

Local Government and Judiciary in Pakistan after 2010

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Abstract

This paper discusses the role that the higher judiciary played in ensuring and holding of elections to local government in Pakistan. This role of judiciary has been studied in the specified period of about five years — 2010 to 2015. Characterized by the process of democratization and judicialization of politics, Pakistan's decade of 2000 terminated by the introduction of 18th Amendment to the 1973 constitution in 2010, whereby under Article 140(A) establishment of local government was made a constitutional duty of the provinces. Averse to this constitutional duty, the executive in the four provinces first came up to the court with number of excuses to delay local bodies' elections. However, judiciary did not let them off the hook over this issue. Taking this constitutional bait, the executives and Election Commission of Pakistan (ECP) held local bodies' election across provinces and the federal areas. The last election in the series was that of Islamabad Capital Territory (ICT) held on 30 November 2015. This study aims to see whether such a role of judiciary helped in the democratization of polity or was the process constrained, in any way.

Introduction

This paper discusses the role played by the higher judiciary in ensuring and holding of elections to local government in Pakistan. This role of judiciary has been studied while focusing on the period between 2010 (when 18th Amendment was introduced on 19 April 2010) and 2015 (when elections were held in Islamabad Capital Territory on 30 November 2015). In between these two dates local bodies elections were held in Balochistan on 7 December 2013 (first phase); in cantonment areas on 25 April 2015; in Khyber Pakhtunkhwa on 30 May 30, 2015; in the Punjab and Sindh (first phase) on 31 October 2015; and, in ICT on 30 November 2015. In this way, this paper covers a period of five years to

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observe of the role of judiciary of Pakistan with respect to the issue of local government. Putting this role in question format that whether the higher judiciary helped in democratization and consolidation of democracy in Pakistan or was it an exercise in the judicialisation of politics, and, therefore, a constraint in the process of democratization in Pakistan in this five year period. It is the former proposition that has been dealt in detail in this study. This role of judiciary has been analyzed not in isolation but in a general and specific context. The general context means the overarching nature of the political order of the state of Pakistan. The specific context means the issues that cropped up in the period from 2006 to 2015. It is chronological addition to the history of the political order of the state of Pakistan.

Specific context

This section is related to the issues of Charter of Democracy (CoD) and what came in the wake of it i.e.: democratization and the civilian rule in 2008 as well as in 2013; lawyers movement and what came in the wake of it: judicial activism and judicialization of politics; and, the nature of relationship between the political actors (political parties/ leaders of lawyer's movement) and state institutions (civilian executives/judiciary) that came into power after CoD and lawyers movement.

Apart from militancy, two important events characterized Pakistan's political scene in the first decade of the 21st century. These were CoD for democratic rule through democratic means, and lawyers movement for restoration of Chief Justice of Pakistan (CJP), Iftikhar Muhammad Chaudhry and other judges, as an immediate goal, and rule of law and independence of judiciary in Pakistan, as a long term objective.

Charter of Democracy was signed in 2006 between the leaders of two larger political parties of Pakistan, Pakistan People Party (PPP) and Pakistan Muslim League-Nawaz (PML-N). Both parties through this document agreed that neither party will seek support from the military against the other party when it is in government unlike the past. In a sense they pledged to promote and protect democracy from being derailed by military. At the broader level, they committed themselves through CoD to further democratize Pakistan's political order. The lawyer's movement¹ started in March 2007 in the wake of suspension of

¹ It is generally called lawyer's movement as it was led by lawyer's community but it was supported overwhelmingly by other groups like civil

CJP Iftikhar Chaudhry by Pervez Musharraf—the President and military ruler of Pakistan. The military ruler was not happy with the way the chief justice was dispensing and administering justice to the people at large. Before his suspension, in 2007, Iftikhar Chaudhry took up two important cases among others. One related to Pakistan Steel Mill Corporation and second was about missing persons in Pakistan. In the former case, Supreme Court called into question the issue of transparency in the process of Steel Mill's privatization. The court judgment records that 'the process of privatization ... stands vitiated by acts of omissions and commissions on the part of certain State functionaries....'² In the missing person case, the court asked the executives whether due process of law have been followed in such cases. Musharraf suspended the services of Iftikhar Muhammad Chaudhry on 9 March 2007. This suspension was like stir up in a hornet's nest, the bar and the bench were supported by other people and institutions. After filing a case in the Supreme Court and later the Judicial Council, Iftikhar Muhammad Chaudhry was restored on 20 July 2007. The court pursued the public interest litigation the way it had perused before 9 March 2007. Meanwhile, Musharraf case about dual designations as president of Pakistan and army chief came to the court. Fearing his disqualification by the court from contesting the presidential election for the second time, Musharraf imposed emergency on 3 November 2007 putting over scores of judges under house arrest.

