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PhD Thesis

**The Impact of Structural Reform Strategies of International Financial
Institutions on the Rule of Law, Good Governance and Development
in Pakistan**

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This thesis is submitted in partial fulfilment of the requirements for Doctor of
Philosophy degree in Law at the School of Law, University of Warwick, Coventry,
United Kingdom.

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ABSTRACT

This thesis examines the impact of structural reform strategies of International Financial Institutions (IFIs) on the rule of law, good governance and development in Pakistan. In doing so, it explores the extent to which the ethos and instruments of rule of law and good governance could be helpful in mitigating problems of social justice as experienced by Pakistan. One important outlet through which this is explored is through the internal factors that have aggravated conditions of poverty and social injustice.

The interfaces of these social variables are made possible by the scale of Pakistan's social challenges which has culminated in the involvement of IFIs in the country's internal struggles. But like other countries, the IFIs involvement in Pakistan's domestic affairs has aggravated social injustice rather than alleviating it. The principal argument of this thesis is that absence of social justice in Pakistan could be attributed to the interaction between IFI policies, weak structures of governance and the rule of law. While IFIs policies have recently attempted to emphasise human rights, good governance and the rule of law, these have been ineffective partly because of IFI submissiveness to strategic interests of the United States and Western powers.

The theoretical and analytic framework of the thesis is mediated through Amartya Sen's capability approach. Capability means:

“What people can positively achieve is influenced by economic opportunities, political liberties, social powers, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives. The institutional arrangements for these opportunities are also influenced by the exercise of people's

freedoms, through the liberty to participate in social choice and in the making of public decisions that impel the progress of these opportunities (Sen, 1999:5).

The theoretical framework is used as the frame upon which to engage the impact of Structural Reform Strategies of IFIs on the rule of law, good governance and development in Pakistan as the case study.

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“In the name of God, most Gracious, most Compassionate”

First of all, I am thankful to my God who bestowed me with good health, the ability and the strength to complete my PhD. During the many phases of the challenges of completing this thesis, I sought support and inspiration from numerous other sources and outlets without whose support the final realisation of this thesis would have been far more painful. In this regard, I owe a profound debt of gratitude to Professor Abdul Paliwala for his diligent supervisory services. In the many occasions where difficulties and challenges came my way, he comforted as well as provided much needed direction. I cannot thank him enough.

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Gratitude is owed to my family whose enormous support remains the special inspiration in the completion of the project. A greater appreciation goes to my dear father (of blessed memory) whose prayers and initiatives guided me through my studies and career development. Similarly, my loving mother has been instrument in getting me to where I am through prays and encouragement. Special thanks also go to my beloved wife whose sacrifices, emotional support and encouragement kept me motivated and focused.

Finally, it is my hope that this research will, however small, contribute to mitigating some of the dilemmas faced by my beloved country, Pakistan. I do hope that the thesis will serve as a foundation step in policy formulation in order to have a greater understanding of the concept of social justice in the perspective of rule of law, good governance and development in Pakistan.

GLOSSARY OF TERMS

ACAs	Anti-Corruption Agencies
ACE	Anti-Corruption Establishment
ADB	Asian Development Bank
CAS	Country Assistance Strategy
CBR	Central Board of Revenue
CJP	Chief Justice of Pakistan
CMH	Commission on Macroeconomics and Health
CMLA	Chief Martial Law Administrator
DFID	Department for International Development
EBRD	European Bank for Reconstruction and Development
EFA	Education for All
ESAF	Enhanced Structural Adjustment Facility
FABS	Financial Accounting and Budgeting System
FIA	Federal Investigation Agency
FOIO	Freedom of Information Ordinance
FTI	Fast Track Initiative
FY	Financial Year
GDP	Gross Domestic Product
GOP	Government of Pakistan
HDI	Human Development Index
HDRs	Human Development Reports
HIPC	Heavily Indebted Poor Countries
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce

