legal reference was filed against him with Supreme Judicial Council. Legal proceeding started and on 13 March 2007, on first hearing, the CJ was manhandled by police. 'The media coverage of these incidents sparked an unprecedented mobilization of lawyers to restore Chief Justice' (Ghias, 2009). The CJ was restored by a full court bench comprising of 13 judges on 20 July 2007. On 3 Nov. 2007 an emergency (martial law) was imposed and constitution was suspended. CJ and 64 judges of superior judiciary were deposed and most of them were kept under house arrest. The reconstituted Supreme Court validated the presidential election and declared General Musharraf president for another five years.

On 17 Dec. 2007, Benazir Butto, Ex Prime Minister (PM) and Chairperson of Pakistan People Party, was assassinated in an Election rally. General election held in Feb. 2008 in which two political parties, PPP and Pakistan Muslim League Nawaz (PMLN) received together a majority vote and formed coalition government at federal level. Musharraf first resigned from the army chief post and later from the President post. The newly elected president, Asif Zardari, also showed hesitation to restore judges and offered fresh oath to the deposed judges. Though most of the deposed judges took fresh oath, CJ and five other judges resisted. The remaining deposed judges were restored on March 16, 2009 amid a grand protest rally. (See annex 1)

### 1.2 Research Questions

The main research question is 'can a professional single issue campaign develop a discourse to become a social movement?'

The answer will depend on the following sub-questions:

- How the legal argument was built against the deposition of CJ/judges of superior judiciary.
- How did the legal discourse modify into a wider social discourse?
- What role did the mass media play in communicating messages from the lawyers' movement?
- Why did the resulting social movement not sustain itself for broader political and democratic change?

### 1.3 Lawyers' Organization

In Focus Group Discussions (FGDs) conducted with lawyers for this research (See annex 5), the immediate objective of the movement was depicted as restoration of all deposed judges. The restoration was intertwined with the rule of law, independent of judiciary, and supremacy of constitution. All FGDs were conducted in bar rooms. Bar room is a specific place for lawyers where they meet and discuss different issues of 'common interest'. In every bar room, television facilities, with the service, and newspapers in different languages were found available. These bar rooms are also used for organising different events like, general body meetings, executive body meetings, and seminars. In every bar association/bar council, a library with internet facility can be found. This gives an impression of an organisation well resourced and skilled in terms of communicative action potential (See annex 1).

In FGDs, the lawyers were found willing to share their experiences about the movement. The lawyers were quick to pinpoint the sacrifices and sufferings they faced during the movement. In general, they were very optimistic about what they had achieved through the movement. They were proudly taking credit of ousting a dictator and restoring judges. While restoration was declared their objective, the political objective of ousting a dictator expanded the scope of the movement which was built upon the popular sentiments against the regime.

'The movement gave new way of thinking to society. If we had no such movement, then the same dictator would have been ruling the country even today'. (FDG 25/07/2009 Gujar Khan TBA)

The lawyers' represented themselves as peaceful, civilized, and determined. A reference to 'civilized world' is often projected as 'we are the people seeking change, the change which is desirable and our struggle will earn good name for Pakistan'. The emphasis on 'peace' is important in context of rising militancy and worsening law and order situation in Pakistan.

'After 60 years of our national life, it was the first time that the lawyers protested continuously for two years. We were peaceful and have never damaged a single light on a street. The movement earned good name for Pakistan in civilized world'. (FDG 25/07/2009 Gujar Khan)

The deposition of judges was seen as a step towards weakening of the institution of judiciary by the institution of military. The institutionalization of the issue was to get support not only from lawyers but also from citizens. The movement was depicted as a struggle for strengthening the institution of judiciary as representative of wider social institutions.

‘Our major problem is that we don’t have strong institutions. The strong institution, especially the military, often intervenes and maligns other institutions for its own benefit’. (FDG 25/07/2009 Gujjar Khan)

The lawyers belonged to different political parties. But it was interesting that despite their affiliation to different political parties, they were united. In many instances, they put aside their political party affiliations. The main reason presented by lawyers as their primary role of being a lawyer which focuses on rule of law and independence of judiciary. In one FGD, a lawyer who was President of TBA described his story as:

‘Lawyers’ professional survival depends on attachment with legal fraternity. I was a mayor (nazim) elected on Pakistan Mulish League Quaid-i-Azam party ticket (the ruling party which supported Musharaf). Parties are supposed to have ideological basis. We, lawyers, have our own ideology based on rule of law. I started realizing that my party is not following its own ideology while lawyers were loyal to their ideology, both in letter and spirit. Therefore I preferred to be with lawyers rather than with my party’. (FDG 25/07/2009 Gujjar Khan)

Notion of a civilized nation and the ideal to be a developed nation through a necessary condition of judicial independence was an argument often presented in FGDs. The lawyers’ paralleled the condition faced by UK after the 2<sup>nd</sup> world war with the prevailing conditions in Pakistan. The conclusion was if Churchill could depend on judiciary, not on parliament or army, for improvement then we should also struggle for same cause. The lawyers termed it a key to solve the nation’s problems. It is also interesting that in all FGDs seldom a reference was made to any Islamic scholar but most of the rhetorical ethos were focused on the Western or liberal philosophy.

‘After the 2<sup>nd</sup> world war, Churchill asked about the institution of judiciary. When he was told that the judiciary is functioning as usual, he said ‘if courts are working, then nothing can go wrong’. I have to say that when there is social justice, rule of law, we would have all problems solved’. (FDG 27/07/2009 Jhelum)

In FGDs, the lawyers also referred to their struggle as a sacred duty. The Constitution was equated with Bible and Judiciary with Church.

‘Mostly, lawyers were united in the movement no matter which party they belonged to. The objective of the movement was equally shared by all lawyers. As a lawyer, the constitution is our bible and judiciary is our church’. (FDG 27/07/2009 Jhelum)

In all FGDs, the lawyers were proud to present their organisation’s democratic processes. Though seems exaggerated, bars were considered to be the only democratic institution in Pakistan and a role model for others to follow. The lawyers’ movement was depicted as a struggle between democratic dispensations against dictatorial dispensations. In lawyers’ movement they used to have series of debates at the bar levels for chalking out strategies and taking the bar politics to the streets. The opposition had chances to contest and express their views but once the house agreed and resolution passed, then the decisions were binding on all members of the bar.

‘Bars are the ideal democratic institution in Pakistan. This is the only institution in Pakistan which fulfils all the democratic prerequisites. Elections are held every year no matter what is the situation in the country. If people want to see real democracy, they should visit our bars. In country like Pakistan,

where the democratic norms are not even followed by political parties, we are the institution proud of our democratic culture'. (FDG 27/07/2009 Jhelum)

A causal relationship was claimed linking restoration of judges to rule of law and then social justice. Restoration of deposed judges was depicted as necessary and sufficient condition for development and social justice. Once restored, the judges then would ensure rule of law, leading to social justice and protection of basic rights. It was a typical explanation presented at the centre and the same was conceived at the periphery of the lawyers' movement.

'We were fighting for ensuring rule of law and social justice. If there is justice in society and everyone has their rights secured, this would be the foundation for solving all other problems. If we have the rule of law, it would mitigate corruption, improve the economy and foreign investment, and establish of industry'. (FDG 27/07/2009 Jhelum)

It was interesting to see the use of same language in different bar associations in different provinces. Reference to development was often made in terms of institutional strength and change in political system. The restoration was taken as a central and necessary point from where all other development imperatives should permeate into the national development scene.

'We are struggling for change in our political system. Take the example of developed countries where every institution works in their prescribed mandate. Like the judicial system, the political system also needs to be changed'. (FDG 20/07/2009 Mardan)

The same theme flew in every FGD. The CJ was depicted as a person representing the institution of judiciary and one who is needed to ensure judicial independence. If justice is not provided to the CJ then how can a common citizen expect to access justice? The concept of state, institutions, judicial independence, and rule of law were found to be common in the language of all lawyers:

'In every civilized society, there is a concept of three pillars of state, executive, legislature and judiciary. If the executive tried to malign the other institutions, then there can be no rule of law. In every society, there are conflicts and courts are supposed to resolve conflicts based on justice. Therefore a strong judicial institution can help ensure rule of law and social justice in society. But in Pakistan, every dictator tried to dictate the judiciary. For the first time in history of Pakistan, a Chief Justice stood for protecting the sanctity of the judiciary. (FDG 18/07/2009 Swabi)

The above mentioned quotes depict how the lawyers' movement was conceptualized by the lawyers at periphery. I found that the discourse of the movement was uniform in almost every FGD, with the same objectives mostly legalistic but assumed to have a crucial impact on the overall development of the country. Independence of judiciary was made contingent on restoration of deposed judges. Free judiciary was made prerequisite for rule of law and constitutional supremacy. The social justice and protection of fundamental rights were then related to rule of law.

The FGDs were conducted after restoration of all judges and indicate the optimism that was at the heart of the lawyers' movement and connection made between the immediate purpose, deliberative processes, and social change. This research explores the discursive moves that led to some frustration of this optimism.

## 1.4 The Social Inaccessibility of Legal Discourse

According to Weber and Durkheim, a process of ‘disenchantment’ caused legal development. The world is disenchanted with the emergence of anthropocentrism challenging theocentricism. A human challenging of the will of god, and goddess, and magic, and superstitions as no more the governors of their lives. This is how Habermas put it:

‘The disenchantment and disempowering of the domain of the sacred takes place by the authority of an achieved consensus’ (Habermas, 1987).

However the legal language, while eradicating the sacred and embracing the state power or communicative community, still remained archaic. The penal law may not essentially be religious in origin but always have maintained religious stamp (Habermas, 1987). The ‘languistification’ of religious consensus made an inroad into the private law through declaration of words as pronounced in ritual.

Mattila describes various attributes of the legal language and reasons for its obscurity. Legal language evolved over ages and carries the burden of old linguistic traditions which is mostly discarded in general parlance. The appeal to the authority and an instrument of power for ensuring justice also make the legal language complex. Other factors includes requirement of the legal protection bent upon establishing forms of procedures, accurate text citation, unambiguous formulas and complexity of society (Mattila, 2007).

Statement of the law is authoritative and declaratory (Phillips, 2003). The distinction between the legal discourse and ordinary speech is described by Goodrich as:

‘Not only that legal language is an elite discourse remote from ordinary speech but also that it has been developed and maintained to promote the economic interest and discriminatory values of legal profession’ (Phillips, 2003).

Habermas sees a strong link between judicial institutionalization and democracy. His prescription for progress is authorisation of power by law, writing of constitution, and institutional development. Habermas sees the medium of law as a mechanism to keep citizens united, who are shaped by social, cultural and philosophical pluralism (Flyvbjerg, 1998). The move from legal to popular discourse is seen as a central problematic for this research.

## Chapter 2

### Theoretical Framework

Different theories explain the emergence, structure, and paradigms of social movement. From the Marxist perspective, a progressive social movement is demonstration of class struggle and class relationship based on economic and production process leading towards Marxist revolution (Buechler, 1995). The political process theory sees insurgent consciousness, organisation strength and political opportunities as prerequisite for formation of social movement. New social movement theorists see other avenues like politics, culture, identity, sexuality and gender, and ideology as main determining factors for collective action (Buechler, 1995). The resource mobilization and political process theories explain the collective action from resource mobilization of internal organization and external political opportunities. The framing process as movement generation is yet another important aspect for analyzing the participation. The political process theorists are emphasizing the cultural dynamics and framing process (Aldon, 2000).

However none of these theories overlook the importance of communication. Communication is synonymous with participation and communicator is promoter of participation (Gumucio-Dagron, 2008; Kees, 2008). In social movements, communication can be categorized in four forms like (a) private and direct, (b) private and mediated, (c) public and direct, and (d) public and mediated. (Saeed, Rohde, & Wulf, 2008). The last category involves the mass media which will be given specific attention in this research.

#### 2.1 Habermas Theory of Communicative Action (TCA)

The new social movement theory, elaborated by Jurgen Habermas, stresses cultural rather than material production as associated with social movements. Habermas denies incomparable or relativist standards of rationality. He distinguishes traditional society from the modern one on the basis of procedural rationality. He also elaborates relationships between speaker and hearer based on three validity claims: truth, the speaker truthfulness, and shared implicit norms. The communicative action is the implicit validity claims coupled with agent's attitude oriented toward reaching understanding, and acts through communication where an agent can get consensus for actions and corresponding claims (Funk, 1986).

For any communication, use of language is indispensable. Communicative rationality or Theory of Communicative Action (TCA) of Jurgen Habermas provides an entry point to the analysis of communication model of lawyers' movement. He explains adherence to good reasoning as basis of Western "procedural" conception of rationality (Funk, 1986). Convincing of participants in a discourse is a criterion for good reason. This is also called consensus theory where discourse is 'ideal speech situation' while consensus is a 'rationally motivated agreement'.

Habermas's TCA is based on rational and discursive attributes of social interaction. Communicative action described by Habermas is positive communication aimed at reaching understanding (Habermas, 1979). Speech is

a form of communicative act where language is used as a medium of understanding. For a valid speech act, Habermas identifies the following prerequisites:

- a. Uttering something understandably
- b. Giving (the hearer) something to understand
- c. Making the talker thereby understandable
- d. Coming to an understanding with another persons

Habermas TCA has its roots in his project of better communication as a vital factor in modernisation. Habermas believes in the reconstruction of the European 'enlightenment' tradition. The main assumption of Habermas as claimed by Powell is:

'The project of modernity can be redeemed. The diagnoses of Horkheimer, Adorno, Nietzsche, Heidegger, Foucault and Derrida are false. Habermas's task is to strengthen the 'project of modernity' by reconstructing it vis-à-vis the 'theory of communication'. Hence, the massive task is to overcome the pessimism of late modernity, the indulgence of his predecessors at Frankfurt, Adorno and Horkheimer by resolving the dilemmas of subject-centred reason in the paradigm of communicative action' (Powell, 2002).

Habermas explains the process of modernization through a critique of the Weber perspective of rationalization of society. Habermas presents his tri-dimensional understanding of the world from cultural tradition to institutionalized social action. First dimension relates to the social movement inspired by traditionalistic and modern conceptions of justice. Second dimension relates to the cultural system of action based on processing of the diverse elements of cultural tradition. This process includes the emergence of the scientific enterprise coupled with formal jurisprudence, informal legal public and market based artistic enterprise. The third way was the 'effective institutionalization of purposive-rational action with structural affect on society as whole (Habermas, 1984). The research takes interaction of structure of formal jurisprudence with wider social and cultural traditions as problematic yet required when the legal complex tries to expand into social movement discourse.

The social movement discourse takes strength of appeal through the normative background and shared validity claims in presuppositions. For progressive communicative action, the participants presuppose shared validity claims and definitions of the situation in order to act consensually. Habermas points to background consensus when speaker and hearer know implicitly that they have to raise validity claims, that both can justify their validity claims (presupposition of communication), and common conviction to the vindication of validity claims through sentences, propositions, expressed intentions, or utterances which satisfy corresponding validity conditions. Habermas defines communicative action as:

'that form of social interaction in which the plans of action of different actors are co-ordinated through an exchange of communicative acts, that is, through a use of language orientated towards reaching understanding' (Habermas, 1984).

Habermas conceives that transformation of traditional society into modernity took place when normative behaviours were subjected to progressive secularization through communicative action (Powell, 2002). He takes an optimistic view of language. To Habermas, language is a means of communicative acts to reach understanding on the basis of rationality and reasons.

Habermas conceptualizes lifeworld and system, lifeworld as a linguistic context for initiating the process of communication. Lifeworld is a private sphere of individual life where cultural and personality is articulated through language. The lifeworld is governed by the presupposed and pre-interpreted form of daily conduct (Powell, 2002). Habermas sees the rationalization of lifeworld through communicative action as requirement for change. The system is taken broadly as economic, social, political system, and society as whole. Habermas therefore differentiate among private sphere, public sphere, and public authority (detail is given in chapter 5). Habermas sees the new social movements as based on communicative rationality linked to change in the public sphere. Building on Habermas TCA, the research explores communicative rationality and change in public sphere in lawyers' movement.

## **2.2 Epistemological Genealogy**

Habermas's TCA has its own epistemological importance. It is neither Marxist nor new/post Marxist. He upholds 'universalistic foundation of law and morality' and discards Adorno and Horkheimer's calculative instrumental reasoning. His TCA is diametrically opposed to post modernism and post structuralism. While post modernism is a power oriented discourse, TCA values reason and rationality. TCA is universalistic while post modernism is contextually specific. At the same time, it is also distinct from positivism as it is evaluative and believes in normative rightness with intersubjectivity while positivism emphasise is on objectivity and discarding norms and values. Though Habermas construction of his TCA rests on wide range of philosophical thinkers, intrinsically it does not fit in with epistemological genealogies.

If Habermasian epistemological genealogy is taken as distinct then it also has implications for methodology of research. Human reasons and rationality, not power, would be the key to understanding and consensus. Then every conflict in society can be resolved if arguments fulfil the criteria of universal validity claims, the opposing parties agree to participate without any hindrance, they show sincerity, and they have the same 'presupposition about the normative rightness'. The conflicting stances emerge because the parties don't qualify to any of these preconditions and prerequisites for communicative actions. Then in practical research, the task of the researcher is to find, categorise, and evaluate communicative acts. The researcher has to answer the questions, how the argument adheres or does not adhere to 'the universal validity claims', how claims are made to subjective truthfulness and objective truth, and what are the agreed or disagreed 'presuppositions'. Language of the communicative act and speech act is to be of specific focus, as carrier of reasons and rationality. Then the next task would be to distinguish different speech acts, like strategic act, communicative act based on the outcome of



communication. The researcher then needs to identify the structures and institutions which obstruct or promote communicative acts. Where to locate the public sphere, is it strong or weak and does it promote deliberative communication or not and how does mass media in the public sphere influence the public authority and facilitate deliberative democracy?

The terminologies would also need to be changed then. Instead of deconstruction, which is the postmodern methodology for analysis of discourse to uncover power structures, the TCA focuses on critical reconstruction of argumentation and validity claims. The wide ranging methodological changes in terms of perceiving social action, which does not give precedent to the positivist stand of sole inductive and deductive logic for truth claims, nor hold norms as the carrier of true knowledge. TCA tried to combine subjective norms, objective truth, and subjective truthfulness in one theoretical framework. Therefore putting the TCA in methodology is a challenge:

‘In the case of the theory of communicative action, the empirical and methodological work has not been done. Despite the vast literature associated with Habermas’s theory, empirical measures of communicative action have not yet been developed’ (Jacobson, 2003).

### **2.3 Methodology**

The methodology will be communicative discourse analysis of lawyers’ movement and moves towards a more inclusive discourse for a wider social movement, particularly semantic and argument analysis through critical reconstruction. I am taking the communicative discourse as any attempt by the lawyers to communicate their message by use of language, within or outside the organisation.

#### ***Rational Reconstruction/Deconstruction***

The research tools would be the analysis of the lawyers’ movement discourse. The study deals with language of professional group of lawyers and the enquiry starts from questioning why the lawyers speak the way they speak? My study focuses on meaning making and interpretation of the language. Meaning making in interpretative research is a matter of trustworthiness which includes:

‘criteria of credibility, transferability, dependability, conformability, and authenticity, fairness and ontological, catalytic and tactical authenticity’ (Gephart, 1999).

The speech acts would be analysed in terms of validity claims of speech acts according to TCA. These are:

1. Objective Truth, to what extent the claims made in Lawyers’ movement appeal to objective truth or truthfulness of persons who were making claims
2. Subjective Truthfulness or Appropriateness, what efforts were made to make the speech acts appropriate, according to subjective world.

3. Sincerity, what claims to sincerity, explicit and implicit, were made within the lawyers' organisation and between the lawyers and regime?
4. Comprehension: The focus would be on the construction and change of legal discourse with the assumption that professional language should assimilate broader development objectives if it can be understood by non lawyers public.

This research takes this classification into consideration through analysing the argument in speech acts and assessing the validity claims according to the criterion determined by TCA.

## **2.4 Information Sources**

### ***Secondary Sources***

For two years, the lawyers' movement was persistently reported on mass media in Pakistan. The communicative discourse was focused in talk shows, newspaper articles, news reports, commentaries and editorials. These media sources form a source of information for this research.

