

# RULE OF LAW, JUSTICE AND CONSTITUTIONALISM:

POLITICAL MOBILIZATION IN THE ‘LAWYERS’ MOVEMENT FOR  
THE RESTORATION OF JUDICIARY AND DEMOCRACY’ IN PAKISTAN  
(2007-09)



Outside the Jamaat's office in Islamabad, Pakistan. Photograph taken by the author © Salman Hussain

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In March 2007, lawyers across Pakistan rose up against the eight-year long military rule of General Pervez Musharraf, when he dismissed the Chief Justice of the Supreme Court, Iftikhar Mohammad Chaudhry.<sup>1</sup> The protesting lawyers, mobilized through their bar associations, were soon joined by students, civil society activists and traders and shop-keepers' unions, as well as various religious and political parties. Although Chaudhry was restored three months later by the Judicial Council of the Supreme Court, he was removed again in November 2007, when – on the pretext of fighting the growing threat of 'violent extremism' – Musharraf declared a state of emergency<sup>2</sup>. Chaudhry was finally reinstated by the Pakistan People's Party-led government in March 2009, owing to intense public pressure and looming protests nationwide by the opposition political parties, mainly Nawaz Sharif's Pakistan Muslim League. The military establishment had by then expressed its support for Chaudhry's restoration as well. The Lawyers' Movement for the Restoration of Judiciary and Democracy became one of the major protest movements in Pakistan's recent history, which, even though led by a professional class,

<sup>1</sup> Chief Justice Chaudhry was dismissed on charges of abuse of his office. Chaudhry, who up until then had refrained from challenging the legitimacy of military rule and Musharraf's executive actions, had overruled the privatization of the Pakistan Steel Mills by the government and admitted the cases of the 'missing persons' - suspected members of various Islamic and nationalist militant groups who are in the extra-judicial custody of Pakistan's security agencies.

<sup>2</sup> Musharraf declared Emergency (martial law) on the pretext of guaranteeing security and maintaining 'law and order' in the country. However, one of the main objectives of this desperate step was to stop the Supreme Court to deliver its decision about the constitutional legitimacy of him holding both the offices of the President and the Chief of Army Staff.

the lawyers, mobilized urban middle classes as well as fused disparate political parties – religious as well as secular – in political action together.

I examine the Lawyers' Movement by asking what we can learn about the appeal of liberal rights, constitutionalism and rule of law and their role in class-based political mobilizations in Pakistan today. I do so by discussing how the Movement succeeded in making these slogans appealing across professional and educated middle classes and brought together different political interests under the loosely, and often contradictorily, defined banner of rule of law, Justice and constitutionalism.

Following a surge in popular politics, brought about by Zulfikar Ali Bhutto's populist mobilizations in the late 1960s and early 1970s, the Pakistani middle classes found themselves caught in a nationalist-socialist euphoria, which subsided once Bhutto's authoritarian rule took full swing against any form of dissent. This disenchantment with popular politics was further exacerbated with the return of the military rule, yet again, in 1977. During General Zia's reign (1977-1988), these classes were further disillusioned by the blurring of boundaries between local-level-patronage, ethnicity, religion and politics, as Zia manipulated national as well as local-level politics in ways that weakened the hold of political parties on the electorate. For example, in 1985, he held elections strictly on a non-party basis – thus encouraging the emergence of local strongmen, representing various ethnic and religious interests and groups. This fragmentation of popular-political power helped Zia to remain at the apex of a tightly-controlled political system of patronage and corruption. The urban educated middle classes gradually distanced themselves from

this form of ‘uncivil’ and ‘unruly’ mass politics, assumed to be based on locally-rooted interests and squabbles and on primordial ethnic divisions, rather than on rational debate and political ideologies. It was after decades of political dormancy that these classes rendered their support – both passively as well as actively – to the Lawyers’ Movement of 2007. Rule of law and the language of constitutional rights provided an apolitical frame, within which these middle-class and civil society activists could take the lead in protest action directed at the reconfiguration of the state, while at the same time keeping a distance from the so-called corrupt electoral politics of the ‘traditional’ ruling elites, who had dominated the political scene throughout the 1990s, even after the demise of Zia and end of his dictatorial rule.