In 18 February 2008, general elections were held in Pakistan. PPP-led government came into power in the center. It immediately freed judges from house arrest but did not restore judges at that very moment. Under the long march of the people led by lawyer's community supported by over hundreds of thousands people from different persuasions, Iftikhar Choudhary and other judges were restored on 22 July 2009. The chief justice continued his zeal of taking up public interest litigation: National Reconciliation Ordinance (NRO) was turned null and void; corruption cases against Zardari were pursued despite his claim of impunity as a president of Pakistan; premier Gillani was disqualified in one case and the next premier was asked to be in the dock; scores of suo moto cases were taken so much so that court issued

society, media, students, political parties and other socio-political activists in Pakistan.

² Supreme Court of Pakistan, 'Wattan Party Versus Federation of Pakistan, etc' 23 June 2006. Accessed on 13/5/2016 http://www.supremecourt.gov.pk/web/user_files/file/cjd_pakistan_steel_mil_ls_case_order.pdf

order to fix the price of sugar. The court squarely intruded into political domain by commenting, as noted in *Dawn* editorial on 18 August 2010 that Pakistan could not be a secular state.³ It is for the parliament to decide and determine the type and character of state.

The demonstration of the assertion of the power of the people in such a robust and assertive way during the rule of a military dictator was but a sought of people's revolution in the first decade of this century. This assertion of peoples' power reflected first, implicitly, in the Charter of Democracy and later, explicitly, in the lawyer movement. This does not suggest that movements of such nature had not been taken place earlier in the history of Pakistan or that they would not take place in the future again. However, the way people asserted the power that belongs to them in the lawyer movement was remarkable in the history of Pakistan itself. Second, coming together of two major political parties against a military dictator was a good indicator of the progress on the democratic front. Third, and what is striking, is the revolt of the higher judiciary against the unconstitutional demands and measures of the executives — military and civilian alike. This is all contrary to the past, whereby judiciary happily extended legal justification to the illegal acts of military and civilian rulers. Fourth, political parties and the judiciary came closer to each other, though by chance, and were directed against the same regime despite the fact that both had different objectives. And, once Musharraf was removed from the helm of affairs of the state, civilian rulers and judges or the executive and judiciary started divorcing each other publically; sometimes even tried to tame each other. The bar and bench claimed they removed the Musharraf regime and paved the way for democratization of politics. The PPP-led government which freed judges from house arrest claimed this credit to itself. Not ready to give, each tried to reign in the other. However, it is relevant here to mention that the role played by the judiciary in the context of election to the local government after 2010 was not to judicialize politics but to democratize it. How? It is discussed later.

What is democratization and what causes it, is not yet a settled issue in the academic literature? There exists an extensive literature about what causes democratization. Some argues that is caused by

³ *Dawn*, 18 August 2010. Accessed on 28/4/2016. <http://www.dawn.com/news/846079/sc-s-responsibility>

economic development and modernization;⁴ other says it is the functioning of international environment,⁵ and the like. However, the role of court in the democratization and consolidation of democracy has hardly been analyzed. This enquiry is specific to a period of time in a country. Its focus is on the role of the higher judiciary in the democratization and consolidation of democracy in Pakistan.

For the corroboration of the role of the judiciary in the democratization of the polity of Pakistan, this study has relied on two main sources: Court hearings and judges' comments have been used as secondary source to determine whether, unlike general cynicism about politics and democracy in Pakistan, they consider democracy that operates in Pakistan of any worth. These secondary sources were collected from different newspapers and research articles. As a primary source, the judgments delivered by the higher judiciary in cases related to the local government elections have been studied to know if these judgments reflect democratic contents, principles, requirements or are they just formal documents describing legality in the context of local government election.