ICS	Indian Civil Services
IDA	International Development Association
IEO	Independent Evaluation Office
IFIs	International Financial Institutions
IMF	International Monetary Fund
LDCs	Least Developed Countries
LFO	Legal Framework Order
LHWs	Lady Health Workers
MDGs	Millennium Development Goals
NAB	National Accountability Bureau
NACS	National Anti-Corruption Strategy
NAO	National Accountability Ordinance
NEPRA	National Electric Power Regulatory Authority
NGOs	Non-Governmental Organizations
NRO	National Reconciliation Ordinance
OAGP	Office of the Auditor General of Pakistan
OCGA	Office of the Controller General of Accounts
OECD	Organization for Economic Cooperation and Development
OGRA	Oil and Gas Regulatory Authority
PCA	Prevention of Corruption Act
PIFRA	Project to Improvement Financial Reporting and Auditing
PMDGR	Pakistan Millennium Development Goals Report
PML	Pakistan Muslim League
PPAF	Pakistan Poverty Alleviation Fund
PPC	Pakistan Penal Code

PRGF	Poverty Reduction and Growth Facility
PRSCs	Poverty Reduction Strategy Credits
PRSPs	Poverty Reduction Strategy Papers
PRSs	Poverty Reduction Strategies
PSPE	Pakistan Special Police Establishment
PTA	Pakistan Telecommunication Authority
PWDs	People with Disabilities
SAAs	Structural Adjustment Agreements
SAC	Structural Adjustment Credit
SALs	Structural Adjustment Loans
SAPP	Social Action Program Project
SAPs	Structural Adjustment Programmes
SRs	Structural Reforms
TIP	Transparency International Pakistan
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNTOC	United Nations Convention against Transnational Organised Crime
USAID	United States Agency for International Development
WTO	World Trade Organization

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Abdul Majeed Zafar V Governor of the Punjab through Chief Secretary [2007] SCMR SC 330

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Court 240

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DECLARATION

I hereby declare that, except where otherwise indicated, this thesis is entirely my original work, and that no part of it has been submitted for any degree or qualification to this or any other university.

DEDICATION

This thesis is dedicated to three people who serve as my main source of inspiration.

My Father (Late);

For always supporting me throughout my whole life spiritually, morally and particularly in my educational development.

My Mother;

For always praying for my success.

And Especially

My Wife;

For the sacrifices and emotional support which helped in the completion of this project.

CHAPTER ONE

INTRODUCTION

The World Bank (WB) – formally the International Bank for Reconstruction and Development (IBRD) – and the International Monetary Fund (IMF) were created by the Bretton Woods agreement adopted in New Hampshire in 1944 (IMF, 1944). The rationale for their creation was to provide financial and economic support to war-torn European countries in the aftermath of World War II. The two institutions are distinct in their line of work. The IMF was set up because of the belief that the international world had been incapable of addressing the financial challenges that confronted “Germany during the late 1920s and early 1930s”. The major focus of the IMF policies since its inception has largely been to facilitate global economic stability by promoting cooperation in the ‘balance of payments’ method amongst member countries.

The World Bank on the other hand, was set up to cope with the economic instability of ‘post-World War II Europe’ and subsequently, oversee the financial well being of the developing world. The bank initially focused on project lending¹ until the late 1970s when it shifted from ‘project to structural adjustment lending’ in the 1980s. These lendings were attached with policy conditions designed to encourage financial development with specific emphases on macro-economic as well as structural factors (Abouharb and Cingranelli, 2007: 57-58).

It is important to note, that the role and impact of the World Bank and IMF on the socio-economic conditions of third world countries has attracted a considerable academic debate over the last two decades. The experiences of developing countries

¹ In the beginning, the World Bank focused on supporting the building of the public services such as dams and power plants.

at the receiving end of these programmes have varied. Some strong supporters of the World Bank and IMF argue that the structural reforms introduced by these institutions are essential to stabilise the economies of member states. Also, the countries which have high-quality financial, economic and business strategies can flourish well with the help of lendings by the IFIs but may produce ineffective or poor results in case of mismanagement of funds (Burnside and Dollar, 2004: 20). Others hold the view that that internal factors such as poor governance and the persistence of authoritarian regimes in loan receiving countries impact negatively on the achievement of sustainable growth through IFIs driven structural reforms (Dollar and Svensson, 2000: 901, 905). However, some critics suggest that IFIs have failed to alleviate poverty, aggravating in effect, problems of member countries (Hira and Parfitt, 2004: 64; Abouharb and Cingranelli, 2007: 136).