The appeal to sanctity of constitutional rights, and the necessity of restoring judiciary and democracy for protecting and upholding them, allowed for the creation of a larger alliance between lawyers, different political parties and the middle-class activists, although the meanings that they all imputed to the Constitution, and what they aspired it to achieve, differed. Even though upholding of constitutional rights was construed to be imperative for effectively challenging the military rule, many in the Movement did not concur on the principles underlying these rights. I discuss below the divergent visions of ‘rule of law’ amongst the lawyers and one of the most active religious-political party in the Movement, *Jamaat-e-Islami* (JI), to show how these actors differed in their expectations of constitutionalism. For most of the lawyers, rule of law and constitutional rule were the means for achieving ‘social justice’ in the Pakistani society, while for JI, the formation of an Islamic welfare state depended upon rule of law based on a constitution that already affirmed Allah’s sovereignty.<sup>3</sup> Nevertheless, ‘secular’ lawyers and ‘liberal’ political and civil society activists as well as Islamists found a common political interest – opposition to military rule and restoration of the Chief Justice – and identified it with the defense of the Constitution and rule of law. The Lawyers’ Movement’s significance lies precisely in successfully bridging religious to secular political parties and the educated and professional middle classes *and* civil society to petit-bourgeoisie simultaneously. Historically, the last time this type of consensus had emerged against Zulfikar Ali Bhutto – when in 1977, all, except the educated classes and intelligentsia, mobilized against his supposedly rigged electoral victory.

<sup>3</sup> I focus on Lawyers and the Jamaat to present a view from within the Movement. Theirs are of course not the only views, but they do represent the main concerns of those who mobilized around them and those political parties that espoused similar ideological interpretations of constitutionalism and rule of law.

The political mobilization, this time around, was led by a professional class, lawyers, many of whom wanted to appeal to Pakistanis across the political and social divide by crafting a new political imaginary of the postcolonial state. The middle classes, on the other hand, after decades of being silently attuned to the political rhetoric of the nationalist and mainstream ideologues of the Center as well as the Right, finally experienced a movement with which they could identify. Needless to say, the middle classes are not a homogenous entity and can be differentiated, based on urban-rural, salaried-business, and liberal-religious bases. However, in order to mobilize effectively, in Pakistan, major political movements have historically attempted to recruit the urban middle classes in their political projects. Similarly, some from within these classes did tend to cluster around political parties that they closely identified with, and justified their support for the Movement on those ideological bases as well. However, the majority of the middle classes did not strictly claim to be a part of, or even sympathize with, any political party or ideology, and insisted that they had come out to support and defend an institution, the Supreme Court. I now move on to discuss two key actors in the Movement, the lawyers and the Islamists from *Jamaat-e-Islami*, who managed to rely on the same slogans, but with divergent meanings, of rule of law and constitution to mobilize different classes around them.

## A CONSTITUTIONAL ROAD TO SOCIAL JUSTICE: THE LAWYERS’ DISCOURSE FOR THE POLITICALLY DISTANT CITIZENS

According to the lawyers, such as Munir A. Malik, who led the Movement and crafted its ideological rhetoric, the ideas of a “welfare state” and “substantive”, rather than procedural, justice proved to be pivotal slogans to appeal to the politically distant citizens. Many activist lawyers agreed with Malik’s definition of substantive justice as “empowering the people ... [gaining] equality and [ending] corruption” of the ruling elites. Malik argued that the political imaginary of a new Pakistan based on justice appealed to the educated classes. At the same time, this notion of justice attracted the support of the middle-class traders and shopkeepers, who are often victims of what Malik calls the “*thana* (police station)/*bhatta* (extortion) culture”. Just as this traders

class, many Pakistanis operating in the commercial sphere, constantly experience extortion by the police and deal with a lethargic legal system. Malik claimed that a new political imaginary, based on the notion of “justice”, took root among these middle-class Pakistanis, and that even after the Movement ended, he continued, “everyone ... says that there is no justice in this society, there should be justice for all”. The idea of finally being able to have recourse to justice attracted popular support for the Movement, which proved instrumental.

Ajmal Baloch, who leads the traders’ union of one of the biggest commercial markets in Islamabad, Aabpara Markaz, saw the Supreme Court under Chaudhry as a site to which people could turn to have their grievances against the state addressed. Traders and shopkeepers, he explained, deal with the state on a regular basis, and many were unhappy with the ways in which the local administration had negotiated with them in matters of taxation and local government under Musharraf. So traders, he claimed, supported the Movement, both by contributing funds as well as participating in strikes, because of their immediate conflict with the Musharraf government as well as their desire to achieve a long term and just relationship with the state by restoring judiciary and ending military rule.