Legal bases of local government

Before the 18th Amendment, provincial government had the authority under non-existent residuary power list of the 1973 constitution to hold election to local government in its area of jurisdiction except cantonment areas and Islamabad Capital Territory (ICT) which fell under the federal government's jurisdiction. In the 1973 constitution, the item of local government has been placed inside part II — 'Principles of Policy'.⁶ Article 32 of the constitution stipulates:

The state shall encourage the local government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.⁷

Article 37(i) in the Principles of Policy states:

⁴ Seymour M. Lipset, 'Some Social Requisites of Democracy: Economic Development and Political Legitimacy', *The American Political Science Review*, 53:1 (March 1959), pp.69-105.

⁵ Boutros B.Ghali, 'An Agenda for Democratization' (New York: *UNDPI*, 1996), p.25. https://books.google.com.pk/books?hl=en&lr=&id=fwt8qHYB_esC&oi=fnd&pg=PA105&dq=Agenda+for+Democratization&ots=Cn12

⁶ Rights placed under 'Principles of Policy' are not enforceable through courts at least in theoretical sense of law unlike the fundamental rights.

⁷ The Constitution of Pakistan, 1973.

The state shall decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.⁸

Through the introduction of 18th Amendment to the Constitution of Pakistan 1973, the establishment of local government has been made the constitutional duty of the provinces under Article 140(A) (1) which stipulates:

Each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.⁹

Whereas responsibility of holding of election to local government has been entrusted to the Election commission of Pakistan (ECP) under Article 140 (A) (2).¹⁰

Under Article 140A the position of local government has changed in an enormous way. Its establishment by law became the responsibility of the provinces unlike in the past when laws were framed by the military rulers in Islamabad and provincial governments were asked to pass them from the provincial legislatures, or at worst, when the provincial assemblies stood dissolved at the time of promulgation of local government acts by military rulers.¹¹ Article 140A has strengthened the legal position of local government in Pakistan. However, its existence is meaningless unless it is implemented. There are laws for local governments in cantonment areas as well, but after 1998 no local bodies' election were ever held there until 25 April 2015. What is, however, important is that non-implementation of laws in the wake of lawyer movement became a very serious offence in the eyes of the higher judiciary.

Holding of election to the local government has been entrusted to the ECP. Article 218 (3) stipulates:

It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that election is conducted honestly,

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Ali Cheema, Asim Khwaja and Adnan Qadir, *Local Government Reforms in Pakistan: Context, Content and Causes*, KSG Faculty Research Working Paper Series RWP05-034, April 2005, pp.1-42.

justly, fairly and in accordance with law, and that corrupt practices are guarded against.¹²

Whereas under Article 219 (d), ‘the holding of elections to the national assembly, provincial assemblies and the local government’,¹³ is the duty of the ECP. Under Article 222, parliament ‘may by law provides for the delimitation of constituency by the election commission of Pakistan’.¹⁴

All these articles were the sources of recourse for the higher judiciary in cases related to local government’s election. Either singularly or in conjunction with other laws, the higher judiciary was legally justified in playing its role in the realization of local government, as well as consolidating and pushing process of democratization to the third tier of government in Pakistan, in the period 2010 – 2015.

Judiciary, executive and local government

For judiciary its role from 2010 to 2015 was not an easier and simple one, rather it was in the nature of an encounter — encounter with the another organ of the state, the executive — executives at federal as well as at provincial levels.

In the final analysis of things, judiciary is the custodian of the constitution of Pakistan.¹⁵ Immediately, after the 18th Amendment, the higher judiciary started asking the executives about the implementation of the Article 140A. As reported in the *Express Tribune*, on 5 April 2012, chief justice asked the ‘provincial governments to submit a comprehensive report explaining the reason that why they did not hold LG election ignoring the constitutional obligation’. He also observed: ‘the election will empower the people’.¹⁶ All the provincial governments as well as that at the center were, afraid of the consequences¹⁷ of not fulfilling of their constitutional obligation under the said article, and on