I have been facilitated by the availability of Pakistani newspapers and their archives online, in both English and Urdu languages. English newspapers like daily Dawn, daily Times, and daily News and Urdu Newspapers like daily Jang and daily Express are major sources I used for this research. The TV talk shows of private news channels which I focused on include Geo TV, Aaj TV, and ARY TV. There are many websites which provides free access to archive recording of these talk shows. (See annex 3)

The selection from voluminous media reports and talk shows was a challenge. First I focused on all speeches of the deposed CJ which he delivered during his visits to different bar associations/councils. These were the policy speeches as far as the lawyers' movement is concerned. Then I chose one talk show in which the lead council of CJ and the then attorney general of Pakistan participated. This talk show covers main legal arguments of both sides on topic of if and how the deposed judges can be restored. I also focused on talk shows conducted when the air transmission was blocked by the government, for analysis of modification in legal discourse and validity claims. These talk shows were more open both in contents and expressions. Those TV talk shows and newspaper articles were also focused which covered important events in the movement. These important events include deposition of chief justice, court decision to restore CJ, proclamation of emergency, lawyers' grand rallies, deposed CJ visits to different bar associations, presidential election, general elections, the Murree declaration, and judges restoration (See annex 1).

### ***Primary Sources***

The second aspect of the research was taking testimonies of the lawyers and media persons on lawyers' movement through FGDs and semi structured interviews. FGD is an important tool for participatory research, collective reflection and for eliciting different views. Semi-structured discussions often

lead to explore areas which are not anticipated at the time of designing research (See annex 6). FGDs were held in selection District and Tehsil Bar Associations at periphery of the movement. These FGDs were aimed at understanding those lawyers' 'standpoints' on the movement who were at the periphery and their perceived reasons and motivations for participation in the movement. These lawyers were the recipients of messages from the centre as well as they were deliberating on these messages. Their testimonies were critical because they have to explain the meaning of lawyers' legal discourse to a wide local public sphere, which in normal practice they do not have to, to make it understandable to the public external to the lawyers' organisation.

A total of four districts were selected from two different provinces, two districts each, to organise FGDs. Two districts from each province, North West Frontier Province and Punjab, were purposive sampled, taking into consideration law and order situation, distance from the national capital, and available time and resources for the study. The Presidents and General Secretaries of the respective bar associations facilitated and organised FGDs. (See annex 5)

In the research design stage, the media was not part of the study. However in research design seminar, it emerged as important factor in lawyers' movement communicative action. Therefore, semi-structured interviews were conducted with those reporters who covered lawyers' movement of leading TV/Radio channels (See annex 5). These channels include Geo TV, Aaj TV, Dawn TV, and BBC Urdu service. This was purposive sampling based on viewership in Pakistan. The interviews focus on the respondents' perception about the validity claims of the lawyers' movement, coverage, and interpretation they have to present to viewers as a bridge between legal and public discourses.

## **2.5 Challenges**

The research was challenging in terms of theoretical and practical aspects. I found myself struggling to with relate theoretical framework to empirical data. While Habermas's Theory of Communicative Action (TCA) is very rich in philosophical contents, I found it challenging to apply it in practical research situation. The challenge was how to distinguish weak communicative acts from strong communicative acts. How could one identify whether claims to the objective truth or subjective truthfulness are strong or weak. It was also a challenge to be evaluative, for one has to set aside personal interest and must be honest. The evaluative part in communication was difficult to engage with as a researcher with a history of supporting lawyers' movement.

My reflexivity and positionality regarding the research was also very important. The lawyers and media have their distinct groups' identities and this made me an outsider. I sympathized and supported the lawyers' movement and with this bias, I had to step back and evaluate how my positionality is impacting the research. The issue was more pertinent with my qualitative research while analysing giving rich thick descriptions in my FGDs and semi structured interviews.

### ***Practical issues***

The data for my research, the discourse, was spread over two years, in newspaper articles, magazines, speeches, and TV talks shows. It was challenging to review the voluminous discourse. Therefore I have to rely on the speeches delivered on the most important occasions in my judgement, which are considered as main events (See annex 1). Challenges in the field cannot be overlooked also. It was challenging to get appointments for meetings with lawyers and journalists/reporters coupled with extremely hot summer and inefficient public transport system in Pakistan.

## Chapter 3

# Rationality of Legal Discourse

This chapter focuses on the legal argumentation within the lawyers' movement and critical evaluation of arguments, both in favour and against the lawyers' movement case, through rational reconstruction and deconstruction of lawyers' communicative acts.

Complex institutionalized legal discourse has presuppositions of legal domains and procedures for claiming validity claims which makes it distinguished from informal modes of speaking. The point is aptly comprehended by Luhmann as:

'We observe and describe a piece of behaviour - more precisely, argumentative communication in the legal system. This already restricts our object: we are concerned only with the legal system and not with anything taking place outside that system (in mental systems or in science, philosophy, politics, etc). And we make the further assumption that in communication which uses arguments the point is always only to secure effects within the system itself. Seen this way, legal argumentation is a means for the legal system to convince itself, to refine and continue its own operations in one direction, and not the other' (Luhmann, 1995, pp 286) .

### 3.1 Critical Reconstruction of Legal Discourse

How then can we critically assess the quality of argument in a legal sphere through a more general frame of communicative action? Feteris holds that relation of Legal discourse to the informal mode of argumentation can be established (Feteris, 2003). Feteris based his research on Habermas discourse theory which sees complementary relationship between rationality of legal discourse and rationality of everyday life based on morality and normative believes:

'Legal discourse and moral practical discourse are complementary, which implies that legal discourse is an institutionalized form of moral discourse and should therefore be evaluated, from the perspective of normative idealization that govern rational moral discussion... On one hand we can ask how legal procedures of conflict resolution institutionalize rational discussions. On other hand, we can ask whether such legal procedure can sufficiently approximate discursive idealizations' (Feteris, 2003).

On the rationality of law and legal procedures, Habermas approaches from the wider perspective of communicative rationality of moral-practical discourse. Moral discourse is institutionalized by law as a form of conflict resolution, thus complementing the limitations of moral discourse through impartial and decisive resolution of legal disputes (Feteris, 2003).

Various factors explain the link between legal discourse and the public sphere. The public is the end user of the law, 'ignorance of law is not an excuse to violate law'. Therefore the public sphere discourse should include the

legalities which regulate their lives. In society, the execution of justice is conceptualized through diverse paradigms. 'Justice must not only be done but must be seen to be done' and justice in public life can only be seen when there are agreements upon presuppositions about justice in an accessible language that moves beyond closed legal language.

The critical approach to argumentation combines an argumentative theory focus on relation between everyday informal mode of argumentation and institutionalized legal discourse, based on the Habermas TCA. The dialectic aspect assesses the reasonableness and openness of a argument while the pragmatic is concerned with the moves made in the argumentative discourse (van Eemeren & Houtlosser, 2003) . This approach tried to locate the 'critical discussion' in four different stages. The stages are, confrontational, the opening, the argumentative, and concluding. In lawyers' movement, while the confrontational stage was clear as pro-restoration and anti-restoration camps, the movement discourse focused more on argumentation.

Argument in legal discussion can be simple and complex depends on clear and hard cases. Clear cases are those in which fact of legal rule are not disputed while in hard cases the fact of legal rules are challenged. If the standpoint is supported by a single arguments, that can be termed as simple argumentation. However, in most legal cases the standpoint is defended through a series of arguments and sub arguments. This gives a niche to the defender if one line of argument is challenged and weakened. There can also be coordinated compounded arguments which are linked. However, attack on one single argument can make the whole case weak. Subordinate argumentations for the standpoint imply that a single line argument is supported by series of arguments. In hard cases a particular interpretation of legal rules must be defended by argumentation in an interpretative argumentation scheme with moral dimensions. This scheme may correspond to historical precedence, semantics, teleological or genetic arguments. (Feteris, 2000). In lawyers' movement the restoration was a hard case as it disputed the fact of legal rules. The contested fact of the rules was whether the imposition of emergency was legal or illegal, whether the newly constituted Supreme Court was constitutional or unconstitutional. The fact of the rules and standpoints were contested by complex coordinated compounded and subordinated arguments.

### **3.2 Legal Argumentation and Critical Deliberation**

On March 22, 2008, a legal discussion was held between Malik Muhammad Qyaum, the then Attorney General of Pakistan and who was supporting Pervez Musharraf, and Aetizaz Ahsan, defence lawyer of deposed Chief Justice, Iftekhhar Muhammad Chaudhry. The live discussion took place on Geo TV programme Capital Talk, hosted by Hamid Mir. The talk show followed the Murree declaration in which the two major political parties in National Assembly of Pakistan, PPP and PMLN pledged to restore all deposed judges within 30 days. *(See annex 2 for complete transcript of the discussion)*

### ***Presuppositions***

The presuppositions in the legal discussion are both stated and unstated. These presuppositions in this discussion are based on adherence to provisions of constitution and upholding the sanctity of the Supreme Court decisions. The discussion also refers to the supremacy of parliament. It can be assumed that both parties are following what Habermas would say 'authorisation of power by law' (Flyvbjerg, 1998).

### ***Conflicting Standpoints***

This case can be termed as a hard case, where fact of the rule after the proclamation of emergency was challenged through complex schema of arguments. The discussion focused on whether the deposed judges who did not take oath under the Provisional Constitutional Order (PCO) 2007 are still valid judges and if so then how they can be restored? Malik Qayum took a standpoint that since the Supreme Court has validated the proclamation of emergency of November 2007 consequent upon the validation of deposition of judges, therefore they are no more judges. They can only be restored through constitution amendment which required through 2/3<sup>rd</sup> majority to repeal the Supreme Court Order. Aetizaz Ahsan rebutted this and held that since the proclamation of emergency of November 2007 was unconstitutional and illegal therefore these judges are still valid judges who are just obstructed from performing their duties. They can be restored through an Executive Order of the Prime Minister (PM) or through resolution of the parliament by simple majority. It is to be noted that at that time Pervez Musharraf was holding dual offices i.e. President and Chief of Army Staff. He promulgated the emergency as an Army Chief, not as a President.

### ***Argument Analysis***

Both sides presented a series of complex arguments to support their standpoints. Malik presented argument to falsify the standpoint of illegality of reconstituted judiciary through legal precedence. Malik said that if the reconstituted judiciary after the proclamation of emergency of Nov. 3, 2007 was illegal, then previous judiciary was also illegal, since all judges of previous constituted judiciary had also taken oath under the PCO promulgated in 1999 by Musharraf. Since the same legal principle cannot have different applications on cases of same nature, therefore either both judicial compositions are legal or illegal. If both are legal, then the reconstituted judiciary is also legal. If both are illegal, then what is the value of argument of replacing one illegal judge by other?

Malik then followed the first argument, since the previous composition of judiciary was legal though all those judges, including deposed CJ, took oath under the PCO in 1999, therefore the current composition of judges who took oath under the 2007 PCO is also legal (strong argument).

Malik capitalized on his first argument that all decisions of reconstituted legal and constitutional judiciary are valid and must be acted upon. These

decisions have now been published in the Pakistan Legal Document (PLD) 2008.

If all decisions of the reconstituted judiciary were valid, then its verdict on legitimizing of Nov. 3, 2007 emergency and validation of presidential election was also legal and valid. Through legalization of Nov. 3, 2007 emergency means, all those judges who did not take oath under the PCO are no more judges. Therefore they cannot be reinstated. The Supreme Court decision can only be reverted through the act of parliament passed through 2/3<sup>rd</sup> majority. Therefore for reinstatement of judges, an act of parliament should be passed by 2/3<sup>rd</sup> majority. The deposed judges cannot be reinstated as it would be against the Supreme Court decision of 1973 which states that a parliamentary resolution can be presented in the constitution but its value is not more than a wishful desire. It can't be a rule and it is not binding.

Aetizaz rebutted the very fact of the rule by terming Nov. 3 emergency unconstitutional and illegal. He presented many arguments in support of his major argument. He held that any composition of judiciary through the PCO is illegal, including 1999 PCO and 2007 PCO. Therefore in previous composition, when the judges took oath under the PCO 1999 was also illegal as long as that PCO was not indemnified through 17<sup>th</sup> constitutional amendment. Aetizaz gave another precedent when Similarly Zia's PCO in 1981 was validated by the 8<sup>th</sup> amendment. Since there is no indemnification of Nov. 3 martial law by any constitutional amendment, therefore it is unconstitutional and illegal. If Supreme Court has power to legitimize martial laws, then former dictators would not have resorted to the parliament. The Supreme Court cannot bring any amendment in the constitution it can only interpret the law.

Through these arguments, Aetizaz contested the validity of historical precedent presented by his opponent by distinguishing the previous composition of judiciary as legal and constitutional and the newly constituted judiciary as illegal and unconstitutional. Nov. 3 martial law was unconstitutional, accepted by the person itself as unconstitutional who imposed it. Malik accepted that it was *extra-constitutional* not unconstitutional but legitimized by the Supreme Court.

As Nov. 3 martial law was unconstitutional therefore all actions taken under it were unconstitutional. The judges were not deposed according to the provisions of the constitution (legal norms), therefore neither Nov. 3 martial law nor their illegal deposition should stand in the way of restoring all deposed judges. The constitutional amendment for restoration would only be required if Nov. 3 martial was indemnified by parliament. Therefore all judges can only be restored through an executive order of PM and parliamentary resolution by simple majority. Following argument were presented in support of parliamentary resolution:

- Pledge of allegiance case in US 2002, the court deposed the case that the will of the people has spoken, (legal norms)
- Malik had argued in Tikka Iqbal case, the PCO was rectified by the parliament through resolution. In the Dogar court (new Chief Justice), the Tikka Iqbal case was given a reason for justification of PCO. (refuting the validity claims to objective truth)



This discussion was a mix of the dialectic and rhetoric argumentation. As a rhetorical move, Aetizaz said that it never happened in the history that a dictator deposed 64 Judges and put all these judges under the house arrest including their families and children. The chief justice's son was not even allowed to go for an exam. He said that Musharraf deposed the judges because he was contesting presidential election for the third term in military uniform, which was a gross violation of the constitution.

**Table 1**  
**Argumentative Schema of Lawyers' Movement**

Coordinated Com-pounded Arguments	Subordinate Arguments
1. All deposed judges, including the Chief Justice, can be restored by an Executive Order of the Prime Minister	<ul style="list-style-type: none"> <li>• The Chief Justice, Iftekhhar Muhammad Chaudhry, and all deposed judges, are still a valid Judges who are just obstructed from performing his duties</li> <li>• An executive order and parliamentary resolution reflect the will of people and the opposite lawyer has himself used it as valid reason for the imposition of emergency in Tikka Khan Case. If that can be used for imposition of emergency then it can also be used for restoration of judges.</li> </ul>
1.1 The promulgation of emergency and PCO was unconstitutional	<ul style="list-style-type: none"> <li>• President Musharraf himself accepted that it was an unconstitutional step, in a BBC interview</li> <li>• It was against the decision of 7 members bench of Supreme Court who issued a stay order against proclamation of emergency</li> <li>• It was imposed by a Grade 22 Officer, violating the procedures set by the Constitution</li> <li>• Malik himself admitted that it was an extra constitutional step</li> </ul>
1.1.1 All proceeding actions taken under the PCO was also illegal, including the deposition of judges and appointment of new Chief Justice and Oath of Judges office	<ul style="list-style-type: none"> <li>• The oath taken by the judges under the PCO has excepted the word of allegiance to the constitution and therefore it is unconstitutional</li> </ul>
1.1.1.1 Since the Supreme Court constituted after the proclamation of emergency was illegal therefore all its decision are not of binding nature	<ul style="list-style-type: none"> <li>• The Supreme Court after the emergency is a beneficiary of the PCO therefore its decision regarding PCO is biased</li> <li>• The Supreme Court decision after emergency can only be part of the constitution of it is rectified by the parliament with 2/3<sup>rd</sup> majority. Since there is no amendment after the 17<sup>th</sup> amendment therefore the Supreme Court decision can't be part of the constitution. Parliament is supreme and its decision is binding on the Supreme Court and not vice versa.</li> </ul>

The above table depicts that how the standpoint was defended through complex argumentation schema. The strategic manoeuvring of using dialectical argumentation, rational and critical aspects were mixed with rhetorical arguments. The language of the discussion focused on historical precedents, and rhetorical pathos like Chief Justice manhandling. Similarly, a strategic move was also presented through allowing the former Supreme Court judges who even took oath under the PCO to remain judges in the state of pre November 3, 2007 position and teleological argument through relating the impact of decision on overall political scenario.

**Table 2**  
**Argumentative Schema for Anti-Lawyers' Movement**

<b>Coordinated Compounded Arguments</b>	<b>Subordinate Arguments</b>
1. All deposed judges, including the Chief Justice, can't be restored through Executive Order of the Prime Minister. They are no more judges. They can only be restored through a parliamentary act passed by 2/3 <sup>rd</sup> majority	<ul style="list-style-type: none"> <li>• The deposition is legitimized by the Supreme Court and the order or verdict of Supreme Court is binding on every citizen of Pakistan</li> <li>• A parliamentary resolution is a wishful act which has no force of law. There are many resolutions by the assembly, like wage board award, which were not implemented.</li> </ul>
1.1 The promulgation of emergency and PCO is now part of the constitution and all actions taken under the PCO are legitimate and binding, including Oath of Office of Judges and deposition of judges	<ul style="list-style-type: none"> <li>• The Supreme Court can overrule its past judgment. Therefore a stay order by 7 member bench against emergency was declared null and void by the newly constituted Supreme Court.</li> <li>• The deposition of judges has now become a past and close transaction since the Supreme Court decision under the Article 270 sub article AAA has been published in Pakistan Legal Code 2008 (PLC)</li> <li>• There is only one Supreme Court in Pakistan, whether it is de-jure or de-facto, it has the authority of jurisdiction in all constitutional matters</li> </ul>
1.1.1 All proceeding actions taken under the PCO were also valid, including the deposition of judges and appointment of new Chief Justice and Oath of Judges office	<ul style="list-style-type: none"> <li>• If the PCO is unconstitutional then the general election held under the PCO is also unconstitutional. It means the current government is also illegal and unconstitutional. Why did the political parties then participate in the general election?</li> <li>• The Parliament has to indemnify the PCO otherwise its own existence is in danger (<i>prescription and warning</i>). There is no specific time for the parliament indemnification but since it is legitimized by Supreme Court therefore till the parliament indemnification, the PCO is valid. All actions taken under PCO is also valid and legitimate.</li> </ul>

The rational reconstruction of the legal discussion here provides a case for communicative action. At the end, there was no consensus between the participants. Overall it was a weak communicative act in terms of Pakistan public sphere due to following reasons:

### ***Conflicting Presuppositions***

While the participants were supposed to agree to give precedents to the constitutional provisions, one party explicitly declared that 'unconstitutional step was validated by the Supreme Court'. Refuting the presupposition can be attributed as one of the reasons for weak communicative act. The contested validity claims then could not be justified if the presuppositions are not agreed by participants.

### ***Participants Sincerity***

Commitment of participants to reach to an agreement is important element of TCA which was missing in the debate. One participant in the very start was missing and when he came late, he complained of his throat infection. This was a clear sign that participants were not taking this debate sincerely to reach consensus and such postures made it weak communicative acts.

### ***Claims to Normative Rightness and Historical Precedents***

Both sides claimed to normative rightness. Aetizaz claimed to normative rightness is based on cases in which the court decisions were based on parliamentary resolutions. However, at one point it seemed that the anti restoration side wanted to conceal the fact of rule, by not allowing the listeners how PCO is legitimized in legal precedence. The pro restoration lawyers presented legal precedents in which emergency or martial laws were indemnified by the parliament, and in case of Nov. 3 emergency such indemnification was still required. The anti restoration side appeal to normative rightness was based on force of the judicial orders of post emergency constituted judiciary.

### ***Teleological Arguments***

Both participants provide strong arguments for their particular aim. One side presented that if judges were not restored, grave consequences in the form of lack of judicial independence and no regards for rule of law would follow. The other side presented that if judges were restored it means nullifying PCO consequent upon the nullification of general election held under the PCO. It also means the current government is illegal and unconstitutional.

The debate ended while both participants pulled their punches but an agreement on contested validity claims was far from sight. The debate's language was very much delimited by legal terms which also limited its ability to communicate with the public sphere.

## Chapter 4

### Communicative Discourse

This chapter deals with communicative actions by spokespeople from the lawyers' movement to totalize and universalize their premises into public discourse through addressing broader developmental goals.

Habermas's TCA provides a framework for understanding social acts based on communicative rationality which aims at overcoming limitations of restrictive 'cognitive-instrumental rationality' (Johnson, 1991). TCA holds that the importance of deliberative argument in the rationality process cannot be overlooked. In society, controversial claims, explicitly or implicitly, are made and then accepted or rejected in discursive processes, some of which might be seen as 'specialist' theoretical discourses. However, Habermas also identifies practical discourses where claims to normative rightness are tested society wide and made thematic (Habermas, 1984). High quality tests of claims to normative rightness rely on society wide rational participation where participants are capable of mutual criticism and free from illusions and self deceptions. Low quality claims do not have these underpinning virtues.