Atizaz Ahsan, a prominent leading lawyer of the Movement, was well aware of this relationship between people’s immediate concerns and their larger aspirations vis-à-vis the Lawyers’ Movement. He claims that the lawyers’ leadership intentionally shifted the focus from “just Iftikhar Mohammad Chaudhry, whose reinstatement was [indeed] cathartic to the Movement itself, to broader social and political issues”. This shift entailed reframing the “question of deprivation, not just of one man from his job but a nation from its rights”. The narrative of the Movement had to be re-shaped by identifying broader social and political inequalities – that most Pakistanis have experienced and can understand and identify with – and then presented to the public in the language of liberal rights and justice.

The educated classes are frequent consumers of the media and the lawyers’ ideological slogans were directed at them through it. Slogans, such as rule of law and justice, Ahsan explained, were framed in the language of equality and rights by directly referencing them to the Pakistani Constitution (specifically, to the chapter on *Fundamental Rights*) and thereby concretizing their appeal. It was by means of the media that these slogans attained their discursive thrust. Malik and other prominent lawyers of the Movement, such as Atizaz Ahsan and Ahmad Ali Kurd, frequently appeared on prime-time talk shows and passionately clashed with

government ministers over the constitutional legitimacy of the state of emergency and the suspension of fundamental constitutional rights. Moreover, the electronic media extensively covered lawyers’ protests, seminars and their rallies and broadcasted their speeches to millions at home.

The lawyers’ liberal rhetoric struck a chord with the generally politically-disengaged Pakistani middle classes, who, over the decades, had consciously distanced themselves from political protests, the electoral process and the legal system, considering the latter two inept and corrupt, and the former simply futile. Therefore, Malik claimed, the Lawyers’ Movement, with its language of rights and justice, at long last, provided these classes the recourse “to break the fatalism” that they perceived to exist in Pakistani politics. Indeed, many political and civil society activists claimed rule of law, based on constitutional rights, as an unquestioned rationale for their support of the Movement and, which, they suggested, played a critical role in even mobilizing those on the streets who did not claim any political affiliation.

## THE PERSPECTIVE OF JAMAAT-E-ISLAMI: ISLAM AND CONSTITUTIONAL RULE

Ji is a case in point, which has traditionally found its electoral base in the urban petit-bourgeoisie in Pakistan. Its workers and leading figures explain that they presented the Movement to their supporting classes as part of their historic (still ongoing) “Islamic, constitutional, and democratic struggle”.

Pakistan’s constitutional and political history is marred by competing interpretations – over the years polarized as ‘Islamic’ versus ‘secular’ – about the ‘true’ nature of the nation-state and its constitution. General Zia-ul-Haq, who maintained power from 1977 to 1988, attempted to put to rest the confrontation between these competing ideologies by making a number of amendments in the Constitution that were intended to preserve and restore its “Islamic character”. For example, he renamed the parliament *Majlis-e-Shura* (“the Shura Council”) to appease the Islamists by adopting an Islamic mode of advisory rule (shura, or “consultation”); imposed stricter legal restrictions on the Ahmadiyya sect; and passed the notorious Hudood Ordi-

nance.<sup>4</sup> This historic divide between the secular and Islamist ideologies in Pakistan, and formations that politically and socially represented and defended them, was finally bridged in the Lawyers' Movement – for the first time since 1977, when all political parties (under the banner of Pakistan National Alliance or PNA) had rallied against Zulfikar Ali Bhutto's government.

Soon after independence, JI entered Pakistani politics by leaving its initial ambiguity over the Partition behind and articulating modernist Islamic interpretations of the Pakistani state against the secular ones of leftist and progressives<sup>5</sup>. JI availed the first opportunity to do so in 1953, when it led the agitation to declare the Ahmadiyya sect<sup>6</sup> non-Muslim. Even though JI opposed Ayub Khan's military rule, it welcomed and provided political support to Zia-ul-Haq's military takeover in 1977. JI, however, has remained consistent in its demand for the reconfiguration of the Pakistani state as an "*Islami falahi riasat*" ("Islamic welfare state"), and, in terms of electoral power, maintained its appeal to the socially-conservative salaried middle classes and businessmen and traders.

The Chief of the *Jamaat's* office in Islamabad, Zubair Khan, explained that when the Chief Justice was dismissed by General Musharraf in 2007, the head of the JI then, Qazi Hussain Ahmed, called its workers and supporters to come out on the streets to protest, because "a single person cannot be allowed to send the judiciary home". Khan explained that JI's support of the Movement was, in essence, a political struggle for the Constitution, because, for the *Jamaat*, it is not the martial law, rather, it is democratic political process that will bring a change in the country's governance. He emphasized that true democratic change in the political system will successfully take place when the "consciousness of the people is aroused", so that "the people will change the system by themselves. This is the only solution". Khan here was alluding to the

4 Hudood Ordinance (1979) was claimed to have merged Pakistan Penal Code offences, based on Common Law Jurisprudence and criminal procedure, with Hudood laws based on Hanafi jurisprudence. These laws were severely criticized and protested by human and women rights activists for institutionalizing limits on women's rights and regulating their social and familial conduct.