¹² The Constitution of Pakistan, 1973

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Shezad Baloch, ‘Local Bodies Elections would Empower the People: SC CJ Iftikhar Chaudhry’, *The Express Tribune*, 5 April 2012. Accessed on 11/5/2016 <http://tribune.com.pk/story/360177/local-bodies-elections-would-empower-the-people-sc-cj-iftikhar-chaudhry/>

¹⁷ The consequences might have taken the form of disqualification for any executive — chief minister, prime minister, or any other state functionary (as they were not oblivious to the fact that the same CJP disqualified PM Gillani) — or any other punishment.

the other hand, were aware of local governments historical role in weakening civilian rulers, party institutions and principle of federalism and, by this logic, weakening of federal democratic governments. They were, therefore, averse to holding of election to local government. Despite the passage of 18th Amendment and other legislative acts, the executives came to the court with a list of excuses for delaying election to local bodies.

In the previous dispensation of rule (i.e. 2008-13), despite enactment of laws for local government provincial governments made an excuse of law and order situation as a reason for their failures to fulfil their constitutional duty related to local government. On the similar line, the federal government showed no interest in holding of election to local bodies in cantonment areas and ICT. The *Dawn* reported on, 13 April 2012, that the Chief Justice of Pakistan, Iftikhar Chaudhry, had asked the provincial governments to ‘immediately announce schedule for holding local bodies’ election. He observed: ‘there should be no excuses as constitution admits no explanation’.¹⁸

After the current government assumed power, the higher judiciary was already running out of patience because of the failure of the executives to fulfil their constitutional obligation on local bodies’ election. But the executives once again presented a list of excuses. Though it must be admitted that some of their excuses were genuine but even at that front the progress was slow, perhaps, intentionally. For example, the federal government pleaded it requires two weeks because there was the need to change the election commissioner. The other excuses were considered childish in the eyes of court: for example, the Punjab government pleaded once that it could not hold election in the months of August-September as there were prospects of floods in the province.

Unimpressed by the rationale of the excuses put up by the executive, Supreme Court asked the ‘provincial governments to finalize election schedule till 15 September 2013’, at once.¹⁹ *The Express Tribune*, on 22 October 2013, reported that ‘This date [15 September 2013] was missed by provincial as well as federal governments’. The

¹⁸ Nasir Iqbal, ‘SC Orders Immediate Local Bodies Poll’, *Dawn*, 13 April 2012. Accessed on 10/5/2016 <http://www.dawn.com/news/710117/sc-orders-immediate-local-bodies-polls>

¹⁹ ‘Sindh Government Decides to Hold LG Election on November 27’ *Dunya News*, 18 September 2013. Accessed on 16/5/2016 <http://dunyaews.tv/en/Pakistan/192758-Sindh-govt-decides-to-hold-LG-elections-on-Nov-27>

court also sent a ‘contempt notice to Malik Yasin, a defence secretary, for not holding local bodies election in cantonment areas’.²⁰ In the wake of these failures by the executives, the court attitude hardened as reflected in its comments towards governments. On 15 October 2013, *Dawn* reported: ‘SC...ordered the governments to submit in one week report on steps being taken to enforce article 140A of constitution and the court direction in this regard....the governments had hoodwinked the nation on the issue of local government....’ ‘The only thing we want is the implementation of the constitution’, said by Justice Jawad S. Khwaja.²¹ After that Sindh government told the court that it would hold election on 27 November 2013 and the ECP announced election for cantonment areas in the first week of November 2013. However, these datelines were not met again.

Along with the executives, the court criticized the Election Commission of Pakistan for delaying local government elections. Iftikhar Chaudhry observed that ‘it appears as if the ECP is creating hurdles in holding the local bodies’ poll’.²²

The ECP’s line of argument in front of the judges was that elections dates were not missed intentionally but it had been facing technical and practical problems in holding elections there. These were that there had been an absence of provincial acts required for holding elections, or if acts had been there, there was the problem of de-limitations of wards and constituencies. Provincial governments maintained, on the other hand, that census had been missing, therefore, de-limitation of wards could not be carried out for holding of local bodies’ elections, indirectly suggesting to the courts, as well as to the ECP, that there had been reciprocal lacuna of laws and other legal instruments due to which Article 140A could not be acted upon. However, the court expressed displeasures by repeated failures of the executives and ECP on the directions of court about local government. *Dawn* reported on 10 March 2015 that ‘Justice Khawaja remarked that ECP is an authorized institution; it has been bestowed this authority by