A standard speech act rests on pragmatic relation to objective world, social world, and subjective world (Habermas & McCarthy, 1985). Speaker and hearer relate the validity claims to these three worlds in an interpretive framework. High quality communicative rationality rests on the process by which contested validity claims are satisfactorily resolved and relationship of validity claims to the world valued by all people in a society.

Habermas identifies four concepts of social action based on their presuppositions and implication for rationality (Habermas, 1984). These are:

1. Teleological action based on cognitive-instrumental concept of rationality under the framework of rational choice theory which describes available means and perused objectives and consistency between current beliefs and detained information (Walliser, 1989). Three steps, each characterized by specific type of rationality determine individual behaviour. These are information, deliberation, and implementation processes, characterized by perceptive, decisional and praxeological rationalities respectively. The evaluative focus is on effectiveness and truth of action.
2. Normative regulated action based on norms, value, culture, custom, and socially defined roles. The evaluative focus is on form/content legitimization and claim to rightness.
3. Dramaturgical action based on self expression, style, personality. Evaluative focus is on eradicating deception or self deception and claim to sincerity or authenticity.
4. Communicative Action, speech acts and language as a medium for reaching understanding of common definition of situation. The participants, through relating to the world, raise validity claims which can be contested or accepted. 'Communicative action requires an interpretation that is rational in approach' (Habermas, 1984).

The focus of the study is on communicative action, but it is important to distinguish different actions taken in the lawyers' movement. Was the sole factor of the actions the communicative rationality or the other kind of actions, namely dramaturgical, normative regulated, or teleological?

Action is human behaviour with intention, or with subjective meaning attached (Szczelkun, 1999). Habermas takes Austin paradigm which describes three types of speech acts namely locutionary, illocutionary, and perlocutionary. Locutionary act means to say something, illocutionary act has force and to act in saying something, while perlocutionary act is a speech that produces an effect, intended or not intended. Pursuing Illocutionary aims by participants in a speech acts is communicative action to Habermas (Habermas, 1984). Based on this classification of speech act, the research distinguished different speech acts in lawyers' movement.

Habermas defines two broad categories of rational action, action oriented to achieve goals as strategic action, and action oriented to reach understanding as communicative action (Johnson, 1991). Strategic action is preoccupied with efficiency or effectiveness and interaction is coordinated by influence, arbitrary choice, or complementarity of interests. In communicative action, understanding involves agreement through validity claims by participants regarding nature of their interaction taking place in context within which the agents pursue their plans. This research tries to identify the typology of interaction within lawyers' organisation, interaction between lawyers and non lawyers public, and between lawyers' movement and regime.

Habermas holds that the participants have two options when everyday interaction deteriorates and the process of reciprocal communicative action fails. The participants may either resort to courts for continuing discourse or argument which help continue the communicative action or they might resort to strategic action (Johnson, 1991). However, if communicative and strategic action fails then Habermas indicates grave political consequences:

‘To the degree the interaction can't be coordinated through (court actions) achieving understanding, the only alternative that remains is force exercised by one against other (in a more or less refined, more or less latent manner). The typological distinction between communicative and strategic action says nothing else than this' (Johnson, 1991, pp 185).

There were various instances where strategic action was exerted by both parties, government through imposition of emergency and deposition of judges and lawyers through rallies, boycott from court proceedings, and grand rallies. Therefore in any instance when force is applied, we can safely assume that the communicative action has failed which gave rise to exertion of force/strategic action.

#### **4.1 Totalizing / Universalizing the Legal Discourse**

The modification of the legal discourse into a more social totalizing discourse was important for lawyers' movement to justify wider claims for social justice. The assumption is that if the lawyers were trying to appeal to wider social public then it should be reflected in their speech acts taking the Habermasian

view of ‘understanding’ in minimal meaning as ‘two subjects understand the same linguistic expression in the same way’. If such transformation took place, then what were the presumed presuppositions, and how was the claim to validity made which is informed by TCA? What kind of locutionary, illocutionary, and perlocutionary acts were produced and did these communicative acts fulfil the criteria of normative rightness, subjective truthfulness and objective truth.

In the lawyers’ movement the communicative action were taking place at two levels, internal and external. The external communicative acts were taking place between lawyers and the public, opponents of the movement, and army. The internal structure of the lawyers and media, and application of communicative technology were major instruments for maintaining communicative acts despite the censorship by the authoritarian sphere. The movement started with the strategic act of a dictator to influence the CJ to resign. The CJ defied by not resigning which led to recourse to the court for initiating communicative action. The sincerity of Musharraf in institutionalized communicative acts through legal proceedings in courts was contested. However the court proceedings, recourse to the power of law, were widely covered through mass media which created space for justifying contested validity claims. The lawyers’ messages was extended to all citizens and deliberation in public sphere started. The more media gave coverage to the legal issue, the more wide deliberation in political public sphere was imminent.

Different kind of communicative acts can be identified within the lawyers’ movement. The lifeworld of the lawyers is based on common understanding of ‘rule of law’, legal procedures, and common approach to professional clientele. From the start of the lawyers’ movement, the media reports were illocutionary acts which generated discussion in the public sphere about issues recognisable to all Pakistani citizens in terms of personal expression of coercion.

‘When the security officers wanted to take Justice Iftikhar to the Supreme Court in car, he resisted and wanted to walk. Meanwhile there was manhandling (*Hathapai*) of Justice Iftikhar and his coat was torn... He (Justice Iftikhar) said that he is under house arrest with his family since March 9 (2007). His official residence is surrounded by police and intelligence agencies...Justice Iftikhar said that due to heavy deployment of police, he and his family could not go out of his house and no one could meet him. His children are not allowed to go to school, college and university. There is no phone and TV facility. The basic need such as medicine and doctor was also not provided’ (Geo News at 9 pm, March 13, 2007)

This dramaturgical and personalised account was based on self expression and appeal to personal experiences. This also claimed understanding of objective reality of experiences and things seen. The speech act is rhetorical which appeals to audience through pathos like treatment by security officer, family and children sufferings, and non availability of medicine and doctor. The message was intentionally framed to rouse public feelings of sympathy as illocutionary acts, for a person who represented judiciary and against a person who presented army. A clear identity frame through a person representing judiciary standing against institution of coercive apparatus was created, rather than a person accused of misuse of his office, which the reference pointed at.

## *Institutionalization of Deposition*

Communicative acts referring to deposition were further built by speech acts of leaders of the lawyers' movement. The move of deposition was depicted as usurping of power by military and therefore the legality of discourse found bases in anti-military and anti-dictatorial premises. The act of deposition was placed in rhetoric of historical frame of uncivilized era where an institution having the coercive power manipulates the structure of power for its own benefit.

‘Now the main danger facing Pakistan today is the tendency towards monopolization and concentration of all state power in one body. This lust for unrivalled power and ultimate authority destroys all those institutions that form the foundations of a modern civilized state. Baron de Montesquieu, one of the first proponents of the doctrine of separation of powers, was of the view that: In the infancy of societies, the chiefs of state shape its institutions; later the institutions shape the chiefs of state. Charles De Gaulle had paraphrased it somewhat differently when he said that some countries need an army but some armies need a state... Pakistan needs to make that transition urgently. We must strengthen our institutions so that we are ruled by law and not by men. We can no longer afford to remain an infant state. A failure to move on could be fatal’. (Munir A. Malik, then President of SCBA, 26 May 2007, reported live by various TV channels)

This speech act provides an example of argumentative discourse of communicative actions. The intended hearers were the lawyers and wider intellectual, and presupposition is that all participants want to make progress from immature to a mature civilized state. Building on this presupposition the speaker appears for common understanding that the change in prevailing trend is mandatory and demanded action is to stand for restoration of judges. He is appealing to the normative rightness by appealing to the ethos of liberal thinkers. This framing determines the deposition as an act of infancy, an act of immaturity with no thinking attached, which goes against the norms of modern civilized state. Therefore efforts for restoration of judges were linked to the independent judiciary which was depicted as necessary condition for realization of a modern state. The subjective truthfulness is also portrayed as we, the lawyers' are civilized and we know how this country can make progress, and therefore all should follow us.

The discourse was also anti-military for obvious reasons. It was a military head who deposed Chief Justice.

‘They changed the Quaid (Jinnah the founder of Pakistan) conception of national welfare state into national security state. The difference is, in welfare state every citizen is the first priority of the state, 160 million citizens is the first priority of the state. In welfare state the citizen and state is like child and mother, child and father, does not matter a citizen is of 5 year or 85 years. It is the responsibility of the state to guarantee education, health, accommodation in the available resources. Because the first priority of the welfare state in Pakistan is its 160 million citizens. But the first priority in the national security state is 500,000 army personnel... We have to hoist this flag as long as we reach to the destination of reconverting this national security state into national welfare state. (Aetizaz Ahsan, Ex President SCBA, 26 May 2007 at Judicial Conference Islamabad, reported live by various private TV channels)

The interest of army was projected opposed to the interest of the whole nation and its unquestionable emblematic founder. The paradigmatic shift from legal discourse is to the social services through conceptualization of welfare state. The speech act is to reach to common understanding with non lawyers and general public through presupposition in context of dismal social sector delivery by the state. The empirical evidence of military intervention in politics and consecutive martial laws provide objective truth to the statement. The speech act is deliberative in extending the communicative space to societal 'lifeworld' which is citizens and public, annexed by 'system' which is army in this context. The scope of the restoration of deposed judges is now framed as a struggle for genuine social welfare state where the state society relations are at its best. There is also an appeal to the normative truthfulness by linking the goal of the movement to realization of state as envisaged by the founder of Pakistan.

The media representation of the movement was structured around the same theme where a conflict was constructed as a tussle between two institutions, with clear evaluative tilt towards lawyers' position. The media report went to the extreme to call deposed chief justice a hero with the charisma of heroically defying a dictator.

The general public's imagination was fired when an institution, the judiciary, raised its head and challenged the army, represented by its chief, the president. The lawyers' movement set out not to accept the dominance of the president. The suspended chief justice who said 'no' to the president became a hero overnight. (Article, Need for Strong Judiciary, 27 June 2007, The daily News)

### ***Validity Claims in Imposition of Emergency (Martial Law)***

The emergency order of Nov. 3, 2007 provides a counter argument against the lawyers' movement. Where the lawyers' presented 'rule of law', progress, delivery of justice, judicial independence as valued objective, the text of emergency provided counter argument and blamed judiciary for interfering in the domains of executive and legislature. The Nov. 3 martial law was imposed after the restoration of Chief Justice by 13 members' full bench of Supreme Court on June 15, 2007. Emergency can only be imposed as prescribed in the constitution, any extra constitution act is deemed to be martial law (FGDs). Lawyers' pointed at Musharraf presidential election *in uniform* for a *third term* as the main reason for proclamation of emergency.

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 diluting the efficacy of its actions to control this menace;

Whereas there has been increasing interference by some members of the judiciary in government policy, adversely affecting economic growth, in particular;

Whereas constant interference in executive functions, including but not limited to the control of terrorist activity, economic policy, price controls, downsizing of corporations and urban planning, has weakened the writ of the government; the police force has been completely demoralized and is fast losing its efficacy to fight terrorism and intelligence agencies have been thwarted in their activities and prevented from pursuing terrorists;



Whereas some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions'. (Reported widely in Pakistani mass media).

The emergency of Nov. 3, 2007 was different from the previous ones, as other institutions, except deposed judges and private television channels, were allowed to work. This emergency was labeled by lawyers as a 'martial law against judiciary'. Therefore in speech acts the military was held responsible for the crisis in the country. While all the actions taken by the Chief Justice under the public interest litigation were dubbed as achievement, these were labeled actions which encouraged terrorism and extremism. The Supreme Court intervention in privatization and urban planning was also rejected and was presented as counter developmental and against the economic progress the regime was pursuing.

### ***Basic Rights and Independent Courts***

The anti-deposition discourse tried to link the restoration and independence of judiciary to a step forward to protect basic rights of citizens, and deposed chief justice was symbolized as the key to judicial independence. The argument then follows that how independence of judiciary is crucial for protection of basic rights enshrined in the constitution. The protection of basic human rights was termed as a prerequisite for a civilized and free society. The discourse heavily focused on the framing of basic attributes of civilized society and lawyers' movement as a leap towards achievement that that goal. It is interesting to see that media was following the same language as lawyers were speaking.

'The very basic tenet of a civilized and free society is under attack in Pakistan by Pervez Musharraf's regime. A regime that can't tolerate the independence of the court cannot be trusted to ensure and protect basic rights of its citizens'. (23 June 2007, Article, An Independent Judiciary: A Peoples Movement, reported in the News)

### ***Progress and Judiciary***

In discourse of the lawyers' movement the scope of the judicial boundaries was extended claiming a multitude of objectives. Statements were presented that the chief justice was an agency important for change. He presented himself as a free minded judge who does not succumb to any fear or favour. The validity claim was his claim to subjective truthfulness seen in public interest litigation and suomoto action. The presupposition held that free judiciary would lay the foundation of progress and development of the country. Most of the speeches acts were locutionary without having force of producing communicative acts. The presupposition tends to the general understanding that all the hearers agree that national progress and prosperity could be achieved through strong parliament, defence, democracy and foreign investment. All these parameters of progress (*inter alia*) were presented as contingent upon independence of judiciary. The speech acts also presented presumably common linguistic expressions with little reference to codified legal language.

'Strengthening and promotion of defence, parliament, democracy, and investment hinge on independence of judiciary. The first thing a foreign investor wants to ensure is whether judges in the host country are bold and

judiciary independent. The investor knows that only independent courts can give him protection and relief in case of any untoward situation... Give independent-minded judges to any nation and see how that nation prospers and progress. But if independent minded judges are arrested, the country is doomed to fail'. (Deposed CJ Speech at Multan, 26 July 2008, reported live through various TV channels)

To further strengthen the validity of the proposition, empirical evidence was provided as an objective truth. Again the reference to a developed society was made as it was presupposed to be a role model. The meaning can be elicited that if a nation wants to be a superpower, it must have supremacy of law and constitution which can be guaranteed by the independent judiciary.

Referring to the survey conducted in 1984 regarding the factors which made the United States the superpower, he said the majority of the interviewees opined that the US was superpower because there was supremacy of law and constitution in the country'. (Deposed CJ speech at Peshawar, 18 Feb. 2009)

### ***Role of Judiciary in Conflict Management***

The lawyers' movement discourse tried to appeal to the interests of diverse interest groups. The causes of different issues were brought to the fore of judiciary directly or indirectly, like governance, poverty, basic needs, law and order etc. The issue of Talibanisation and militarisation in Swat valley was presented as sole problem of persistent inefficiencies of judiciary and Taliban wanted an alternate in the form of imposition of Sharia law. This may be termed as a reductionalist approach to the complex issue of militancy and Talibanization which goes against the empirical evidences, since the judges have been restored but the problem still persisted. Following is an example of instrumental legal move:

'The people of Swat did not demand construction of any road or establishment of any factory but they took to the streets for speedy justice, he said and added only an ideal judicial system can restore peace to the troubled areas'. (Deposed CJ speech at Peshawar, 18 Feb 2009)

### ***Free Judiciary, Alleviation of Poverty and Injustices***

The speech of the CJ at Faisalabad Bar is another example of a communicative act, with a mix of legal and development discourse. The deliberative affect is an attempt to convince audience, lawyers and non lawyers citizens expected to see him live through various media channels, on the power of legal discourse which can shape the social and development discourse. The reference to different legal cases is to strengthen the validity claim of an argument as an objective truth. The major argument was the power of the court to intervene in the areas which involve public interest. Therefore the court is a protector of public interest and fundamental human rights. Then he narrates the court judgments which can alleviate poverty, injustices, and even can improve the process of democracy in Pakistan. Even the scope of power of the court is extended to the micro-management of provision of safe drinking water and basic necessities.

'The implementation of jurisdiction for the public interest litigation envisaged in the constitution can alleviate poverty and injustices. In our

country, the application of public interest litigation is now increasing but there was no such thing in the past. Due to the public interest litigation, many people have been benefited. One such case is PLD 1988 Benezir Bhutto Vs Federation of Pakistan. Under this case, the Supreme Court gave verdict for registration of political parties and termed that forming an association is fundamental human right. This judgment helped the process of democracy in Pakistan. ...I don't want to mention it, but I am here in Faisalabad and there is a Village named Gulam Muhammad, where deaths were caused due to the unsafe drinking water. A complaint was sent to me by mayor of the concerned union council. I took action on the complaint and ordered the concerned official to provide clean drinking water to the people'. (Deposed CJ Speech at Faisalabad, 24 June 2007).

This analysis of discourse surrounding the lawyers' movement demonstrates an effort by the legal complex to modify the language for having the same linguistic expressions with non lawyers. Claims were made that restoration of judges is the necessary and sufficient condition for development which included social justice, social welfare, democracy, investment, peace, poverty alleviation, and fundamental rights. Though the presupposition of these fundamentals for progress and development cannot be overlooked, the challenge was how the restoration of judges would fulfil these claims. These claims were justified on normative rightness, objective claims and subjective truthfulness.

Within the lawyers' organisation the good quality communicative acts were observed where deliberation and challenge to validity claims were presented and contested at different levels in bar councils and bar associations (FGDs). The bar association provided a structural opportunity where lawyers of different interest affiliated with different political parties could come to a common understanding in the course of movement. It was a purposive deliberative act on the part of lawyers where communicative acts maintain the loyalty to the culture where common understanding prevailed. So we can find many examples where a leader of party is standing against his own party. Aetizaz Ahsan, a veteran politicians and member of executive council of PPP, was lead council of the deposed CJ and led a grand rally against the PPP government. Similarly, in district bar associations, many lawyers openly identified themselves with their parties who were opposing restoration but they remained active for the restoration. The element of deliberative democracy and organization feeling of pride in its democratic norms was found in the lawyers' focus groups.

Without channels of communication, through which the lawyers' discourse goes into public sphere, this modification would not have served the purpose. Here comes the role of mass media which is discussed in next chapter.

# Chapter 5

## Role of Media

### 5.1 Lifeworld, Public Sphere and Communicative Action

This chapter deals with the role of media as transmitter or possibly modifier of information in professional public sphere of lawyers and political public sphere of non lawyers/citizens. Habermas makes the concept of the lifeworld and communicative action complementary. Lifeworld is what we take as common sense or 'given to the experiencing subject as unquestionable' (Habermas & McCarthy, 1985). Lifeworld contextualizes the speech acts in a given situation. This provides a priori or social structure into the intersubjectivity of mutual understanding in language.

Habermas conception of the public sphere rests on lifeworld, as delimiting space for public deliberation. Public sphere is an area where people can freely discuss aspects of societal problems. That provides boundaries to communicative action. He distinguishes private sphere, public sphere, and sphere of public authority. Habermas sees that the public sphere can only be conceptualized in full sense within a state as impersonal locus of authority (Calhoun, 1999). Habermas takes private sphere as family or workplace and public authority as state. The public sphere is space of institutions and practices which mediates between private sphere and public authority (Habermas & Burger, 1989).

Habermas signifies the important role of mass media in relation to public sphere. The public sphere comes into being with every conversation in which private individuals assemble to form a public body (Habermas, 2001). Habermas further explains the public body as the individuals who neither behave as professionals, who undertake only private affairs, nor those who are subjected to constitutional order or legal constraints of state bureaucracy. Citizens behave as public when they behave in unrestrained fashion, with guaranteed freedom of expression and assembly, and freedom to express their opinion on matters of 'general interest'. Habermas identifies prerequisites for participation and reaching agreement in public sphere. First prerequisite is the willingness of individuals to participate without any hindrance or restriction and relinquish their particular identities and engage in rational discussion. Within such public sphere individuals reasoning in universal terms (universal pragmatics), in principle, could reach agreement (Nowak, 2006).

Habermas sees that large public sphere requires specific means for transmitting information of general interest and influencing those who receive it. This specific means are television, radio, newspaper and magazine. Habermas also discusses the transformation of media into commercial enterprise, censorship, publicity, commodification of news, and changing role of media to trade off between commercial interests and ideology. Public sphere mediates between society and state (Habermas, 2001). Society is taken as private sphere while state as public authority. Media is a source of transmitting information within public sphere, and also between private and public authority spheres. The public authority derives its mandate for caring the wellbeing of citizen through public sphere. Habermas conceives deliberative

democracy as subordination of public authority to public sphere, and ‘political public sphere institutionalize influence over government through the instrument of law making bodies’ (Habermas, 2001). Habermas illustrate that relation between the free journalism and development of public sphere:

‘the emergence of free political journalism in the beginning of enlightenment era, the state of confrontation between government and press served as a measure for the degree of development of public sphere’ (Habermas, 2001).