5 JI, under Maulana Maududi, had refrained from supporting the creation of Pakistan as it went against its pan-Islamic vision of an Islamic state. After independence, it reluctantly entered the Pakistani political scene and started advocating an Islamic state, based on Islamic law and ideology, against a secular western one.

6 The Ahmadiyya sect was eventually declared non-Muslim in 1974 and further restrictions were officially sanctioned against its members, in 1984, during Zia-ul-Haq's rule.

expectations and desires of those political opportunists and ideologues, who often look towards the military rulers to re-organize social and political order in Pakistan.

If the lawyers identified rule of law and constitutional rule as the political means to achieve social justice, turning these terms into key slogans for mobilizing the support for the Movement beyond the Bar Associations, the *Jamaat's* discourse was similarly intended to mobilize its supporting classes by continuing to advocate for a reinterpretation of the Pakistani state as one based on Islamic, rather than secular principles, but within constitutional means. For both, these slogans served as a frame to mobilize Pakistanis beyond political divides and raise their political consciousness. While JI's support of the lawyers appears as a paradox, it is important to note that, for Khan, the contradictions between their (JI's) ideology and the "secularists" were reconciled by the Constitution – their struggles were constitutional and for the restoration of judiciary and constitutional rule. Khan claimed that it is the Constitution that can bring various political parties and ideologies together. However, he further argued that the differences in political ideologies can be reconciled only if all political parties "accept and take oath under the constitution, in which *haakmeet-e-Allah* ("Allah's sovereignty") has been recognized and accepted. Even if their (non-Islamists') ideology is secular, the struggle is constitutional". This interpretation of the Pakistani Constitution diverged ideologically from the one forwarded by secular lawyers as well as the liberal political and civil society activists. These competing interpretations of the Constitution and its underlying principles were argued by actors whom converged together under the banner of rule of law and constitutional rule but diverged on what that rule entailed and what it was meant to achieve.

However, what Malik and Ahsan had noted about rule of law, Khan emphasized as well that the national consciousness needed to be addressed and suitably refined regarding constitutional rights, democracy and justice. For both Khan and Malik, it is the educated and professional middle classes that need to free themselves of political inertia and become political agents, and for both, rule of law and constitution mark the way to justice, freedom and political change in Pakistan.

## LESSONS FROM THE LAWYERS' MOVEMENT

Many activists and commentators continue to assess the Lawyers' Movement by looking at what it achieved in the long-term, in both legal and political means, beyond its immediate aim of restoring the judiciary and challenging General Musharraf's rule. However, it is more interesting to examine the Movement by asking what we can learn about the class-based politics and the appeal of liberal rights, constitutionalism and rule of law in Pakistan today. The language of constitutional rule and rights was intended, as Munir A. Malik claimed, to work as a bridge between the lawyers, the educated middle classes and civil society and political activists. It succeeded in achieving a tenuous consensus – a historically rare occurrence in Pakistan – amongst ideologically divergent political parties and professional and educated classes on restoring judiciary and democracy, and provided content to imaginaries of corruption, political power and many social and political crises in the Pakistani state and society.

The Lawyers' Movement appealed to the sensibilities and shaped the aspirations of the Pakistani urban middle classes and led, albeit transiently, to the emergence of a site from which they could re-imagine the state to be finally free from the hold of corrupt ruling elites and excessive military rulers. Even though lawyers are still considered gatekeepers of a lethargic and corrupt legal system, many lawyers from within the legal profession criticized the same system and argued for reformulating the notion of justice.

Religious-political parties, such as the Jamaat-e-Islami and other political groups, drawing support from different strata within the middle class (shop-keepers, small traders and industrial bourgeoisie), provided vital support to the protesting lawyers by mobilizing their reluctant sympathizers and extending the Movement's appeal, in the name of constitutional rights, to those who had stayed away from protest politics as well as electorate processes for decades. These political parties provided legitimacy to the presumed sanctity of the Constitution and necessity of an independent judiciary in place to protect it, and, even though for a short period, achieved a consensus, amongst different classes, on upholding liberal principles of government and state power in Pakistan.