²⁰ ‘Defence Secretary Apologizes to SC for Not Holding LG Elections’, *The Express Tribune*, 22 October 2013. Accessed on 14/5/2016 <http://tribune.com.pk/story/620822/defence-secretary-apologises-to-sc-for-not-holding-lg-elections/>

²¹ ‘SC Slams Government over Delay in LG Polls’, *Dawn*, 15 October 2013. Accessed on 8/5/2016 <http://www.dawn.com/news/1049801>

²² ‘ECP Creating Hurdles in Holding Local Government Polls, Says CJ’ *Dawn*, 21 October 2013. Accessed on 5/5/2016 <http://www.dawn.com/news/1050840>

the constitution of Pakistan and thus it should not mock the constitution and public by delaying LB polls'.²³

In the meanwhile, Balochistan held election to local government on 7 December 2013, the first province to do so. It, therefore, went out from the court's angry jurisdiction of implementing constitution and constitutionalism. However, the wrangling between the court and the executives about constitutionalism did not die down with election, rather it intensified and deepened with the entry of the ECP into foray among court, provincial governments and federal government. The court was exasperated about the non-implementation of its orders, and above all, the non-implementation of the constitution of Pakistan. Deceleration started of erstwhile foot-dragging of provinces when the Chief Justice, Iftikhar Muhammad Chaudhry, retired in December 2013. For example, earlier the province of Punjab had announced that it would hold local government polls on 30 January 2014²⁴ but, as reported in *Dawn* on 30 November 2014, it backtracked after the retirement of Iftikhar Chaudhry.²⁵ After the retirement of the chief justice, Supreme Court once again, asked all provinces to hold local government elections by 15 November 2014.²⁶ But the elections could not be held according to this dateline. On the other hand, provincial governments of the Punjab, Sindh and Khyber Pakhtunkhwa got further times to delay polls with the entry of ECP into foray, and, the coming up of cases into court one after another for the purpose of determining the legality of the different acts passed by the legislatures. Finally it was in March 2015 that ECP agreed that it would hold local government elections by September 2015. Elections in cantonment areas and Khyber Pakhtunkhwa were held before September 2015 and in the Punjab and Sindh, and ICT after

²³ Aamir Yasin, 'Local Bodies Election in Punjab Not on Govt. Agenda', *Dawn*, 30 November 2014. Accessed on 16/5/2016 <http://www.dawn.com/news/1147880>

²⁴ 'Supreme Court Gives Provinces until Nov 15 to Conduct Local Bodies Election', *The Express Tribune*, 19 March 2014. Accessed on 16/5/2016 <http://tribune.com.pk/story/684667/supreme-court-gives-provinces-until-nov-15-to-conduct-local-body-elections/>

²⁵ Abdul Shakoor Khan, 'Apex Court Asks ECP to Adhere to LB Polls Schedule', *Dawn*, 10 March 2015. Accessed on 5/5/2016 <http://www.dawn.com/news/1168624>

²⁶ Abdul Shakoor Khan, 'ECP Agrees to Hold Local Bodies Polls by September', *Dawn*, 4 March 2015 Accessed on 9/5/2016 <http://www.dawn.com/news/1167329>

September 2015 (i.e. on 31 October and 30 November 2015 respectively).

Judgments of the court

The higher judiciary of Pakistan delivered round about twenty verdicts about the issue of local government election. Several issues were the bone of contentions in these cases. These were as follows:

1. Who has the authority, Election Commission of Pakistan or provincial government to carry out the delimitation of wards/constituency for elections to LG?
2. Whether election to local government could be held on non-party basis if different legislative acts direct so?

Apart from these two main questions, there were other legal points which were also deliberated upon like Article 140A does not cover federal areas; who are to be considered an 'elected' representative: a person that has been elected on party ticket or it could be without party identification, and, such other minor questions.