Habermas describes the emergence of the daily journals in the middle of the 17<sup>th</sup> century as an important development which made the news accessible to the general public. With more reading public, more public criticism on government policies and regulations started. This process reshaped the state-governed public sphere into the public of private people. The public opinion referred to critical judgement of public by making use of reasons. This critical thinking was mediated by institution of public sphere of private people, in the form of salon, coffee houses, theatres, where new middle class educated people gathered as discussants (Nowak, 2006).

## **5.2 Mass Media and Lawyers’ Movement**

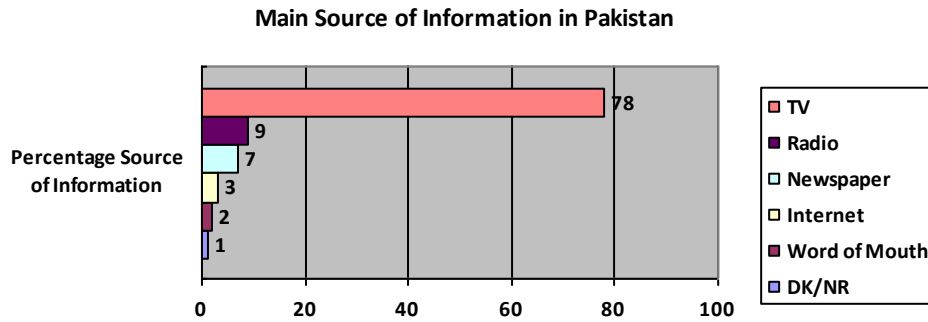
There was an explosion of private electronic media in Pakistan from 2002 (See annex 4), marked by more open debates on government policies and performance of political parties, as described by a columnist in Pakistan:

‘In Pakistan today the easiest thing to do is criticize the government, for sins real or imagined. Forget government, even army and the country’s all-powerful security services — ISI, MI and their poor cousin, IB — have lost holy cow status. Gen Musharraf personally has suffered more criticism at the hands of the press than all of Pakistan’s past rulers put together...Most of the new TV channels coming up are owned by big business or corporate interests. In their talk shows the great punching bag is politics — government policy and performance of political parties. Corporate greed or the wheeling-dealing in the real estate sector seldom comes up for examination’ (Amir, March 6, 2005).

This trend was instrumental in change of wide public sphere in Pakistan, which was less informed on performance of government and public figures before the advent of the vibrant mass media, especially private electronic media in Pakistan. CJ’s meeting with Musharraf on 9 March 2009 was given overwhelming coverage by private TV channels, which would have gone unnoticed, if there was only state owned TV channel. It can be termed as the first occasion when the issue of public authority was thrown forcefully in public sphere, and the public sphere reciprocated spontaneously with equal force.

## *Electronic Media*

Electronic media, especially private television channels proved to be the most popular mean of providing information to the citizens in Pakistan. This is obvious from the International Republican Institute (IRI) survey conducted in March 2009<sup>1</sup>. The survey estimates 78 percent of population depends on television, 9 percent on radio, 7 percent on newspapers, and only 3 percent on internet for getting information.



It is to be noted that March 2009 was very critical for the lawyers' movement. In this month, the lawyers' launched grand protest rally, the deposed judges were restored, and mass media was extensively focusing on lawyers' movement. The institutional arrangements for moves from professional to more general public sphere through bars and media were well in place. For lawyers, it is the bar rooms and bar associations/councils where they discuss 'issues of common interest'. For journalists, the press clubs and media centres were the depiction private public sphere. It was willingness of these professionals to participate in deliberation and challenging the restrictions put by public authority. The professional private sphere of lawyers was well organized and well equipped, with regular elections and membership. In lawyers' movement, the professional private spheres of media and lawyers came closer, especially when restrictions were imposed on media after Nov. 3 martial law. The electronic media proved to be a hurdle in the way of regime domination by not allowing the blockage of information.

Was this development instrumental in the development or strengthening of a general public sphere as conceptualized by Habermas? The media initiated a sustained critique of government policies, and if criticizing and deliberation on government policies is taken to be a prerequisite for change in political public sphere, then the mass media was optimally doing so. The media was also trying to frame the public opinion and exposed many 'facts' which were not formally accessible. In the context of lawyers' movement, the lawyers' messages were reinforced and propagated through 'marathon transmissions', transmission which cover the lawyers' movement persistently for two years (Interview with Abdul Qayum, Geo TV). The private media provided a space

<sup>1</sup> <http://www.iri.org/newsreleases/2009-05-11-Pakistan.asp> retrieved on Nov. 5, 2009

for communicative acts in which contested validity claims were presented by proponents and opponents of the lawyers' movement. In order to give a sense of deliberative objectivity, in talk shows the media tried to present standpoints and validity claims on pro-restoration and anti-restoration. Each camp had to defend the standpoint through the force of argument, based on validity claims to objective truth, subjective truthfulness and normative rightness. Free discursive discussions were ensured by inviting members of treasury benches and member of opposition benches, and lawyers supporting Musharraf and lawyers' defending CJ. On the other hand the regime was critical of the media and accused it of exaggerating and misrepresenting the facts (Interview with Irfan Ashraf, DAWN TV). Since the media was very sympathetic to the lawyers' movement from the very start, this greatly facilitated lawyers' task of taking a professional issue of lawyers private sphere into wider public sphere. As a result, the first attempt of restraining electronic media was made on June 4, 2007 when Pakistan Media Regulatory Authority (PEMRA) amendment ordinance was promulgated. The ordinance prohibited media from the live coverage of the lawyers' protest rallies. The lawyers and journalist started joint protest against this restriction and the government had to take back the ordinance. Joint protests by lawyers and media were instrumental in emerging institutionalized public sphere for the lawyers' movement.

After the promulgation of emergency, the private TV channels were banned. Government tried to restrict the discursive deliberation on private electronic media. Talk shows of popular anchors of different private TV channels were banned. The promulgation of emergency was followed by crackdown on lawyers and media. This was an effort by the state to restrict deliberation in public sphere through use of coercion, where communicative acts were not required on the part of the government. These curbs further brought lawyers and media on the same platform. Afterwards, the media and lawyers sailed in the same boat. The media found alternate methods to keep their programme on air and their viewers intact. While the programmes were banned on cable network, free access to live streaming through the internet and satellite antenna was provided. This was followed by a crackdown on satellite antenna vendors in major cities, and high demand skyrocketed the price of satellite antenna from Rs.5,000 to Rs.20,000 (Daily Dawn, Nov. 8, 2007). The channels did not stop reporting of the news and telecasted their programmes as usual, with more forceful and critical deliberation. The government ministers stopped coming to the talk shows, unable to defend the criticism against their validity claims through communicative reasons, and often their names tags were spotted on the empty seats. Another unique approach was that the TV talk shows were organized on footpaths, press clubs, and at premises of bar associations. These were the institutions which mediated critical thinking of public sphere, the same way the salons, coffee houses, and theatre were institutions of public sphere in Habermas's description. In these talk shows the anchors and the participants, mostly lawyers and journalists criticised, reasoned, and deliberated on the government policies more openly.

The private electronic media was prime mover in mobilizing public against the deposition. This contribution is duly recognized and appreciated by lawyers in all focus group discussions.

## ***Print Media***

Despite anti press freedom laws (See annex 4) the print press in Pakistan was considered to be relatively free as compared to electronic media. The commentaries in the national press on different issues of national importance appear to be critical and more open. However, this freedom is not without challenges and journalists have had a history of long struggle for press freedom. Therefore when the electronic media was stopped from airing their programmes, newspapers were reportedly not openly pressured.

The press was very receptive and full of appreciation of the public interest litigation under the *suo moto* actions taken by the CJ, even before the start of lawyers' movement. As a leading columnist pointed:

'A strange situation we are witnessing: the Supreme Court under the Chief Justice Iftikhar Mohammad Chaudhry slowly picking its way through the ruins and retrieving some of its lost honour and credibility. People have lost faith in other institutions. They have lost faith in leadership. The very desperation this situation creates is making the people look to the Supreme Court as the last station on the line, the only forum capable of providing relief (Amir, May 5, 2006)'.

The CJ showed keen interest in the court's media image (Ghias, 2009). Ghias refers to the Supreme Court report in 2006 in which a section on "Supreme Court and the Media" was included. The section comprised of 18 press reports on the achievements of the Court. The major shift was visible in the CJ posture from government loyalist to a public figure with expanded media coverage. The publicity was demanding more actions from the CJ in terms of more public interest litigation. National public sphere appeared demanding to hold the public authority accountable, backed by communicative rationality and arguments. The more *suo moto* actions meant more media appreciation consequent upon more public interest litigations. The regime clearly resented this trend as evident in the reference filed against CJ in March 2007, one of the charges was based on the media:

(K) Self projection... visibility in the media

(a) The Chief Justice... desired a lot of self-projection and specially employed an officer to arrange special media projection for him. The PRO was tasked to ensure prominent reporting of (Chief Justice) activities in all newspapers and the electronic media

(b) PTV was ordered to ensure that the (chief justice) was given daily coverage in the news prominently'. (Reported in daily Dawn March 21, 2007)

The mass media framed the issue as a question of presidential authority to suspend the CJ as opposed to the CJ's alleged misconduct. With each case, implicating public authority, there was more encouragement from media and legal public sphere, leading to of favourable public opinion of CJ. The construction safety and urban planning case 2005 implicated provincial officials. The privatization of steel mill's case in 2007 implicated the prime minister. The missing persons' case in 2007 implicated the army and intelligence agencies. Finally the presidential election in 2008 implicated a president in military uniform (Ghias, 2009). In each case, CJ was acting against more powerful officials than the previous ones and media was full of appreciation and encouragement for the CJ. The same media stood behind the



CJ after his deposition and in the whole lawyers' movement. The price they paid was crackdown on media outlets, ban on private media channels, and crackdown on journalists.

The critical role of the technologically revolutionary electronic and conventionally resistant print media in Pakistan changed the dynamics of political public sphere, with more information flowing to the private sphere on the performance of regime, the emergence of critical deliberation in private sphere and then public sphere was imminent. The role of electronic media was especially critical, with former dictators it was easy to censor flow of information while only one state owned television channel was broadcasting. With explosion of electronic media, from one state owned TV channel as a mouthpiece of the regime to 47 private TV channels, each with a tacit agenda to attract viewership, and no best event than the lawyers' movement would have the same potentials.

Why media was very sympathetic towards lawyers' movement? The findings from interviews are:

'The electronic media has to provide something to viewers round the clock and lawyers' movement was a best opportunity to provide continuous stories for news and talk shows. Secondly there were feelings in the media that if the judiciary is strong, it would protect them from the pressure of government'. (Riaz Khan, President Khyber Union of Journalists)

'It can be safely assumed that 70% people of the media are fresh graduates who were themselves inspired by the lawyers' movement. These journalists, who reported from the scene of protests, were also chanting slogans 'Go Musharraf Go'. Second aspect was tough competition among private media channels, if one channel was broadcasting live the protest rallies, the other channels were bound to do so.' (Shaheen Bunerji BBC Urdu service).

'But you should also see what was done with the media. We were beaten, we had to face draconian media laws, anchors were arrested and their programs were banned, our channel was not allowed to telecast through cable service for 70 days and huge financial losses were incurred. After such a harsh treatment what do you expect us to do?' (Abdul Qayum, Senior Reporter Geo TV).

### **5.3 Internet and Cellular Telephony**

The surge in internet users (See annex 4) also facilitated effective communicative acts. The internet blogs, live streaming of different private TV channels, email groups, and different social sites, were monumental in sustained communication and spreading information when electronic media was banned. The internet public sphere was mostly educated middle 'group', lawyers, media itself, and university students/teachers. The nature of information was even more open, had no restriction whatsoever and no government scrutiny of information. The picture of manhandling of CJ was widely circulated on internet. Most of the blog administrators were students and professionals of emerging IT sector in Pakistan. The electronic revolution also provided sustained information to Pakistani nationals and students living abroad, especially in Europe and United States, and they organised various protest events against deposition in various cities.

Cellular telephony (See annex 4) is one of the booming enterprises in Pakistan. The cellular service providers claim that almost every second Pakistani has a mobile phone connection. The price of calls and text messages

is very low. Therefore circulating text messages were a common pastime in the lawyers' movement. Government tried to stop or block the cellular service many times, especially in the grand protest rallies. However, it proved to be a useful tool for communicating information.

In Pakistan the emergence of the healthy mass media, specially the electronic media, proved to be an opportunity for the lawyers' movement to communicate their messages. The mass media was persistently threatened by the regime however together with lawyers it provided a principled opposition to the regime. For media the lawyers' movement provided substance for continuous reporting and for lawyers' movement the media was a source to convey their communicative acts to the public.

# Chapter 6

## Conclusion: Evidence Challenging Habermas Theory

### 6.1 Postmodern Critique of TCA

Habermas sees communication as a tool for consensus and building understanding which in turn leads to action. His view is very optimistic about the role of discourse and language in creating and sustaining social movements. The totally opposite view is presented by Foucault who sees discourse and language as expression of structural power. Foucault takes language as a means to communicative power. Foucault holds that it is the discourse not the subject who speaks and produces knowledge (Hall, 1997). Foucault holds the discourse cannot take meaning until they are identified 'with those positions which the discourse construct and become subject of its power and knowledge' (Hall, 1997).

Habermas's 'presupposition' is based on rationality and reason as emancipatory forces. Foucault and Derrida term 'communication is at all times already penetrated by power: power is always present and any conception of communication without considering power is meaningless' (Flyvbjerg, 1998). For Foucault, emancipation is not to close eyes but to disclose and unmask the structures of power used as an instrument of oppression. The post structure/post modern critique of the TCA would be that it is 'linear' and tries to create meta-narrative or totalizing and universalizing discourse without locating 'geo-politics' of knowledge. Catherine Walsh (Walsh, 2007) holds that knowledge has its roots in politics based on geopolitics and power of those who promote it and it is basically the politics of knowledge which determine its truth and reliability, rather than knowledge itself. Flyvbjerg describes Habermas project as:

'The basic weakness of Habermas's project is its lack of agreement between ideal and reality, between intention and their implementation. The incongruity pervades both the most general as well as the most concrete phenomenon of modernity and its is rooted in as insufficient conception of power' (Flyvbjerg, 1998, pp 215).

However, there are thinkers who are critical of Foucault's project as 'overemphasizing power and describe it as Hobbs's notion of 'war of all against all'. As Hanssen (Hanssen, 2000) says:

'Foucault project appeared as but one alternative in a growing repertoire of like minded philosophical solutions that exacerbated, rather than redressed, the impoverished lifeworld increasingly defining cultural modernity'

Habermas describes Foucault's historiography as relativist, cryptonormative illusory science. Foucault denies any notion of universal norm independent of people and context. Foucault holds that search for universal morality is catastrophic and authorization of power by law is inadequate (Flyvbjerg, 1998). He further says that law, institutions, or policies and plan guarantee no freedom. Freedom is a practice not a universal or theory, and its ideals are not *utopian* absence of power. Habermas terms rationality as power and while Foucault says power is everywhere and defines rationality.

Foucauldian discourse on power poses a challenge to Habermas' TCA. Flyvbjerg says that 'nothing can be discovered if everything is power or if nothing is power, but instead ideal utopian' (Flyvbjerg, 1998). These two paradigms would have different explanations for the success or failure of lawyers' movement. Habermas would assess the movement on the basis of the institutionalized rational and communicative acts to produce social change while Foucault would focus whether it has unmasked the structures of power and how these structures are challenged.

## 6.2 TCA's Implications for Practical Research

Habermas's TCA seems to be prescriptive and evaluative. It is scanty in providing a focused methodological framework for analysing strong and weak communicative acts, which can be interpreted with diverse interpretative imperatives. Context specific interpretation and meaning making, the positionality, and reflexivity cannot be overlooked, which goes against the concept of universal rational dialectical pragmatics.

Progressive communicative actions depend on common understanding of 'presuppositions'. Presupposition about validity claims may strongly emerge in a single professional group but extending this to a whole populace divided on the lines of ethnicity, language, gender, education, culture, and access to sources of information is a great challenge. In Pakistani context, the major social and national issues such as poverty, violence, religious beliefs, power shortage, corruption, illiteracy, poor governance, are seen intermingled but have diverse impact on different segments of people. Similarly the political parties are divided on liberal, secular, religious, nationalist, regional, and linguistic lines. Habermas does not take into consideration the contextual backgrounds, where subjective truthfulness, objective truth, and normative rightness have different meanings and conceptions for these different lifeworlds. Habermas's TCA seeks to be universalistic, an agreement on contextual nature of multitude of conflicting interests seems very challenging and not amenable to discursive resolution.

Habermas takes the emergence of free press as an important development for the public sphere but he is pessimistic about the role of electronic media with wide publicity appeal. The research suggests that newly founded electronic media in Pakistan, though they struggled to attract advertisements, were able opportunistically to project critically on issue of judicial crisis. The electronic media in Pakistan came up with innovative mechanism to disseminate information. Without electronic media, the lawyers' movement may not have gained the momentum over two years (FGDs). In the lawyers' movement it appeared that the lawyers' sought to enter the public sphere.

The external communicative acts with non lawyers remained weak as it did not create a structure where these validity claims could have been challenged by non lawyers, though media was assumed to provide a level playing field for non lawyers. Hence media was also 'following the popular sentiments' (correspondent Geo TV), it did not create an ideal environment for high quality communicative acts. Non lawyers and public had not enough oversight on the argumentation of the validity claims to sustain communicative actions

after the restoration of judges. Therefore other factors, rather than communicative rationality of the legal complex, have been responsible for the larger spontaneous participation of the non lawyers. The other factors may include affiliation to the political parties, like the main rally on March 15, 2009 in Lahore was overwhelmingly PMLN workers and led by PMLN leader at its critical stage. Also there was low approval rating of Musharaf, which was low even before the start of lawyers' movement (Malik, 2008). One of the issues which implicated the government was privatization of the big industrial unit, Pakistan Steel Mill (PSM), and privatization in Pakistan had long been suggested to have potential for negative political impact (Cameron, 1997). Therefore strong communicative acts in lawyers' movement cannot be credited as a sole factor for public participation in the movement. But again the low approval rating of Musharaf means common consensus which was the outcome of public communicative acts already taking place due to host of factors like power shortage, worsening law and order situation, and issue of missing persons. Those communicative acts were reinforced by the communicative acts of lawyers' movement, though this did not necessarily mean discursive influence.

As the evidence suggests, a legal issue became public due to vociferous claims of the lawyers' movement's discourse as a central point in raising diverse issues. A legal issue ended with the legal solution, the restoration of all deposed judges. However, the resolution was not the result of the consensus or understanding between the regime and the lawyers. Communicative acts demand setting aside personal interests in conflict resolutions. This element could be seen within lawyers' organisation and lawyers claimed to have no personal interest in the movement (FGDs). But this element was missing on the other side. In case of Musharraf, he was interested in his presidential election for third term in army uniform and Zardari was interested to protect National Reconciliation Ordinance (See annex 1). The only possible outcome, what Habermas rightly holds, was the grave political consequences through the use of power. Lawyers organized grand rally started from almost every corner of the country, supported by opposition political parties. Government also exerted full force to block any road leading to the capital. Finally it was the power, not communicative acts, which restored all deposed judges. Here it should be noted that the army was reportedly involved again. The Army Chief talked on phone with leader of the lawyers' movement, Aetizaz Ahsan, on March 15, 2009 to stop the grand protest rally and within few hours, early in the morning on March 16, the Prime Minister addressed the nation on electronic media and announced that all deposed judges have been restored (Aetizaz Ahsan, Programme Islamabad Tonight, Aaj TV, Nov. 05, 2009).

Does it mean that power is the only source of conflict resolution? Though the issue seems to have been resolved through the use of force, but it was the communicative acts of lawyers which gave rise to the country wide protest for restoration. The protest rally would not have been so powerful had it not been supported both by lawyers and non lawyers; by the rational argument and validity claims.

This also signifies that violation of communicative acts would stop conflict resolution through agreement and use of force would become inevitable. The violation includes lack of agreement on presuppositions, hindrances to participation, not giving up personal interests, weak claims to objective truth, subjective truthfulness, and normative rightness. In lawyers' movement there were many violations consequent upon use of power in the form of proclamation of emergency, protest rallies, and use of state coercive apparatus against the media and lawyers. However, anything achieved through force cannot possibly have a tangible change in the behaviour of the opponent, not agreed but waiting for a proper time to respond through force. This was optimally exhibited by the opponents even after the restoration and the term 'exogenous pressure' in the following quote points to these forces:

'The lawyers in the movement were so carried away by the prospect of humbling a haughty president that they forget that the judiciary could become neither independent nor more responsible only by the reinstatement of a chief justice — howsoever unjustly removed or harshly treated. Institutions are built by sloggng over centuries and not by one quick march. The lawyers succeeded in their immediate aim but their campaign has made the judiciary more vulnerable to extraneous pressures than before'. (Dawn, 'A Movement Wasted' by Kanwar Idris, 04 Oct, 2009)

### **6.3 Lawyers' Movement as a Sustainable Mass Social Movement**

The transformation of public sphere by the lawyers' movement was instrumental in generation and articulation of a demand for change. This public sphere developed a network of communication, permitting deliberation and producing critical public opinion. The messages were widely propagated by sympathetic mass media. Lawyers were successful in broadening and modifying the language of the movement to inculcate the interest of non lawyers and citizens. However, lack of institutional arrangement in political public sphere, other than media and lawyers' did not transform to the level which could have changed the lawyers' movement into a broader social movement for greater deliberative democracy. The extension of public sphere into political sphere could have been a testing ground for deliberation and critically analysing the claims made by the lawyers' movement as a contributor to a wider social change. The political public sphere was claimed by 'established actors' in political parties. After the restoration, professional legal public sphere was bound to squeeze and public sphere was not equipped or ready to take over a political role, and therefore the movement reverted to the political parties. The political party leaders were ready to capitalize on the existing mass mobilization but did not have the capacity and will to sustain the movement. As Imran Khan, a former cricketer turned politicians and chairman of Pakistan Tahreeki Insaaf (PTI) argued for subjective truthfulness and objective truth of what media was presenting. However it can be deemed as a political move of a politician who determines that heroes fight battles and then disappear and politician take over to reap the benefits.

'We want the media to tell the truth only. Truth means don't be influenced by anyone. If Musharraf is still sitting there we all opposition parties are responsible for that. Recognize your heroes, your main hero is

Justice Iftikhar and your judiciary. After that your heroes are lawyers and journalists. They are the heroes because they are bringing the truth. They have changed the Pakistan, it is new Pakistan. We need an opposition which strives for independent of judiciary, only independent of judiciary can ensure rule of law. If there is rule of law then only there be a real democracy and free election. If there is rule of law then only we will have our basic rights and can release missing persons' (Imran Khan, Capital Talk Geo TV, Nov. 24, 2007)

The political parties in Pakistan have no institutional arrangements where the policies of the government could have been tested for communicative rationality. Within the political parties, there is lack of communicative rationality as authoritarian political culture and weak democratic norms remain intact. It was clear from the PPP changing stances and contradictory validity claims. PPP supported restoration before Feb. 2008 general election but the same party stroke a deal with Musharraf through NRO and became a main hurdle in restoration once it formed governments at centre and at three federating units. The coalition partners of PPP even included those parties which supported Musharraf. The inherently and authoritarian party leadership inherently disregarded any space for deliberative democracy within the political party. After the restoration of judges CJ who was symbolized for judicial independence resumed his duties in the Supreme Court. Lawyers had achieved their proclaimed objective and citizens would have to wait for the benefits claimed by the lawyers i.e. restoration as necessary and sufficient condition for national development'. The research identifies good modification of legal discourse but limited argumentation on validity claims so weak communicative acts of lawyers' movement in broader political public sphere as one of the reasons for unsuccessful transformation of lawyers' movement into a sustained mass social movement for a more deliberative democracy. This restricted the potentials of sustained social movement.

However, the research findings consolidate the importance of institutional development for sustainable communicative action consequent upon social change. The communicative action within lawyers' movement and media opened up new vistas, which was instrumental in reinstatement of judges. The failure to convert these communicative acts into a wider democratic movement building on the lawyers' own deliberative structures means that no sustainable mass social movement was created and the political momentum reverted to the political parties. Further research is required to analyse whether the movement has brought any structural changes in political parties, and how changes in political public sphere by media and lawyers' movement are shaping the political system of Pakistan.

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## **Annex 1: Lawyers' Movement in Pakistan**

The lawyers' movement in Pakistan started on March 9, 2007, the day the Chief Justice of Supreme Court of Pakistan, Iftikhar Muhammad Chaudhry was deposed by the then President/General Pervez Musharraf. The deposition was based on allegations of misconduct and misuse of office. The reference was filed with the Supreme Judicial Council, a body of judges empowered under the constitution of Pakistan to hear cases of misconduct against judges. However the deposition was seen as a move by a dictator to keep the judiciary under his command.

The military intervention in politics and deposition of Chief Justices and judges of superior judiciary by military dictators was not unprecedented in the history of Pakistan. The successive military coups used the state coercive power to brush aside any opposition, if there were any. In 1958, after eleven years of independence, the first martial law was imposed by General Ayub Khan. The martial law was lifted in 1962 but again another military coup was staged in 1969 by General Yahya Khan. In 1971 after the disintegration of Pakistan, Zulfikar Ali Bhutto became the first civilian martial law administrator. The 1973 constitution was passed by the parliament which laid the foundation of parliamentary democracy in Pakistan. In 1973 constitution, special arrangements were made to stop future military coups. Article 6 of the constitution reads as:

High treason (Article Six of the Constitution)

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.

Any person aiding or abetting the acts mentioned in clause (1) shall likewise be guilty of high treason

Majlis-e-Shoora (Parliament) shall by law provide for the punishment of persons found guilty of high treason

However this provision did not deter the military dictators from adventures of abrogating or holing the constitution in abeyance. In 1977 another martial law was imposed by General Zia-ul-Huq. He also subjugated the political opposition and trailed Zulfikar Ali Bhutto leading to his 'judicial murder' in 1979. Martial law was lifted in 1985 and general elections were held on non polity basis. On 17 August 1988 Zia died in an air crash followed by the party based election. Zia amassed overwhelming power through 8<sup>th</sup> amendment in the constitution in 1985. He added 58-2B in the constitution which gave discretionary power to the president to dissolve national assembly, first used by General Zia on 29 May 1988 and then by the successive presidents. The 58-2B reads as:

(2) Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,  
(b) 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.

Three elected governments were toppled by the presidents through the Article 58-2B in 1990, 1993 and 1996<sup>2</sup>. This amendment also changed the parliamentary structure of the government and a hybrid parliamentary/presidential form of government emerged. In 1997, the 58-2b was removed from the constitution through 13<sup>th</sup> amendment. On 12 Oct. 1999, Pervez Musharraf staged a military coup and ousted the elected Prime Minister (PM) Nawaz Sharif. General Pervez Musharraf became chief executive, and the president of Pakistan.

The Provisional Constitution Order (PCO) was promulgated. Under this arrangement the judges were bound to take oath under the Oath of Office Judges Order 2000. It meant the judges had to take fresh oath of allegiance to the military ruler and they would make no decision against the military. There were many judges who refused to take fresh oath and resigned.

The political history of deposed Chief Justice, Justice Chaudhry is important for the lawyers' movement. Chaudhry comes from the most underdeveloped province of four provinces of Pakistan. He practiced law in Baluchistan for 18 years and was elected as President of the Quetta High Court Bar Association. In 1990, he became a judge to the Quetta High Court and at the time of military takeover in 1999, he was the Chief Justice of Quetta High Court. He took an oath as a Judge of Supreme Court in 1999, when six judges of Supreme Court refused to do so under the PCO. In May 2000, justice Chaudhry was amongst the 12 judges of Supreme Court who validated the coup based on 'doctrine of necessity'. Doctrine of necessity is one of the most notorious judgments in the judicial history of Pakistan, dated back to 1954 when Governor General Ghulam Mohammad dissolved the government of PM Khoawja Nazim Uddin. While the Sindh High court nullified the dissolution Mr. Munir, Chief Justice of Chief Court (later named as Supreme Court), decided in favour of the Governor General. The basis of the decision was the 'Doctrine of Necessity' which means to preserve the country the constitution has to be abandoned. This was the most favourite judgment for all the successive military dictators in Pakistan (Wolf-Phillips, 1979). In 2002, Justice Chaudhry was on the nine members bench that legalized Musharraf's non constitutional referendum which paved the way for him to be the president for coming five years. In 2003, he was on five members' bench who legalized Musharraf's amendments to the Constitution. Again in 2005 he was on five members' bench who allowed Musharraf to be hold dual offices of an army chief and president (Ghias, 2009). The never resisting attitude of Chaudhry made him one of the favourite judges of Musharraf and he was promoted as Chief Justice of Supreme Court in May 7, 2005 and the oath was administered by Musharraf.

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<sup>2</sup> 58-2B and 60 years of Pakistan History, Geo TV documentary (Urdu language)

Musharraf, like his predecessors, also grab overwhelming power through introducing various amendments in constitution. He reintroduced the 58-2B in the constitution through the 17<sup>th</sup> amendment passed by national assembly on 30 Dec. 2003. In general election in 2002, he used all means to get his party win named Pakistan Muslim League Quaid-i-Azam (PMLQ). Afterward he remained a sole decision maker of the Pakistan PMLQ party, a faction which had separated from Pakistan Muslim League Nawaz (PML-N). He established National Security Council and being a President became chairman of the council. The political leadership in the country was dismantled. Leaders of two major political parties and former Prime Ministers, Ms. Benazir Bhutto of Pakistan People Party (PPP) and Mian Nawaz Sharif of PMLN were sent into exile. There was no leader in Pakistan who could have voiced against Musharraf's dictatorial regime.

Benazir Bhutto and Nawaz Sharif came closer while in exile. A Charter of Democracy (CoD) was signed in London between Ms. Benazir Bhutto and Mian Nawaz Sharif on 14 May 2006 in which, among many other pledges, it was asserted that no judge should take oath under the PCO.

The transformation from justice Chaudhry to Chief Justice Chaudhry was interesting. Rather than serving a political function of legitimizing military regime, the Supreme Court started governance function through public interest litigation and suo motu actions. Ghias attributes this transformation to economic liberalization, supportive media, regional influence and strategic judges (Ghias, 2009). Chaudhry also brought expansive notion of public interest litigation and established Human Rights Cell to deal with cases and complaints under the court's original jurisdiction. These developments got overwhelming media coverage. Every court decision in such cases was followed by media encouragement consequent upon court action in more complicated and political sensitive issue. It started from construction safety and urban planning, going through price control, privatization, illegal detention, and reaching to Musharraf. These cases would later be seen as bedrock of the lawyers' movement.

Of these cases the privatization of Pakistan Steel Mill and illegal detention of missing persons were important, which directly implicated the Musharraf handpicked PM and the head of the secret agency. Shoukat Aziz was a Citibank vice president before he joined Musharraf's team as a finance minister in 2000. Aziz became PM in 2004 and retained post of finance minister and chairman of privatization commission. Steel Mill was privatized in 2006 amid union protests. The union filed a petition in Supreme Court and the court annulled the share purchase agreement and effectively reversed the sale.

The case of illegal detention case was sensitive as it involved the secret agencies of Pakistan. After the 9/11, the government of Pakistan was aggressively complying with the US demand to fight war against terrorism. One aspect of this war was secretly detaining people. These also included the political adversaries from Baluchistan and people who were holding anti-government stance. The Human Rights Commission of Pakistan (HRCP) produced names of 400 missing persons. In 2006, the court took the case of 41 missing persons and demanded the ministry of interior to produce the missing

persons. Initially denying but later the officials confessed to have found 20 persons.

This raised significant reservations for Musharraf to expect that the same court would legitimize his candidacy in Oct. 2007 presidential election. Musharraf had given one time exception for dual offices duly indemnified by the 17<sup>th</sup> amendment. However, the activist posture of the Supreme Court could no longer be trusted to allow him the same exception for second time. Before the Supreme Court had acted upon Musharraf re-election as president while still in uniform, was quick to pave his way by suspending Chaudhry on March 9, 2007.

The manner in which the Chief Justice was deposed raised public outrage. While Chaudhry was in planned meeting with Musharraf on March 9, 2009, the general in his uniform informed about the complaints against him. The allegations would later be revealed as partly based on an open letter by an advocate Supreme Court Naeem Bukhari. Chaudhry was advised to resigned or face the Supreme Judicial Council. For Musharraf it proved a hard nut to be broken and meanwhile directors of intelligence agencies and PM also entered the room. While they all were convincing him to resign he reportedly negated violation of any code of conduct or rule of law. Chaudhry was detained in the room for five hours and when he was released there was no official flag on his car. After escorting him to official resident, he was kept under the house arrest, which Musharraf latter called it as ‘wrong tactical handlings’<sup>3</sup>.

Another incident took place on 13 March 2007 when Chaudhry was required to appear before the Supreme Judicial Council. Chaudhry insisted to walk and not to use vehicle provided by security officers. He was roughed up by police who dragged him from his head into car. Photos of the incident appeared in some newspapers and manhandling of Chaudhry were seen as planned act of harassment.

The legal battle started between the government and Chief Justice. He appeared in all proceedings, and he was always flanked by gathering of lawyers from his official residence to the Supreme Court. Meanwhile Chaudhry started visiting bar associations in different parts of the country. These visits were a public show of support for Chaudhry restoration and every visit was accompanied by full media coverage. The chief justice visited bar councils in Rawalpindi on March 28, in Sukkur on Apr. 14, Peshawar on Apr. 21, Lahore on May 5, and Abbottabad on June 2. His visit to Karachi on May 12 was confined to the lounge of the airport by city government who was loyal to Musharraf and clashes started amongst rival political groups in which 34 people were killed and 140 injured<sup>4</sup>. However, this provided another imputes to the movement against the blunt support of the coercive apparatus of the state. The Chaudhry had to return to Islamabad without addressing the bar in Karachi.

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<sup>3</sup> Live with Talat (Musharraf Interview with Talat on Aaj TV), 4 June 2007

<sup>4</sup> Daily Dawn March 13, 2007

On 20 July 2007, the 13 members Bench of Supreme Court reinstated the Chief Justice. He again reopened the missing persons' case. Now a critical issue before the court was the election of the president scheduled in Oct. 2007. In given scenario, Musharraf had no expectation from CJ to legitimize his presidential election while in uniform. This opened space to the political parties for political manoeuvring. Musharraf met with Benezir in Abu Dhabi on July 27 to negotiate her return. The negotiation was materialized in National Reconciliation Ordinance (NRO) on Oct. 5 which dropped all pending charges of corruption against her and her husband Asif Ali Zardari, and also allowed her a third term as PM. In return the Musharraf demanded the presidency for five more years (Ghias, 2009). Afterward, a lenient, rather accommodating posture was visible in PPP stance against Musharraf. It was a successful move on the part of Musharraf to weaken the lawyers' movement, as PPP had been very active and vocal against Musharraf. However Musharraf did not offer the same package to Nawaz Sharif. Nawaz Sharif exile came into force after a secret deal with Musharraf and guaranteed by heads of a foreign countries. Supreme Court allowed Nawaz and his brother stating that they 'have inalienable right to enter and remain in country as citizens of Pakistan'. When he tried to come to Pakistan on Sep. 9 he was forcefully deported. Supreme Court was quick to issue contempt of court notices to the government. However, this move was important for CJ to secure support of one of the largest parties in Pakistan, which reciprocated in March 2009 grand protest rally.

Musharraf wanted to be elected from the same Electoral College again which elected him in 2002. His term of presidency was to finish at the end of 2007. The opposition filed a petition against his re-election and lawyers brought their own candidate for the presidential election. The lawyers made it difficult for Musharraf to have legitimate ground for contesting election. The court ordered that election could go ahead but reserved that the election results would not be notified by Election Commission of Pakistan until the full hearing is conducted. Musharraf won election on Oct. 6 but due to the Supreme Court verdict he could not declare victory. While the case was pending before Supreme Court, a martial law was imposed on 3 Nov. 2007. Another PCO was promulgated followed by Oath of Office Judges. Sixty four judges who did not take oath under the new PCO were sent home. The new court headed by Abdul Hameed Dogar legitimized the president election, the PCO, and every action taken by Musharraf under the PCO the judges had to comply with the proviso 'the supreme court or high courts and any other court shall not have the power to make any order against the president or the prime minister or any person exercising powers or jurisdiction under their authority'. After the promulgation of emergency, more than 5,000 lawyers were detained and television channels were closed down.

Probably this was the biggest media blockage in Pakistan which went against the tall claims of Musharraf regime of media freedom. The media found a new strategy to attract public attention. Not allowed to air their transmission, the talk shows were organized on footpaths, in bar councils, and in press cubs. The public participation in these talk shows was worth seeing, and these talk shows and regular programmes were shown on TV transmission

through internet live stream and satellite dish. Many internet blogs were created where the recorded talk shows could be accessed. This increased the demand for satellite dish and price of dish antenna rose from Rs.5,000 to Rs.20,000 in Islamabad<sup>5</sup>.

This was a major turning point and the movement was accelerated consequent upon Musharraf resignation from Chief of the Army post and later from the President post. Benazir Bhutto, the chairperson of PPP was assassinated in an election rally on 27 Dec. 2007. After the general election in Feb. 2008, the PPP and PMLN got the majority vote. Asif Ali Zardari, the widower of Benazir Bhutto became co-chairman of PPP and new President of Pakistan. The PMLN entered into coalition with PPP after signing six points Murree declaration on 9 March 2008. The 2<sup>nd</sup> point Murree declaration reads as:

‘This has been decided in today’s summit between the PPP and the PML (N) that the deposed judges would be restored, on the position as they were on November 2, 2007, within 30 days of the formation of the federal government through a parliamentary resolution’<sup>6</sup>.

However Zardari did not keep his words and judges were not restored in 30 days through parliamentary resolution. A series of meetings were held between Zardari and Nawaz a plan for restoration of judges was not agreed upon. The lawyers’ and opposition parties pointed to the NRO as main reason for Zardari unwillingness to restore Judiciary (Goodson, 2008). The fear was, if the Chief Justice was restored, he would scratch the NRO and corruption charges would mount again. Therefore on 25 August 2008, the PMLN withdrew from the coalition government due to abandoning the goal of restoration of Judiciary by Zardari’s government (Goodson, 2008). Meanwhile the government offered fresh oaths to the deposed judges and except six judges, all deposed judges took fresh oath and resumed their offices. The six judges, including Chaudhry were of the opinion that promulgation of martial law was unconstitutional and they were the legitimate judges. Meanwhile the lawyers announced a grand rally for restoration of all deposed judges. To obstruct PMLN participation in the rally, governor rule was imposed in Punjab on Feb 25, 2009 and the PMLN provincial government was toppled by Zardari. It further pushed the PMLN to overwhelmingly support the restoration of judges so the judiciary can restore PMLN government.

The lawyers claimed that movement was not for a personality but for the institution of judiciary. The lawyers were in forefront and in absence of political leadership they started and successfully maintained a movement. The role of lawyers was central to the movement and they boycotted the court proceedings persistently for two years and took to the streets (Zaidi 2008). The lawyers exert pressure on the government by using the sanction, not allowing the courts to work. It was on the expense of their work and livelihood.

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<sup>5</sup> Daily Times, Nov. 7, 2007

<sup>6</sup> The News, March 9, 2008

The lawyers waited for a year and losing all hopes a grand rally (long march) was announced which started on March 12, 2009. The government tried it best to cordon off the major entries to major cities by placing containers on main entrances and deploying thousands of para-military forces. However on March 15, the rally was successful to do away with all obstacles in Lahore and started marching to Islamabad. It was on its way that early in the morning on March 16, 2007, the PM Yousaf Raza Gilani announced restoration of Chaudhry along with all remaining deposed judges<sup>7</sup>.

### **Lawyers' Organisation**

Pakistan is a federal parliamentary state has four federating units (provinces). At federal level, Supreme Court is the apex Court of Pakistan having 17 judges. It is the final arbitrator of the law and of the constitution. The Supreme Court has Principal Seat in Islamabad and four Branch Registries, one in each province. Federal Sharia Court is a specialised court responsible for determining whether or not provision of law is according to the injunctions of Islamabad. Federal Ombudsman was established in 2003 with an aim to diagnose, investigate, redress, and rectify injustices done to a person through maladministration. In addition to the ombudsman headquarter at Islamabad, currently all provinces have also established Provincial Ombudsman except NWFP.

In each province there is a High Court. The number of High Court judges varies in each province. In each province, the principal seat is in the capital of the province and High Court Benches in various districts of the province. In Punjab High Court the number of judges is fixed at 50, in Sindh High Court at 28, in Peshawar High Court at 16 and in Baluchistan High Court at 9. In capital of each province, the respective High Courts have its Principal Seat and have Branch Registries in various Districts of the province.