However, what is important for our purpose is that how judiciary especially in relation to the second question, gave a libertarian and democratic interpretation to the clauses in acts related to non-party-basis of election. Therefore, looking into this democratizing role of judiciary in the polity of Pakistan, the following six cases' verdicts delivered by higher judiciary have been analyzed:

Cases=1, 2: These two cases (ECP versus Government of Punjab and Province of Sindh versus MQM) were related to the same issue that who has authority to carry-out the de-limitations of constituencies/wards for local bodies' elections. One case was in Sindh High Court (SHC), and the other was in the Lahore High Court (LHC). SHC as well as LHC decided that de-limitation of wards is the responsibility of Election Commission of Pakistan and not the governments of Sindh and Punjab respectively.

ECP challenged in the Supreme Court the judgment of the LHC. Supreme Court of Pakistan upheld the judgment of LHC, and further stated: 'Punjab Government De-limitation rules 2013 are inconsistent with Article 218(3) read with Article 222(b) of the constitution as they abridge and take away the constitutional role and obligation of the ECP

besides offending Articles 3, 4, 9, 14, 17, 19 and 25 of the constitution'.²⁷

Additionally, Supreme Court in the said judgment (CA 297-2014) issued further two directives. One direction was issued for the ECP and the second for the Government of Punjab. Directive for the ECP was that: We [the judges], therefore, direct ECP to perform its constitutional role without further ado and hold election to the local government in Punjab forthwith (emphasis in original).²⁸ Direction to the Government of Punjab was:

The provincial government under 140A of the constitution shall take necessary steps for carrying out the amendment in the Punjab Local Government Act, 2013 in the light of the constitutional role and obligations of ECP provided under part VII of the constitution, as laid down in this judgment, as soon as possible, so that democracy in the country is further strengthened (emphasis in original).²⁹

The said judgment of the court reasoned that since the de-limitation of constituencies of local government is a part of the process of holding elections honestly, justly and fairly (Article 218 (3)), therefore the power of carrying-out of de-limitation should lay with ECP.³⁰ Second, 'fair elections would mean fair representation and de-limitation of constituencies is a foundational step toward that end'.³¹

Case 3: In this case (Raja Rab Nawaz versus Federation of Pakistan), the Supreme Court of Pakistan, the Federation of Pakistan through secretary of defence, requested the court to extend dateline to hold elections to local government in cantonment areas. Some of the texts of the judgment, related to democracy are reproduced here.

...that under article 32 read with 140A of the constitution, it is incumbent upon the state to encourage local Government institution...For a real democracy, it is necessary that all the inhabitants...must have a say in their affairs...there is little reason that why advantage of this should not be taken by involving them in the management of their affairs through

²⁷ Supreme Court of Pakistan, 'Election Commission of Pakistan Versus Province of Punjab'. Accessed on 11/5/2016, http://www.supremecourt.gov.pk/web/user_files/File/ca.297_2014.pdf

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

directly chosen representative....only such a political system can succeed which is essentially indigenous. The political analyst have always emphasized on the importance of local self-government. ...mind that local government is the most vital element in a democracy. It is imperative upon the government to ensure that the local government bodies' elections as envisaged under the law must be held from time to time so that the representatives of the people are enabled to participate in managing their affairs at the grass-root level and fundamental rights guaranteed under the constitutions are protected and enforced.³²

Cases 4, 5, 6: These three judgments are simultaneously analyzed. First judgment was delivered by a bench of Lahore High Court in 2014 in a case titled *Pakistan People Party Versus Government of Punjab and others*. Second judgment delivered, on 30 March 2015, by Lahore High Court in a case titled *Awais Younas Versus Federation of Pakistan*. Third judgment was delivered, on 12 May 2015, by Peshawar High Court in a case titled *Sardar Hussain Babak Versus Government of Khyber Pakhtunkhwa*.