Subordinate judiciary comprises of civil and criminal courts at District level, however the High Court exercise the administrative control over subordinate courts. The civil court comprises of District Judge, Additional District Judge, and Civil Judge Class I, II, and III. The criminal courts comprise of Session Judge, Additional Session Judge, and Judicial Magistrate Class I, II, and III. One or more judges of civil and criminal courts may have seats in the Tehsil level. There are also specialized courts like consumer courts, revenue courts, anti terrorism courts, service tribunals, anti corruption courts, banking courts, labour courts etc.

In Pakistan the lawyers' organisation is administered under the Pakistan Legal Practitioners and Bar Council Act (PLPBCA) 1973. The lawyers' organisation is structured according to the hierarchy of the judiciary. The lawyers at Supreme Court are presented by Supreme Court Bar Association (SCBA), and in High Courts by their respective High Court Bar Associations (HCBA). Lawyers at subordinate judiciary are presented by the District and Tehsil Bar Association. The bar associations are independent entities of

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<sup>7</sup> Daily Dawn, March 16, 2008



lawyers, however there the bar councils provide a combine platform to lawyers of different bar associations.

In each province there is a Provincial Bar Council. The members of provincial bar council are elected by all bar associations of the respective province. The number of member of provincial bar councils varies according to the strength of lawyers in province. The Punjab Bar Council has 75, Singh Bar Council has 33, NWFP Bar Council has 33, and Baluchistan Bar Council has 7 members. The PLPCA provides for the qualification criteria for membership and to be elected members of bar associations and bar councils. The criteria mainly depend on experience as an advocate, and status of dues payable to bar association/bar councils.

Pakistan Bar Council is an apex body, with Attorney General as Ex. Officio Chairman and 20 members elected by Provincial Bar Councils through single transferable vote for four years. From each province, the following number of members is elected for the Pakistan Bar Council.

**Table 3**  
**Pakistan Bar Council Composition**

Name of Province	Membership in Pakistan Bar Council
Baluchistan	1
North West Frontier Province	4
Punjab	11
Sindh	6

Source: PLPCA 1973

Tehsil Bar Association (TBA) is a grassroots level of lawyers' organisation. An Executive Committee is elected comprised of President as lead er and of Vice President, General Secretary, Joint Secretary, Finance Secretary, Library Secretary, and Auditor as member of the Executive Committee by the respective members of the TBA. Similarly District Bar Association (DBA) is an organisation of all lawyers registered as members of the District Bar. An Executive Committee of the DBA is elected comprises of President as lead ers representation all lawyers of respective District Bar. On same way, elections are held every year at the HCBA and SCBA. The only difference at SCBA is that it has four Vice Presidents, one from each provincial. The President of the SCBA is elected in rotation from each province. The tenure for all elected members of all bar association is one years, and after every year, the panels are dissolved and new election are held. Each HCBA and DBA has its own constitution under which the membership of advocates, role and responsibilities of executive committee, code of conduct, and elections procedures are chalked out.

## **Annex 2: Legal Argumentation on Restoration of Deposed Judges**

**Telecasted live on Goe TV (March 22, 2008)**

This discussion took place in Urdu language between the then Attorney General Malik Qayum who was supported deposition and Aetizaz Ahsan, Defence Lawyers for the Chief Justice<sup>8</sup>. This debate took place when the general election took place and new government was formed. The leader of two opposition parties, PPP and PMLN signed Murree accord in which both leaders pledged to restore deposed judges within thirty days through parliamentary resolution. The debate was focused on whether the deposed judges can be restored or not, and if they can be restored then how? It was a legal/constitutional debate in which both lawyers presented their different standpoints and validity claims were contested.

- Q.** Malik Abdul Qayum  
**A.** Chaudhry Aetizaz Ahsan  
**Anchor:** Hamid Mir

**Anchor:** pointing towards Q. Why you did not accept the decision of the Supreme Court July 20, 2007 though you promised to respect the decision of full bench?

**Q.** We have accepted the decision of restoration of the Chief Justice. The Chief Justice resumed his responsibilities and was honored. There is no tussle in the parliament and the presidency.

If there is no tussle then what is the issue?

**A.** There can't be a tussle. President is bound to accept Prime Minister advice. Prime minister (PM) is the Chief Executive. According to Article 144, this issue is not in the realm of the President discretionary power. In Pakistan, we have parliamentary democracy. Musharraf has himself confessed that it is third phase. In first phase he had all powers. In 2<sup>nd</sup> phase, there was parliament but still he was all powerful. In 3<sup>rd</sup> phase, the power is vested according to constitution. It means he has to play Golf and prime minister has to run the government. Therefore if PM and parliament decide that the judges should resume their duties again, those judges who were obstructed from performing their duties, who were imprisoned, so it is the discretion of the PM, and president will have to play golf now.

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<sup>8</sup> ([http://www.youtube.com/watch?v=hdU1C1r1\\_RI](http://www.youtube.com/watch?v=hdU1C1r1_RI)), retrieved on October 12, 2009

The President has to abide by his words. According to his plan, there should not be any issue of conflict between president and parliament.

**Anchor:** But if there is any discussion in parliament about the judges then?

**A.** There can't be any discussion about the judges. The discussion should be on the Provisional Constitutional Order (PCO) and oath order. You can discuss order of Grade 22 officer in the parliament. If you discuss order of Federal Secretary then you can also discuss the order of an army chief.

**Anchor:** Why you laugh Mr. Qyaum?

**Q.** Aetizaz is innocently saying something which he knows better. Who told him that the president would play golf only? President got his own power and he can use it. He is right that Chief Executive will be PM and in most cases the PM advice is binding on the President. Therefore I am sure that president would remain in his constitutional role and PM will remain in his own constitutional role. There cannot be any conflict. It is premature to say something about conflict. As you were saying last day that Supreme Court is ordering that parliament should not pass a resolution. While are you digging something which does not exist. It is only assumption. Who said that president will not accept advice of the PM. But the question is the PM has to order first. How can you say that PM can order this? If constitution does not allow the PM, then I can't accept.

**Anchor:** We are saying so because in the Burbund Declaration the majority parties have resolved that we will bring the deposed judges back one we form the government.

**Q.** They will bring a resolution in the parliament. And the Supreme Court has decided in 1973 whose Chief Justice was Justice Hamood Rehan, that a parliament resolution can be presented in the constitution but its value is not more than a vicious desire. It can be a rule and it is not binding. There are numerous resolutions passed. This parliament has also resolved that your wage board award should be implemented, was it implemented? Law making is different from passing resolution. There are different procedures for amendment in constitution and making a common law. And the President would never cross his boundaries he had never done so before.

Tell me one thing, who will decide that president has crossed the limits of his power?

**A.** Which Supreme Court?

**Q.** There is only one Supreme Court in Pakistan. All your colleagues are pleading before the Supreme Court.

**A.** There are only six lawyers who are pleading before the court. We hold that that there is no need for the parliamentary resolution. It is only for the moral and political purpose which gives a direction to the executive to perform the task. The executive is already convinced the government will be formed by two political parties who have signed an accord in the Burband. The speaker is already elected from the coalition of these political

parties, not from the parties which was supporting Musharraf. Musharraf has vigorously campaign for the party but that party has no more existence. These two parties have to form executive, PM, interior minister. The accord says that judges would be facilitated to resume their responsibilities again. The word restoration has not been used. Now the resolution is important so it can be seen that it is the will of the people. If Musharraf want to fight with the will of the people then it is another issue. Pledge of allegiance case in US 2002, the court deposed the case that the will of the people has spoken.

**Anchor.** The same way the Pakistan resolution was passed on 23 March 1940.

**A.** Malik has said in Tikka Iqbal case, the PCO was rectified by the parliament through resolution. In the Dogar court, the Tikka Iqbal case was given a reason for justification of PCO. On page 51 of the Court Decision says' the resolution passed by the national assembly reads as under: this house of the considered view that serious circumstances prevailing.... Out of this there were adverse affect on the law and order situation in the country and economic crisis necessitated; action was welcomed by national assembly whose members were elected representatives of people. Hereto the people have spoken though indirectly that is through their representatives'. The court made it a reason for justifying the PCO. This point was presented by Qayum himself that a resolution has passed and the PCO has rectified. Who rectified it, the parliament did. That parliament which was completing its tenure of 5 year within five days. How was it rectified? It was done through resolution. Here the new parliament with fresh mandate, you should be scared of God, if a parliament which is near to die can pass a resolution which is acceptable then why a resolution passed by the new parliament with fresh mandate is unacceptable. If a resolution can be a reason for rectification of PCO then why not it also be an enough reason for its nullification?

**Q.** Where is the resolution that we are discussing? I am not saying that parliament resolution is just a piece of paper. I said it has no binding effect and that is not law. If there is no enactment of law on the constitution then it has no binding affect. It is the will of the people. PCO was not issued by the parliament. Aetizaz said that there is no need for the resolution.

**A.** Qayum remarked that Musharraf has never done anything illegal. I am reading Qayum's own stance. '.. there is lack of cohesion and harmony amongst various organ of state and none of them are in position to provide solution to the situation faced by the country, therefore an order to save the country from the chaos and anarchy, deviation from the constitution was made in the larger interest of state necessity'. Deviation from constitution means violation.

**Q.** Deviation is not violation

- A.** Deviation is a violation. State of necessity has been termed illegal by the Supreme Court many times but Qayum is still stick to it. Deviation from constitution is a crime, constitution is a right path, and there cannot be any deviation from the constitution. Article 6 should be implemented on deviation. Has there been any deviation from the US constitution. Is there any army chief who has taken over?
- Q.** It was an extra constitutional step which was validated by the constitution. Only those things will be illegal and unconstitutional which is termed by the Supreme Courts as illegal and unconstitutional. The Supreme Court said, it was valid action and it was the necessity of time.
- Anchor:** The way the judges were removed after the Nov. 3, 2007 emergency, was it according to the Article 209 of the constitution?
- Q.** No, it is not according to the Article 209 of the constitution.
- Anchor:** Then what are the other ways through which judges can be removed?
- Q.** It was not for the first time that judges were removed. Iftekhhar Choudary and Bagwan Das termed it valid once. In 1999 when the judges were sent home, was it a constitutional way. When Zia imposed martial law and judges were removed, the Supreme Court justified the act. In Oct. 12, 1999 when Musharraf took over and imposed PCO again judges were removed, and the same Supreme Court again legalized the action. Those judges who did not take oath under the PCO or who were not invited to take oath, they were removed from their positions under the Judges oath of office order. When the same case was presented to the Supreme Court, the judiciary which included Iftekhhar Chaudhry and Bagwan Das said that it was the right decision. They also said that it is past and closed chapter and no judge can resume their duties again. I am not saying that it is according to the constitution, but if the extra constitution measure is legalized by the supreme court, then it become part of the legal order.
- A.** I have to respond to it. Zia imposed PCO and removed judges. He accepted that it was extra constitutional step. That was not validated by the Supreme Court. It was validated through 8<sup>th</sup> amendment by 2/3<sup>rd</sup> majority. Musharraf also imposed PCO and removed Supreme Court Judges, and when Supreme Court decided that did not validated the PCO. The PCO was only validated when in the building behind you (parliament) passed the 17<sup>th</sup> amendment through 2/3<sup>rd</sup> majority. If Musharraf can validate all his action after the 17<sup>th</sup> amendments through 2/3<sup>rd</sup> majority from the parliament, I have to accept it.
- Q.** How much time it took to pass 17<sup>th</sup> amendment? It took two year.
- A.** No matter how much time it took, at that time Pakistan was land without constitution. What was the need for the 17<sup>th</sup> amendment? What was the need to approve 270AA from the assembly? For two years the country remained without constitution under the Legal Framework Order. Similarly, Was Zia such a powerless journal that he needed 8<sup>th</sup> amendment? All sitting judges are the beneficiaries of the PCO then how they can term it unconstitutional. If they declare PCO unconstitutional then they would lose their seats. Yes, if parliament can rectify all actions by 2/3<sup>rd</sup> majority

taken by Musharraf on Nov. 3, 2007 and after that then there is no reason to accept that.

He declared emergency as an army chief, he imposed PCO as an army chief, and an army chief delegated power to the President, what a mess, and the President should delegate power to the army chief. The snatched power from the president was delegated to the President by a 22 grade army chief. Let's see the proclamation of emergency Nov. 3, 2007 PCO by an army chief. It says:

'Notwithstanding the abeyance of the provision of the constitution of Islamic Republic of Pakistan, here and after referred to as Constitution of Pakistan, subject to this order and any order made by the President to be governed as nearly as may be in according with the constitution provided that the president may from time to time by order amend the constitution as deemed expedient'.

An army chief is delegating powers to the President. The president can delegate power to the army chief and not the other way around. It is the most illegal and unique thing in the world. There come the Oath of Office Order, which is the most notorious and interesting document. I think Qayum can only defend it, my eyes are always full of shame when I see it.

Q. The shame started now, why you did not ashamed before?

A. I was always ashamed of it, and if you remember I said to Justice Khalil Ramday court

Q. Here we talk only of law and constitution, so don't talk of personal things.

A. I am talking of constitution and law,

Q. I respect him, he is my president (Supreme Court bar association)

Anchor: He is your president

Q. Yes I am the member of his association. So far he has not terminated my membership.

A. I will not do anything unconstitutional.

Q. Yes but your subordinates have used all the tricks. Once I also remained the president of the same association

A. If you don't violate the discipline, nobody can terminate your membership.

Q. What discipline, is it a discipline that nobody should plead in courts against you

A. Army chief is given exception to whom; the grade 22 officer is saying that 'provided that the Supreme Court or any high court or any other court shall not have the power to make any order against the president or PM or any person exercising power under their authority'. Under this order the power from judges were taken away. Judges were removed and held in prison including their families and children, who are still under house arrest. Where Qayum can see or not, he is the attorney general of Pakistan.

Q. I have enquired there is no order of the imprisonment.

- A. Then he is imprisoned unconstitutionally  
Anchor: So police has imprisoned him illegally
- Q. I can't say why police has imprisoned him. There is no order of imprisonment of Chief Justice or any other judge. There might be a law and order issue but there is no order for his imprisonment.
- A. I can tell you that Chief Justice and his family including children cannot come out of his home. Only kitchen door is open where different items of daily life can come. He can't come in lawn of his own house, even outside his room. There are four police persons standing outside the door of his kitchen for the last four months. There is some relaxation in the house arrest of other judges, they also can't come out but visitors can visit them and their families can come out.
- Q. There are many judges who can come to Islamabad from Lahore and other cities. He is not right. Anchor: Can you take me to the Chief Justice House?
- Q. Let me get information. I think there should not be any restriction to meet him.
- A. No, you should bring him to the Chief Justice House.
- Anchor: Let us resume our constitutional debate
- A. Excuse me it is a constitutional discussion. Under which constitutional provision you can keep the Chief Justice under house arrest
- Q. I am saying there is no house arrest. Show me the order. If there is no order you can petition in the court
- A. There is no order and still he is held in house arrest. It is also interesting that on one wall there is a chain. On one side there is Dogar and other judges. The other judges did not take any action. The Chief justice has resolved that he would not file a petition in this court.
- Q. So he must go the High Court
- A. In high courts also the PCO judges are sitting. He is passing through tough time boldly. He has one special child and can't go to school for the last four months. Examination center was established in his house because he was not allowed to go out of his home.
- Q. He was offered to go to the examination center but the Chief Justice refused
- A. Why he should send his children to the police security.
- Anchor: Former Chief Justice of Supreme Court has said that the time the promulgation of emergency a 7 member bench of Supreme Court issued a stay order against PCO which is valid. Therefore all the judges who took oath after the stay order is invalid. What do you say about this?
- Q. There was no notice to me or the Aetizaz Ahsan. Notice to the Attorney General is obligatory. The file adjourned on Monday, the stay order was issued on that file on Saturday. We challenged the order in Supreme Court and this is the verdict of Supreme Court.
- A. I was not there because I was under house arrest. You put me under house arrest and now you are saying that I was not present.
- Q. But why I was not present. Let us have look at the Supreme Court decision:

'In view of observation made by the court in the case of federation of Pakistan Vs Aetizaz Ahsan PLD 1989 supreme court 61, we hold that in the presence of promulgation of emergency and PCO read with oath of office Judges order the order dated 3<sup>rd</sup> of November 2007 was a nullity in the eyes of law'.

Saeed-uz-Zaman Sadiqi remained a Judge of high caliber but it is worrisome that he is talking against the decision of Supreme Court.

- A.** Let me response to that. Those judges who were not allowed to take oath under the November 3 PCO, only those judges have nullified the decision. They are judges in their own cause. If I and you have dispute on a building and I am a High Court Judge and you are an ordinary litigant. Can I be a Judge in the same case? I am disqualified because I have my own interest. This decision was written by those judges who have been instructed on November 3 that they have to take oath under the PCO. What is the validity of this judgment? Another thing he is saying that I was not available. I was not asked to appear. You should have instructed that bring Aetizaz even in police custody. Lawyers of one litigant are in jail and the other litigant is giving the decision. Civil judge can also give ex-party order and as longer ex-party order is not set aside the order remain valid.

**Anchor:** Now my question is that those judges who given the stay order on November 3 against PCO, they also have not heard any lawyer.

- A.** There are two types of stay orders. One is add-interim which can be given without hearing the 2<sup>nd</sup> party. It can be for three days. So when the Supreme Court issued the stay order they fixed Nov. 5 for hearing. Instead of appearing in court they put all judges in prison. Civil judges in big cities are issuing hundred of stay orders without hearing the opposite party.
- Q.** We appeared in court on Nov. 6
- A.** At that time you have put all judges in prison.
- Q.** Tell me who is qualified to be judge. If current judges have personal interest then the deposed judged have also personal interest. We better import judges.
- A.** No, the deposed judges have no personal interest

**Anchor:** tell me how the judges can be restored under the executive order?

- A.** There is no question of restoration. They are judges who are prevented from attending courts. One mile from here, Chief Justice is imprisoned in private jail without any order, the way Khans and Feudal have their own jail, the same way he is also put in private jail. From here, 400 meters there is a supreme court. He has been obstructed to come here physically. There is no rule, an army chief cannot make a law. The people who are saying that we need 2/3<sup>rd</sup> majority to reverse Nov. 3 emergency. They are actually according to the constitution. Who rectified the decision? those judges who were appointed by an army chief. I took an action, I hand-picked judges under the same PCO, and the same judges rectified my de-



cision. You scratch my back I scratch your back, validity can't be attained through this foul play. Validity comes from the established institution not from the rupture. I will accept all these action, not morally and politically, but legally and constitutionally I will accept if they can pass 18<sup>th</sup> amendment through 2/3<sup>rd</sup> majority justifying all action taken on Nov. 3 and hereafter. It was a criminal act on part of the Musharraf.

**Q.** He is already saying that there is no need for the resolution, they are already judges. He wants the judges to march on the Supreme Court and remove the sitting judges. That would be anarchy. No matter they like the Supreme Court or not, that is today's Supreme Court. If they are not de-jure judges, they are de-facto judges. I want to give you details of the Supreme Court. It is PLD 2008, 12.

'The chief judges and the judges of superior court, federal Sharia court and high court are subject to accountability .... Those judges who have not been given or who have not taken oath under the oath of office judges 2007 have cease to hold their respective offices on 3<sup>rd</sup> of Nov. 2007 there cases can't be reopen been hit by doctrine of past and closed transaction'.

**A.** Which Supreme Court?

**Q.** This is the decision of the Supreme Court whether you accept or not. This issue should now be raised in the parliament and let the parliament decide upon it. I accept Parliament Supreme after the God. It is in our constitution and in objective resolution. Supremacy of the parliament can't be denied. Let the parliament decide. You are saying that there is no need for the parliament resolution.

**A.** Tell me if Iftekhhar Chaudhry is not a judge then under which provision of constitution he was removed?

**Q.** It was an extra constitutional act.

**A.** It was unconstitutional.

**Q.** No there is difference between extra constitution measures and unconstitutional measures. But those measures have become part of the constitution by the Supreme Court

**A.** Which constitution who judges took oath unconstitutionally under the PCO?

**Q.** If you believe on the supremacy of the parliament, let them decide

**A.** That is another discussion. Let it bring on the record that he is saying that lets the parliament decide upon the case whether simple majority or resolution or 2 /3<sup>rd</sup> majority would be required

**Q.** It should be on 2/3<sup>rd</sup> majority

**A.** Thanks God he has accepted that under this sacred constitution and under its four corners there is no provision under which the judges were removed. That must be another power.

**Q.** What Iftekhhar Chaudhary and Rana Bagwan Das said in Zafar Ali Sha case?

**A.** It was an invalid decision.

**Q.** He is nullifying a judgment of 12 learned judges

- A.** I swear that in front of 13 judges in Wajihuddin case I termed that decision invalid.
- Q.** I am again constitutional deviation. But what I can do if right from 1958, the Supreme Court has validated 10 deviations.
- A.** For the first time, thanks God, the Supreme Court has obstructed the constitutional deviation. Why you did not joined them? You want to accept me to accept the new book (constitution) published after the emergency in which 270AAA has been added which was amended by the president through the power delegated by an army chief. Sorry.
- Q.** It is published by the government of Pakistan.
- A.** If I write a new constitution and in Article 6, I write Ghalib poem, would it become part of the constitution
- Anchor:** 270A came after the 8<sup>th</sup> amendment
- Q.** Who said? That came through legal framework order.
- A.** On 14 March 1984 it was published but it became part of the constitution only in 30 Dec. 1985, after the 8<sup>th</sup> amendment. Similarly another Legal Framework came in 2002 but it became part of the constitution in Dec. 31, 2003 through 17<sup>th</sup> amendment. It can read the 270 Article: ‘Article 270A substituted by 8<sup>th</sup> amendment Act 1985’, similarly 270 AA is read as ‘constitution 17<sup>th</sup> amendment’.
- Q.** These were introduced by Zia and Musharraf and it became part of the constitution. Similarly 270AAA has already become part of the constitution.
- Anchor:** But it is not validated by the assembly
- Q.** There is no need for validation. If it is rejected by the assembly, then these provisions would be no more part of the constitution. Otherwise it is part of the constitution.
- Anchor:** What would happen to the current judges if the deposed judges resume their duties?
- A.** There are three categories of judges. Those who did not take oath under the PCO and were removed unconstitutionally. These are 45 judges. The issue of oath taking is also very interesting. The oath reads oath ‘I do solemnly swear that I will bear true faith and allegiance to Pakistan: That, as Chief Justice of Pakistan I will discharge my duties, and perform my functions, honestly to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law...and that I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan...’.

The judges who took oath under the PCO the oath is ‘in accordance with the promulgation of emergency of Nov. 2007 the provisional constitution order 2007 and law’, and there is no reference to the constitution of Pakistan. So how can you take another oath from the judges?

Second category is those judges who were already the Supreme Court judges and who took oath under the PCO. The third category is those judges who took oath under the PCO but were not former judges.

Those judges who were unconstitutionally deposed they will just resume their duties. Those judges who took oath under the PCO and were formal judges, we are up to that extend agree that they would also remain the judges. The only difference is that Justice Dogar will shift from court room 1 to court room 3. The third category judges are those who were appointed under the caretaker system. First the caretakers have no authority to appoint permanent judges. Their regularization case would be according to judges cases 1996, there are some good judges who were promoted and there are some who are just not eligible for the post. These judges were the lawyers who had no cases and left the lawyers community and went to Malik Qayum. Their moral standards are also not up to mark. But I am not a judge and there should be scrutiny to analysis their qualification. If they fulfill the merit, they can be judges otherwise there is no reason for them to be taken as judges.

**Q.** I don't have any objection on what he is saying. The judges who were removed under the oath of office order remained no more judges. The new judges in Supreme Court came through regular procedure. They were recommended by the Chief Justice of Supreme Court.

**A.** The chief justice did not recommend them, he was in prison.

**Q.** That's why I am saying let the parliament decide upon it. The number of judges can be increased through act of parliament.

**Anchor** So you are ready to accept the deposed judges?

**Q.** No, they are no more judges.

**A.** He will destroy the whole system with Musharraf.

**Q.** You are taking the issue to somewhere else; here the people don't have drinking water. I said the parliament is supreme. Let the parliament decide.

**A.** If parliament do it by simple majority

**Q.** Then it is controversial. The parliament has to abide by 270AAA

**Anchor:** Qayum you don't accept that Ch. Iftkhar is a sitting judge and if the PM decides to restore him then what?

**Q.** Let the PM do it? The Supreme Court can't interfere in parliament's affairs. How a prime minister can violate the Supreme Court judgment. The Supreme Court judgment is as binding on the PM as it is binding on me and you.

**A.** He said in the start that Musharraf's has done nothing unconstitutional. He himself accepted in BBC interview that 'have I done anything unconstitutional and illegal, yes I did it on 3<sup>rd</sup> of November'. Now which court validates it?

**Q.** If Supreme Court gives a verdict then the parliament is supreme. Let the parliament come and decide upon it.

**Anchor:** It Burband declaration pledges to restore judges.

**Q.** In Burband they only pledge to move resolution in the parliament. Even Supreme Court can't interfere in the internal proceedings of the parliament. How can a PM violate the verdict Supreme Court? It is as binding on the PM as on me and you.

**Anchor:** If the majority of parliamentarians ask for the restoration of judges then?

**Q.** Have they resolved? Let the parliament decide.

- A.** It is a principle of “might is right”. It is not constitutional issue. Power flows through the barrel of guns that is what they believe in. On Nov. 3, Musharraf was chief of the army staff. He deposed sixty judges through unconstitutional means. He did every unconstitutional act. There were some judges who said it constitutional acts.
- Q.** Then what we should do with the decision of the Supreme Court verdict which validates the decision of removal of judges.
- A.** Article 190, Article 5 says that every citizen has to abide by the constitution. Article 190 says that every citizens, executive and judiciary, should abide by Supreme Court decision. Then what happen to the decision of 7 judges on Nov. 3.
- Q.** But nine judges over ruled it.
- A.** Recite the name of judges. Were not these judges appointed by Musharraf?
- Q.** These are the judges promoted from High Courts
- A.** There are the judges who violated the Supreme Court decision of Nov. 3.
- Q.** Where from a file came at 5 pm at the evening on Saturday?
- A.** You should tell it to the Supreme Court on Nov. 5. You imprisoned those judges, your injustices knows no bounds.
- Anchor:** Malik Qayum if PM issues an order of restoration of judges, then can president go the Supreme Court against the decision of PM
- Q.** PM will not issue such order. He can issue an order only if parliament nullifies the former decisions of Supreme Court.
- Anchor:** Why he is so confident Aetizaz?
- A.** Let think of the Nov. 2. Did anybody predict that an army chief will imprison 65 judges? Attorney general of Pakistan accepts that those actions were unconstitutional. If that was not constitutional and there was a decision of 13 judges in which they said that no judge can be removed except article 209. Why you don’t accept that decision of the Supreme Court?
- Q.** Where are detailed reasons of that decision?
- A.** You just look at the Benezir Bhutto case you don’t need to look at the details. Lets conclude it. He has accepted three things. One let the parliament come and let them decide how they tackle it. 2<sup>nd</sup> is that the removal of judges was extra constitutional or unconstitutional. I don’t see any difference in extra constitutional and unconstitutional acts. If they were removed unconstitutionally then it means they are constitutionally judges. I can see that the Burband declaration will be acted upon. We are talking about the accommodation. The third category judges should be scrutinized. The fourth thing is that no one has set aside Asma Jilani case and it is valid today. That cased says that when the usurpers loss the power, hold him.

‘A person who destroys the national legal order in an illegal manner can’t be regarded a valid source of law making. May be on account of holding the coercive apparatus of the state, the people and courts are silent temporarily. But let it be laid down firmly that the order which usurper imposes will remain illegal and the court will not recognize it and act upon is as de-jure. As soon the first opportunity arises and when the coercive apparatus falls from the hand of usurper, he should be tried for high treason and suitably punished.

Those alone will serve as deterrence to would be adventurers’.

The trail can be done by the Supreme Court.

- Q.** Very strange. The new elections are held under the same order. If they destroy the PCO, the whole legal order will destroy. Musharraf is the president of Pakistan and there should not be such comments about him. What safe passage you are talking about. He is the duly elected president. Burband declaration is no more than wishes let it be discussed in the parliament. I am also saying that the judges can be restored, the procedure is different. I think they need 2/3<sup>rd</sup> majority.
- A.** You told that Musharraf is the elected President of Pakistan. On Nov. 20, 2007 they amended the constitution, under the Article 41 (7), Musharraf decided his tenure which was rectified under the 17<sup>th</sup> amendment till Nov. 15, 2007. Sub article 3 was saying that the president to be elected after the term specified in clause 7. It means the president has to be elected after Nov. 15. It means the new assembly has to elect him. On Nov. 15, the tenure of the old assembly was completed. I also pleaded this in Justice Wajihuddin case but they just turned the bench non functional through emergency. But when they amended the constitution, they just exempted the words. In clause 41, the words ‘president to be elected after the term specified in clause 7’ will be omitted, why? It means the assembly which elected Musharraf had no power to elect him.
- Q.** He is the president and your minister will take oath from him. Let us not open Pandora box. This time we need reconciliation not conflict. I assure you that there will be no conflict.

### Annex 3: Newspapers and Talk Shows Information

**Table 4**  
**Newspapers/Talk Shows/News Channels Information**

Newspaper / Talk shows	Website
Daily Dawn	<a href="http://www.dawn.com">www.dawn.com</a> <a href="http://epaper.dawn.com">http://epaper.dawn.com</a> (e-paper)
Daily News	<a href="http://www.thenews.com.pk/news_archive.asp">http://www.thenews.com.pk/news_archive.asp</a> <a href="http://e.thenews.com.pk">http://e.thenews.com.pk</a> (e-paper)
Daily Jang	<a href="http://ejang.jang.com.pk/">http://ejang.jang.com.pk/</a> <a href="http://www.jang.net">www.jang.net</a> (e-paper)
Daily Express	<a href="http://www.express.com.pk">www.express.com.pk</a>
TV talk shows	<a href="http://www.friendskorner.com">www.friendskorner.com</a> <a href="http://pkpolitics.com">http://pkpolitics.com</a> <a href="http://www.pakistanaffairs.com">www.pakistanaffairs.com</a>
News archives about lawyers' movement	<a href="http://www.publicpolicypakistan.com">www.publicpolicypakistan.com</a>
Chief Justice speeches	<a href="http://www.youtube.com">www.youtube.com</a>
Geo TV online stream	<a href="http://www.geo.tv/geoip">http://www.geo.tv/geoip</a> (only in Pakistan) <a href="http://www.geotv.net">http://www.geotv.net</a>
Aaj TV online stream	<a href="http://www.livetv.pk/aaj_tv.html">http://www.livetv.pk/aaj_tv.html</a>
ARY News online stream	<a href="http://www.thearynews.com/english/arytvlive.htm">http://www.thearynews.com/english/arytvlive.htm</a>
Express TV online stream	<a href="http://www.forumpakistan.com/express-news-live.html">http://www.forumpakistan.com/express-news-live.html</a>
DAWN TV online stream	<a href="http://www.dawn.com/dntv-live/index.html">http://www.dawn.com/dntv-live/index.html</a>

## **Annex 4: Electronic and Print Media in Pakistan**

### ***Electronic Media in Pakistan***

In Pakistan the liberalization of mass media, particularly the electronic media, started in 2002. Media Regulatory Authority (PEMRA) was established through the PEMRA Ordinance 2002. There was an emergence of number of private television channels, which challenged the monopoly of the state owned PTV channel called Pakistan Television (PTV).

Till 2002, PTV and its outlets was the only Pakistani TV channel available in Pakistan. However, since 2002, licences have been issued to private television channels for cable or satellite only. PTV is still the only channel which has sole monopoly over terrestrial access, can be accessed through simple antenna. All private television channels in Pakistan can be viewed only through dish antenna or cable network. The price of dish antenna fell rapidly which triggered the viewership of the private TV channels, especially in rural areas of Pakistan where cable network is not available. According to Gallup Pakistan, the number of viewership of the electronic media in Pakistan has increased from 63 million in 2004 to 86 million by 2009<sup>9</sup>.

In total Pakistan have 49 TV channels of which 15 are news channels, 32 entertainment and two religious channels (IMS, 2009). Dawn TV is the only English news TV channel while Urdu news channels include Geo, ARY, Aaj, Waqt, Dunya, Royal, Samaa, and Express. There is also the emergence of local language TV channels, telecasting news in Punjab, Siraiki, Sindhi, Pushto, Kashmiri, and Baluchi. In 2004 government decided to remove ban on cross media ownership which allowed newspapers owners to operate radio and television channels as well.

### ***Print Media in Pakistan***

Prior to proliferation of electronic media, press played a key role in dissemination of information and educating citizens. Despite of the repeated claims of press freedom by the successive governments, it suffered repeated bottlenecks and curbs. An access to information held by the public bodies has never been an easy pursuit in Pakistan.

**Table 5**  
**Circulation of Daily Newspapers in Pakistan**

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[http://www.gallup.com.pk/News/Media%20Cyberletter%20June%2009%20\(2nd%20version\).pdf](http://www.gallup.com.pk/News/Media%20Cyberletter%20June%2009%20(2nd%20version).pdf), accessed on September 9, 2009

Dailies	1997		2006	
	No.	Average Circulation	No.	Average Circulation
English	368	485,073,	133	905,755
Urdu	4,000	3,017,310	1,236	6,472,510
Pashto	20	30,578	34	54,700
Sindhi	44	351,868	35	688,200
Punjabi	0		5	6,700
	<b>4,432</b>	<b>3,399,756</b>	<b>1,443</b>	<b>8,127,856</b>

Source: Statistical Department of Pakistan reported in Daily Times, 4 March 2008

There have been various attempts to make the press as state governed public sphere, in the form of various press laws in Pakistan which has direct implications for press freedom. Majority of these laws were promulgated through Ordinances without any debate and discussion in the Parliament. Press laws included, Press and Publication Ordinance amended in 1963, Defamation Ordinance 2002 as amended in 2004, Press Council Ordinance 2002, Press, Newspapers, News Agencies and Books Registration Ordinance 2002 which have adverse implications on press freedom. Press Council Ordinance provides for establishment of Press council with heavily representation by state representatives. The Council having its chairman appointed by the President is responsible to enforce a statutory 'Ethical Code' of Practice on press. The Defamation Ordinance provides criminal penalties for defamation.

### ***Internet***

According to Internet World Stats<sup>10</sup>, In Pakistan estimated interned users are 18,500,000, which is 10.6 percent of the total population. It is still counted as low internet penetration. Internet cafes can be found in almost everywhere, through broadband internet connect is available only in cities and big towns. As of June 2009, the total number of broadband subscribers was only 168,100. Still Pakistan is the 8<sup>th</sup> largest internet user in Asia.

### **Telecommunication**

Pakistan has shown tremendous development in cellular phone. In 2003, there were only 1,698,536 which increased to 88,019,812. There are six cellular companies catering cellular services in Pakistan. The intense competition between these companies to attract more consumers caused lowering the price of text messaging and cellular calls. They also provide internet services on phone. However the total number may be less than what provided in the following table due to multiple subscription by consumers.

**Table 6**  
**Cellular Service Subscription in Pakistan**

<sup>10</sup> <http://www.internetworldstats.com/> accessed on September 9, 2009



<b>Years</b>	<b>Total Subscribers</b>	<b>Percentage Growth Rate</b>
2002	1,698,536	-
2003	2,404,400	41.56
2004	5,022,908	108.90
2005	12,771,203	154.26
2006	34,506,557	170.2
2007	63,159,857	80.70
2008	88,019,812	39.4

Source: Pakistan Telecommunication Authority (PTA)<sup>11</sup>

### **Media Organisation in Pakistan**

Pakistan Federal Union of Journalists (PFUJ) represents journalists of the whole country. In provinces and in major metropolis, the journalists are presented by their respective unions of journalists. Election of all affiliated unions of journalists held every year while PFUJ election held after two years in Biannual Delegates Meeting (BDM). The last election of PFUJ held on March 29, 2009 in which 17 members Federal Executive Council was elected. The affiliated unions of journalists elect the executive council for their respective unions headed by President and General Secretary. The last election of all affiliated unions of journalists held on January 30, 2009<sup>12</sup>. The affiliated unions of journalist also elect delegates for the BDM. The affiliated union of journalists of PFUJ includes Faisalabad Union of Journalists (FUJ), Rawalpindi-Islamabad Union of Journalists (RIUJ), Punjab Union of Journalists (PUJ), Karachi Union of Journalists (KUJ), Khyber Union of Journalists (KHUJ), Balochistan Union of Journalists (BUJ), and Abbottabad Union of Journalists (AUJ). In rest of Pakistan, journalists are presented by their respective District Union of Journalists and every year district executive council is elected. Regular elections are also held at press club level, where members of the press club elect president and general secretaries.

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<sup>11</sup> <http://www.ptv.gov.pk>

<sup>12</sup> Daily The Nation, February 1, 2009,

## Annex 5: Schedule of FGDs and Interviews

Schedule for FGDs with Tehsil and District Bar Associations

Date	Venue	Participants	Status of Membership in Respective Bar Associations
July 18, 2009	Swabi District Bar Association	Fazli Subhan	Member DBA
		Abudullah khan Yousafzia	Member DBA
		Bakhtiar Ali	Member DBA
		Israr khan	Member DBA
		Mudasir Khan	Member DBA
		Ijaz khan	Member DBA
July 20, 2009	Mardan District Bar Association	Syed Jan Wali Bacha	President DBA
		Syed Mukhata Bacha	Member EC
		Zulfiqar Ali	Member EC
		Shamshad Qamar Bacha	Member DBA
		Yousaf Shah	Member DBA
		Muhammad Iqbal	Member DBA
		Faheem Wali	Member DBA
		Khurshid Anawr	General Secretary DBA
		Jamshed Khan	Member DBA
		S. M. Riaz	Member DBA
		Qasim Khan	Member DBA
July 25, 2009	Gujar Khan Tehsil Bar Association (TBA)	Chaudhry Sajad Muhammad	Member Executive Committee (EC)
		Muhamamad Irfan	Ex. President TBA
		Malik Khalid Mazhar	Member TBA
		Agha Noman Munir	Member TBA
		Bashir Ahmad Bhatti	Ex. President TBA
		Ch. Imran Sultan	Secretary TBA
		Ghazi M. Shahid Masood	Member TBA
		Mirza Muhammad Aslam	Member TBA
July 27, 2009	Jhelum District Bar Association	Ch. Abdul Manaf	Ex. President DBA and currently member Punjab Bar Council
		Mr. Naseerudin	Ex. President DBA
		Raja Shakeel	Member DBA
		Sher Aslam	President DBA
		Shaikh Muhammad Asgar	Member DBA
		Tablib Mehdi	Member DBA
		Chaudhry Hizer	Member DBA
		Chaudhry Zafar	Member DBA

### Schedule of Semi Structure In-depth Interviews with Media Persons

<b>Date</b>	<b>Name</b>	<b>Organization</b>
August 1, 2009	Abdul Qayum Saddiqi	Senior Reporter, Geo TV
August 5, 2009	Shakil Ahmad	Reporter Aaj TV
August 9, 2009	Shaheen Beneri	Reporter BBC Urdu Service
August 12, 2009	Irfan Ashraf	Senior Reporter, DAWN TV
August 15, 2009	Riaz Khan	President Khyber Union of Journalist

## **Annex 6: Research Design**

The document explains the Research Paper (RP) design on research topic “Single Issue Professional Campaign and Social Movement Discourse” through an analysis of case study of ‘Lawyers’ Movement in Pakistan’. The paper design presents the context of the study, theoretical framework, major research questions and objectives, rationale, and research methods.

### **1 A Statement on the Nature of the Research Problem**

This research seeks to explore and analyse the communication discourse to determine the framework and nature of collective action expressed through participation in a social movement. The research would focus on the case of lawyers’ movement in Pakistan started on March 9, 2007 and concluded on March 16, 2009. A brief description of the movement is given as under:

On 16 March 2009 Mr. Yousaf Raza Gilani, Prime Minister (PM) of Pakistan, announced the restoration of all deposed judges<sup>13</sup>. The announcement was made amid grand protest rally started on 12 March 2009. The rally was called on by the lawyers participated by opposition political parties, civil society and citizens at large. Finally the movement which started on March 9, 2007, after the military dictator Mr. Pervez Musharaf deposed the Chief Justice of Pakistan Mr. Iftikhar Muhammad Chaudhry, seemed to have achieved its proclaimed objective, restoration of all deposed judges. The restoration of Chief Justice, later all deposed judges, was a single issue campaign emerged into a full-fledged social movement. This transformation is of specific interest for the paper.