A bench court of LHC in a case titled *Pakistan People Party Versus Government of Punjab* in its ruling clearly established that the elections to the local government shall be held on party-basis. The court judgment said that the decision of the cabinet of the Punjab government about holding election on non-party basis is unconstitutional as it is against to the Article of 17 (2) of the Constitution of Pakistan that stipulates: 'Every Citizen, not being in the service of Pakistan, shall have the right to form or be a member of political party, subject to any reasonable restrictions imposed by law...'.³³

The issue in question, in the case of *Awais Younas Versus Federation of Pakistan* at the Lahore High Court, related to local government election on non-party basis in the cantonment areas. Section 14 of the Cantonment Local Government (Election) Ordinance of 2002, states that elections in cantonment areas for local government shall be held on non-party basis. The judgment of the LHC in this case has discussed in detail the importance of political party in a democratic

³² Supreme Court of Pakistan, 'Raja Rab Nawaz versus Federation of Pakistan', 2 July 2013. Accessed on 17 May 2016 http://www.supremecourt.gov.pk/web/user_files/File/CMA3258of2013inC_P65of09DetailOrder.pdf

³³ The Constitution of Pakistan, 1973.

government. Out of 24 pages judgment, 20 pages discuss the role of political parties. And, thus ordered that local bodies election to the cantonment areas shall be held on party-basis as non-party elections are against Article of 17 (2) of the Constitution of Pakistan.³⁴

In a case of Sardar Hussain Babak Versus Government of Khyber Pakhtunkhwa, the Peshawar High Court dismissed the plea of the Sardar Hussain Babak through his lawyer. The petitioner prayed that court through its ruling should order that elections to the village and neighborhood council should be held on party basis. Khyber Pakhtunkhwa Local Government Act 2103 provides for elections on non-party basis to the village and neighborhood council. The court did not entertain the request of the petitioner in this regard. The court decision reasoned that the decision of LHC is not binding on Peshawar High Court. Citing Article 17 (2): ‘every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, *subject to any reasonable restrictions imposed by law* [emphasis mine]...’ It was this second part upon which the court relied and stated that in the LHC case the whole exercise of holding polls for local government was challenged whereas here it is only one constituent (village and neighborhood council) of the whole body of local government that has been challenged, that is why election could be held on non-party basis for this particular category of local council and, therefore, it is not against Article 17(2).³⁵

Contrary to the decisions of LHC about election on party basis in cantonment and in the province of Punjab, the PML (N)-led government at the centre tried to hold election in ICT on non-party basis. The government passed a bill in the National Assembly for local government elections in ICT to be based on non-party basis but, however the in Senate the bill, owing to its non-party basis clause, was blocked due to PPP’s majority. Afterward, the government changed the bill, and allowed elections in ICT on party-based. Apart from PPP’s role at this stage, the government was also afraid that the judiciary might strike down (like the Punjab Local Government Act and Cantonment Act by LHC) the non-

³⁴ Lahore High Court Lahore, ‘AwaisYounas versus Federation of Pakistan’ 30 March 2015. Accessed on 11/5/2016 <http://sys.lhc.gov.pk/appjudgments/2015LHC5328.pdf>

³⁵ Peshawar High Court Peshawar, ‘Sardar Hussain Babak Versus Govt. of Khyber Pakhtunkhwa’, 12 May 2016. Accessed on 11/5/2016. <http://www.peshawarhighcourt.gov.pk/PHCCMS/judgments/W.P.100-2014-Sardar-Babak-Local-Government-Act.pdf>

party basis election' clauses of the bill, therefore, it easily succumbed to the demand of party-based election to the local government in ICT.

Conclusion

At the end, one can say it boldly that all the three: CoD, lawyers movement and the Article of 140(A) has had a transformative nature with significant bearings on the politics of Pakistan, judiciary of Pakistan, and, the overall overarching political order of Pakistan. The politics that started in the wake of COD has carried forward the process of democratization of the polity of Pakistan despite the PPP offence, almost for a year, for not restoring the chief justice, and other judges. The similar offence of the higher judiciary is noticeable in taking up cases that were political in nature; but on the other hand, its role in consolidating democracy by emphasizing the importance of holding elections to local government, and that too on party basis, is commendable. Similarly, PML-N supported long march for the restoration of judges but also made efforts to hold elections to local government in cantonments, the Punjab and ICT on non-party basis. PML-N might have succeeded had the judiciary not wanted to consolidate democracy in Pakistan. That is why the intervention of judiciary in the case of local government election is rightly comes under the 'doctrine of positive intervention'.³⁶

³⁶ Umair Javed, 'A Positive Intervention', *Dawn*, 13 April 2015. Accessed on 10/5/2016 <http://www.dawn.com/news/1175522>