Pervez Musharaf took power in 1999 through a military coup and overthrew the elected government of Mian Nawaz Sharif. For nine years, Musharaf accumulated overwhelming power through making the Presidency very powerful. He established National Security Council and being a President became chairman of the council. He remained a sole decision maker of the Pakistan Muslim League Quaid-i-Azam (PML-Q) party, a faction which had separated from Pakistan Muslim League Nawaz (PML-N). Musharaf imposed the Provisional Constitutional Order (PCO), and legitimized all his unconstitutional acts through rubber stamp judiciary. The political leadership in the country was dismantled. Leaders of two major political parties and former Prime Ministers, Ms. Benazir Bhutto of Pakistan People Party (PPP) and Mian Nawaz Sharif of PMLN were sent into exile. There was no leader in Pakistan who could have voiced against Musharaf’s policies. The President also got the power to dissolve national assembly through the 17<sup>th</sup> amendment passed on 30 December 2003. It meant the national PM had to obey the president otherwise the naked sword of dissolution of assembly would be hanging over his head.

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<sup>13</sup> Daily Dawn, March 16, 2008 ([www.dawn.com](http://www.dawn.com))

Ms. Benazir Bhutto and Mian Nawaz Sharif came closer while in exile. The major reason seems to be their common interest of paving their way for going back home. A Charter of Democracy (CoD) was signed in London between Ms. Benazir Bhutto and Mian Nawaz Sharif on 14 May 2006 in which, among many other pledges, it was asserted that no judge should take oath under the PCO. Mr. Iftikhar Choudary had taken oath as Chief Justice of Supreme Court before the signing of this pledge on May 7, 2005. The oath was administered by President Mr. Musharaf.

Generally a favourable Judiciary was maintained by Musharaf so no hindrance to face regarding any constitutional or legal issue. However, the then Chief Justice started taking seemingly independent decisions. These included nullifying of privatization of Pakistan Steel Mill, by privatization commission of Pakistan. Another important issue was related to missing people. The Supreme Court ordered the release of all missing people arrested without any warrant or imprisoned by the Pakistan intelligence agencies without having legal defence. Even the head of intelligence agencies were asked to appear in person before court. Many persons were released who were missing and held by the Pakistan intelligence agencies on one or other pretext.

It was a clear sign that the Chief Justice was no more under the control of the President and therefore his resignation was sought. Legally the duration of his services was till December 2013. When the pressure tactics were useless to convince the Chief Justice to resign, he was sent on forced leave and a reference was filed against him in the Supreme Judicial Council. The reference was seen as politically motivated. The deposed Chief Justice decided to face allegations. This was a major turning point and many would say, if the Chief Justice had not taken the bull by horns, the movement would not have been started. He was put under house arrest and nobody was allowed to approach him. He was required to appear in person before the Supreme Judicial Council, and once when he was coming to Supreme Court building, the security forces harassed him by pushing him into the car. This raised public outrage and provided an impetus for the movement. It was unprecedented in the history of Pakistan that a judge has defied a military dictator.

The legal battle started between the government and Chief Justice. He appeared in all proceedings, and he was always flanked by gathering of lawyers from his official residence to the Supreme Court. On 20 July 2007, the 13 members Bench of Supreme Court reinstated the Chief Justice. Again in 3 November 2007, the President Musharaf imposed emergency and toppled the whole judiciary. Sixty judges who did not take oath under Provisional Constitutional Order (PCO) were sent home. This was a major turning point and the movement was accelerated consequent upon Musharaf resignation from Chief of the Army post. Ms. Benazir Bhutto, the chairperson of PPP was assassinated in an election rally on 27 December 2007. After the general election in February 2008, the PPP succeeded in forming government and Mr. Asif Ali Zardari, the co-chairman of PPP and husband of late Ms. Benazir Bhutto, became the President of Pakistan.

Zardari also showed hesitation to restore judges. The lawyers' and opposition parties pointed to the National Reconciliation Ordinance (NRO) as main reason for not restoring the Judiciary (Goodson, 2008). Zardari and

Benazir Bhutto were facing corruption charges which were dropped under the ordinance. The fear was, if the Chief Justice was restored, he would scratch the NRO. Zardari was determined till last moment not to restore judges but it was overwhelming pressure from the lawyers, opposition parties, civil society and media which helped change his decision.

The movement was marked by many ups and downs and was unique in the history of Pakistan. The deposed Chief Justice became a symbol of freedom of judiciary so restoration of Judges was considered synonymous with restoration of independent Judiciary. The movement was not for a personality but for the institution of judiciary. The lawyers were in forefront and in absence of political leadership, they started a movement. Lawyers as a pressure group successfully articulated their message to different segments of society. The role of lawyers was central to the movement and they boycotted the court proceedings persistently for two years and took to the streets (Zaidi 2008). The lawyers exert pressure on the government by using the sanction, not allowing the courts to work. It was on the expense of their work and livelihood.

Their rallies were like any rally of a major party in Pakistan. The deposed Chief Justice started addressing bar councils across the country and his every address was attended by huge gathering of people. For instance, in one such visit to Lahore from Islamabad on May 5, 2007, it took 25 hours to reach there, the distance which can be covered in four hours normally. On his way, there were huge gatherings in all major cities waiting for the Chief Justice.

The major political parties supported the movement including PMLN, Pakistan Tahreeki Insaaf, Jumati Islami, and Pukhtunkhwa Milli Awai Party. General Election was held in Pakistan on 18 February 2008 in which the two political parties, PPP and PMLN, got majority in centre and formed coalition government. PPP was in forefront of the movement in the start but after the general election the party was seemed as no more enthusiastic about restoration of Judiciary. Therefore on 25 August 2008, the PMLN withdrew from the government due to abandoning the goal of restoration of Judiciary by Zardari's government (Goodson, 2008).

Hassan Abbas depicts the movement as "Pakistan... recently witnessed the fruit of courageous and sustained lawyers' movement that led to the restoration of deposed Chief Justice and about 60 other superior court judges. These judges were victims of former President Pervez Musharraf's short-sightedness and selfishness in 2007 that, in turn, provoked a major movement that inspired and galvanized thousands of Pakistanis to struggle for the rule of law, an independent judiciary, and the supremacy of the constitution. The people stood up for those who defied a dictator – a rare development in the 62 year checkered history of Pakistan" (Abbas, 2009).

There are contrasting views which hold that the lawyers' movement was actually hijacked by the opposition parties, especially by the PMLN and Jumati Islami. The participation of the political activists actually outnumbered lawyers. Therefore it is debatable whether it was really a lawyers' movement or it was a show by political parties juxtaposing lawyers for getting political gains. Therefore the RP would try to establish how lawyers' movement was bolstered by the participation of the political parties and their stake in participating in the movement. The movement was supposed to be supported but not

spearheaded by any political party. The judiciary as an apolitical institution should not take the favour of any political party. This point was highlighted by the opposition parties, and the term 'judicial activist' was coined.

There are some challenges regarding setting my ontological grounds. Therefore the research paper, there is need to discuss the debate critically the following points:

- It is challenging to define and locate the lawyers' movement in wider social movement context. Therefore in my research paper, it would be discussed how a social movement is defined, and how to establish empirically that the lawyers' movement really fall in the wider social movement categories. How the lawyers, elite and non elite, define the movement and relate it to the wider contemporary social movements would be a subject of inquiry.
- The lawyers' community is not a homogeneous group in all terms. The lawyers have political affiliation to different political parties. For instance, the former president of Supreme Court Bar Association, Mr. Aetizaz Ahsan, was member of the PPP central executive committee and former federal law minister in PPP government. But he kept aside his political affiliations and who contested the case in Supreme Court for deposed Chief Justice. It is important to analysis how the majority lawyers held united against the pressure exerted by the government and setting aside the political affiliations.
- In Pakistan, the last two years witnessed a worsening law and order situation. There are many suicide attacks all over the country. The fear of suicide attack in any big gathering cannot be overlooked. Despite this, any call for show of power on streets was responded to by remarkable participation of lawyers and wider civil society.
- The democratically elected bar associations of Supreme Court, High Courts, and District and Tehsil courts, showed the strength of initiating and leading the movement. In the start, there were suspicions about the credibility of lawyers and it was believed that the movement may lose fervour. But they remained seemingly unaffected by any attempt by those who favoured Musharaf to disrupt their unity. The possibility of offering huge incentives to those who were leading the movement cannot be overruled.
- The role of communication and media in any social movement cannot be overlooked. The media revolution in Pakistan is another important development in Pakistan. The number of private television channels increased from three channels in 2000 to over 50 private channels in 2008, and almost 20 were exclusively focusing on news (Marco & Safiya, 2009). These private TV channels almost replaced the state owned television channels named Pakistan Television (PTV), especially in urban areas where the cable service was available. There was fierce battle amongst these private TV channels on breaking news and to get the attention of audience. The talk shows and media reports of every TV channels extensively focused the lawyers' movement, and even some channels were banned from airing their programme. In some cases the media was even seen as siding clearly with lawyers which exacerbated

the government stance. Therefore the role of the media and how they helped emerge the movement is another aspect to be looked into.

- The cyber activism was yet another influencing communicating factor. The media revolution was also accompanied with the explosion of cellular and mobile phones. This development was coupled with internet and cyber communication. The messages were passed in the form of email messages, cell phone messages, jokes, and information. The information was also instrumental in the gathering momentum for movement.

## **2 Connection of the Research to a Theoretical or Policy-making Field, Main Research Priorities**

The restoration of Chief Justice and later other deposed judges was a single issue campaign started by lawyers which evolved in broader lawyers' movement. In two years, lots have been written and discussed about the movement in Pakistani mass media. My proposition is that the movement's discourse provides an opportunity to analysis the lawyers' movement. The discourse was produced by those who were at the top of ladder, the lead ers of the movement and also by journalists and writers who wrote in different newspapers and journals<sup>14</sup>. The discourse provides ideological and operational framework of the movement.

The lawyers are trained in very professional language. The legal fraternity in Pakistan is very much structured by legal language which has basis in Anglo-Saxon traditions. As opposed to any political party, which speaks the language common to public, the language of lawyers is very technical coined in legal parlance, not necessarily understandable by a man in street. The language is only understood by the elite and not by the majority of Pakistani citizens, even if they are literate by official standards. With that legal and structured language, the lawyers would not have reached to the public. There can be two assumptions. One is there was no modification and the movement discourse did not try at all to reach to the general public. If this is the case, then any other factor rather than lawyers' discourse was responsible for the participation of general public in the movement. The another assumption is, if there is any modification then how did it modified and try to reach to the general public. Whether the language transforms during the pace, or does not transform is to be explored in my research paper.

The paper aims at analysis of the lawyers' movement from lawyers' participation and communication perspective. How the movement discourse was produced, communicated and consumed are the major thrust areas. The movement production part would specifically focus on the movement elites who were producing the discourse. The communication part of the discourse deals with the media. How the discourse is contextualized, developed,

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<sup>14</sup> On such journal includes "Mustaqbil" (future). The Dec. 2008 issue was fully dedicated to the judicial crisis in Pakistan and main lead ership of the lawyers' movement contributed.



mediated or challenged by the media. The third area is consumption, how the discourse is consumed by the intended audience/readers. These include the lawyers at the periphery and their perception about the movement.

### 3 Objectives of the Research

If we model communication in the lawyer’s movement, it can be explained at two levels, internal and external. Internal communication refers to the passing of messages within the organization of lawyers, which is supposed to be very professional and legal language of communication. External communication refers to the communication with external actors and agencies like political parties, civil societies, media, citizens etc. Again the communication can be divided into two main categories, horizontal and vertical. The horizontal communication refers to exchange of messages at same category, within centre or periphery. The communication is referred to messages between centre and periphery. By centre, I mean leadership of the lawyers’ movement and periphery mean lawyers at Tehsil and District Bar Associations. There also exists a category at the middle of the ladder, all those lawyers who were neither at the leadership role nor at the extreme peripheral position. However, it would be challenging to distinguish these criteria from one another, given the perceived and actual role which lawyers as main actors of the movement were playing in the movement.

	<b>Internal Communication (Within Associations) lawyer</b>	<b>External Communication (With external actors)</b>
<b>Centre</b>	Internal Centre	External Centre
<b>Periphery</b>	Internal periphery	External periphery

The internal communication in the table depicts only horizontal communication while the vertical communication can be centre-peripheral communication. Furthermore, there can be a middle category of lawyers as well, like lawyers who are neither leaders nor belonging to periphery. This category includes lawyers of high court bar associations and even members of district bar associations of big cities. However, I will focus only on lawyers at centre and periphery.

### 4 The Formulation of the Research Questions, and/or Hypotheses

The lawyers’ movement provides for a unique opportunity to revisit the contemporary social movement theories. The major question is “How does a single issue become a social movement discourse”? The basic assumption is that discourse does influence and also influenced by the public opinions. So every discourse reflects the aspirations of the ‘target’ audience while tried to visualize the future course of action. The current course of action is predicted to lead to the aspired future. So a movement to emerge, there is some change which is aspired for. There can be debate on how the individual preferences

and collective preferences differ and how an individual attach personal interest to collective interest but when the current situation of unease is shared by group of people, it may emerge in movement.

Heywood defines the social movement as:

“A social movement is a particular form of collective behaviour in which the motive to act springs largely from attitudes and aspirations of the members, typically acting within loose organization network. Being part of a social movement requires a level of commitment and political activism rather than formal or card carrying membership. Above all, movements move. A movement is different from spontaneous mass action (such as uprising or rebellion) in that it implies a level of intended and planned action in pursuit of a recognized social goal. Not uncommonly, social movement embrace interest groups and may even spawn political parties” (Haywood 2002).

So my RP would analysis the movement’s discourse which tries to shaping collective behaviour, process of formation of social movement, transformation in structures, and how do these are perceived by lawyers as participating from the periphery of the movement.

## **5 Sub-research Questions or Operational Hypotheses**

The sub or related questions of the research would be:

- Whether the structure/procedures/discourse of the Bar associations were modified in the process of becoming a movement?
- How does the lawyers’ movement define and try to transform the state society relation?
- What difference it aimed at in the institutional and power structure of the state?
- How did the movement’ discourse shape participation in the movement? How did the discourse try to reach to the other strata of society, like trade unions, workers, poor segment of society, professionals which include doctor and engineers, and civil society as a whole?
- Since the movement has achieved its proclaimed objectives, how does the lawyers’ community evaluate it in terms of its strength and weakness and its future impact on Pakistani politics?

## **6 A Short Review of the Relevant Theoretical Background**

Communication is synonymous with participation and communicator is promoter of participation (Gumucio-Dagron, 2008; Kees, 2008). Communication is as important for human agency as oxygen for human existence. Without mass mobilization social movement cannot succeed. Communication of movement discourse is important for public mobilization. In social movement, communication can be categorized in four forms like (a) private and direct, (b) private and mediated, (c) public and direct, and (d) public and mediated. (Saeed et al., 2008). The last category involved mass media.

For any communication, use of language is indispensable which carries and determines power relation. Communicative rationality or communicative action theory of Jurgen Habermas provides an entry point to analysis the communication model of lawyers' movement. He explains adherence to good reasoning as basis of Western "procedural" conception of rationality (Funk, 1986). Utterance, conception, and person are the major pillars of rationality. Convincing of participants of discourse is a criterion for good reason. This is also called consensus theory where discourse is 'ideal speech situation' while consensus is a 'rationally motivated agreements'.

Different theories explain the emergence, structure, and paradigms of social movement. From the Marxist perspective, social movement is demonstration of class struggle and class relationship based on economic and production process leading towards Marxist revolution (Buechler, 1995). The political process theory sees insurgent conscious, organization strength and political opportunities as prerequisite for formation of social movement. New social movement theorists see other avenues like politics, culture, identity, sexuality and gender, and ideology as main determining factors for collective action (Buechler, 1995). The new social movement theory, elaborated by Jurgen Habermas, stresses more on cultural rather than material production as demand associated with movement. Habermas denies incomparable standard of rationality. He distinguishes the traditional society from the modern one on the basis of procedural rationality. He also elaborates relationship between speaker and hearer based on three validity claims like truth, the speaker truthfulness, and implicit norms right. The communicative action is the implicit validity claims coupled with agent's attitude oriented toward reaching understanding, and acts through communication where an agent can get consensus for the actions and corresponding claims (Funk, 1986). The Habermas communicative action theory which lays ground for the just democracies for emancipation of the authoritarian political system and public sphere are also important key factor for analysis of the lawyers' movement. How the media provided an opportunity of public and mediated communication and provided public sphere which provided spaces what Habermas termed as 'just democracies'. This broad theoretical framework would be further elaborated in my research paper and its applicability on the lawyers' movement would be analysed.

The resource mobilization and political process theories explains the collective action from resource mobilization of internal organization and external political opportunities. The framing process is movement generation is yet another important aspect for analyzing the participation. The political process theorists are emphasizing on the cultural dynamics and framing process (Aldon, 2000).

The debate on social movement theories would be revisited and it would be examined that how does the lawyers' movement fit or otherwise in this theoretical context.

## **7 Methodology**

My methodology would basically focus on analyses of the movement's discourse produced in the form of speeches, anthems, interviews, talk shows, and press conferences by elites of the movement. The text available in the form of speeches would be analyzed using the discourse analysis methods. Most of these speeches and interviews are available in English and Urdu languages. I have to select among a lot of such discourse because it may not be feasible to analyze each and every piece of movement's discourse. However the selection will be based on the different phases of the movement. The major discourse analysis methods to be used are critical discourse analysis, metaphor analysis, and argument analysis. The text would be deconstructed for contextual framework and semantic analysis. The analyzing of framing process and deconstruction of the discourse would also be used analyzing the participation and social movement discourse. However, I will be following the post modern epistemology and grounded theory for my research, not following any specific social movement theory in start but after the field work, it would be seen how the lawyers' movement fits into the contemporary social movement's debates.

Focus group discussions (FGDs) would be held with the lawyer's community specifically in remote areas and with lawyers of Tehsil and District bar associations. These FGDs would aim at understanding those lawyers 'stand point' on lawyer's movement who are at the periphery and their perceived reasons and motivation for participation in movement. The initial checklist for the FGDs, which would be refined during the field work, is given as under:

- What were the main objectives of the movement?
- Does the lawyers' movement have achieved all its objectives? If yes how, if no why?
- How did your bar association participate in the 'lawyers' movement'? How do you think its effectiveness?
- Why did your bar association was so anxious to restore chief justice. Chaudhry Iftekhhar was not the first chief justice deposed by army dictator so why there was no such movements before?
- What were the major milestone in the movement and why you called it major milestones?
- What were the major factors which made you participate in the movement? Why you think these were the major factors?
- There are different parties and each party has their lawyers' forum (for example PPP has people' forum in each bar council). How did your bar association set aside these political differences for the sake for movement?
- How the movement has affected the state-society relationship? Do you think there is any difference in the judicial proceedings before and after the movement?

The focus group discussion is important tool for participatory research and collective reflection. It is also important tool for eliciting diversity of ideas and different views. So the method is not value high only the similarities in the ideas, rather the range of different ideas emerged which enriches the finding of

research. Similarly unstructured discussion often leads to explore even those areas which are not anticipated at the time of designing of research.

There key informants in media, like editors and those who host the talk shows would be interviewed. In these interviews the interaction of rapidly expanding media with the lawyers' movement would be analysed. I foresee the challenge of getting appointment with important media persons, however if only five such interview are conducted, it would be enough for taking media interface with lawyers movement.

These three research methods, namely discourse analysis, focus group discussions and semi structure interviews with key media informants, are chosen because I think they can best serve the purpose of research. My research is all about movement discourse and communication, and how communication and discourse has become a tool for mobilizing and making people participate in the movement. It is also about the framing of the movement. I think that the best way to analysis the movement from the social theory, social capital and social movement is the discourse analysis and focus group discussion.

## 8. A timetable

Activities /Outputs	Months (2009)																											
	May				June				July				August				September				October				November			
Research Design Developed	█	█	█																									
Research design seminar held			█																									
Research Design submitted and approved				█																								
Field Work					█	█	█	█	█	█	█	█	█	█														
Data analyzed					█	█	█	█	█	█	█	█	█	█														
Work on first draft of RP										█	█	█	█	█	█													
Submission of draft RP																												
RP Seminar																												
Development of Final draft of RP																												
Submission of final draft																												

## 9 Table of Contents of the Research Paper

The following is tentative table of contents for my RP. However, I would like to see my RP evolve during the research process. Therefore the following outlines may not be final.

### Chapter 1: Introduction

- Background
- Purpose of the Paper
- Methodology
- Structure of Paper
- Ethical dimensions

### Chapter 2: Theoretical Framework

- Communicative Action Theory
- Interest Groups and social Movement
- New Social Movement Theories
- Narrowing the Scope

### Chapter 3: Movement Discourse Production

- Communication Discourse and Media
- Movement Organization and Coalition Building
- Framing Process
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### Chapter 4: Movement Discourse Participation

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- Discourse of Participation in Movement
- Movement and Future Political Scene

### Chapter 5: Revisiting Theoretical Challenges