Another case against IFIs relates to the charge that most of their programmes are largely framed around the political agenda of some powerful countries such as the U.S. and not so much on the economic needs of the borrower countries. The major criticism, however, pertains to ‘conditionalities’ which are forced upon loan receiving countries (Swedberg, 1986: 377-79; Woods, 2006: 9). The ‘conditionalities’ are mostly unsympathetic and cause complications in the attainment of sustainable economic development in member countries (Kapur, 2005: 32).

A related dimension to this architecture is the Comprehensive Development Framework (CDF), which has been labelled as the beginning of ‘Second Generation Reforms’ in the World Bank presented by the Bank’s President for discussion (Wolfensohn, 1999). The CDF takes into consideration the issues of “social,

structural and human” aspects. The key areas such as education, health, human rights, rule of law and good governance are considered as central to the realisation of sustainable development under the CDF (Rittich, 2005: 200). So central is the CDF to development initiatives that the World Bank has endorsed it as the foundation of sustainable development policy (World Bank, 1999).

In September 1999, the Poverty Reduction and Growth Facility (PRGF)² were introduced for purposes of poverty reduction and enhancement of growth in low income and heavily indebted poor countries (HIPC) by IMF lendings. The IMF introduced PRGF by replacing its Enhanced Structural Adjustment Facility (ESAF) on the same terms and conditions, which was subsequently correlated to PRSPs (IMF, 2007).

The late 1990s witnessed a shift in international development approaches to economic governance. The IFIs policies were strongly criticised due to the East Asian Crisis of 1997 and the failure of Structural Adjustment Programmes (SAPs) in developing countries. As a result, “the 1999 review of the Heavily Indebted Poor Countries (HIPC)” forced the IFIs to seek a solution “to link debt relief to poverty reduction in the design of the Enhanced HIPC Initiative, or HIPC2” (Christiansen and Hovland, 2003: vii). All the above mentioned factors contributed to policy reforms in the direction of IFI strategies. In September 1999, the World Bank and IMF in their joint meeting initiated Poverty Reduction Strategies (PRS)³ process, a

² The Poverty Reduction and Growth Facility (PRGF) is the cheap-interest lending feature of IMF' for poor countries. It is for the reduction of poverty with the involvement of civil society and “Development Partners”. The PRGF is designed to reduce poverty and to achieve economic stability. The PRGF loans were disbursed for the period of ten years and at the rate of 0.5% interest (IMF, 2002).

³ According to IMF: “Poverty Reduction Strategy Papers (PRSPs) are prepared by the member countries through a participatory process involving domestic stakeholders as well as external development partners, including the World Bank and International Monetary Fund”(IMF, 2009).

new framework for better relations with poor countries. According to the IMF and World Bank,

The approach—centered around the development and implementation of poverty reduction strategies (PRSs)—was in many ways novel. It made the successful preparation of a nationally owned poverty reduction strategy a precondition for access to debt relief and concessional financing from both institutions. These strategies were expected to be poverty-focused, country-driven, results-oriented, and comprehensive (IMF and the World Bank, 2005: 16).

In 2001, the World Bank initiated Poverty Reduction Strategy Credits (PRSCs) as the new framework of funds from International Development Association (IDA) for recipient countries also related to PRSPs. The PRSP approach was adopted by the IFI with the view to enabling the borrower countries to set their objectives for poverty reduction on the one hand, whilst also persuading the donors to lend according to the circumstances and feasibility of the borrowers on the other hand (UNDP, 2009: 3,5; Christiansen and Hovland, 2003: 4).

The Structural Reforms of the World Bank and IMF have, however, produced less growth in developing countries in comparison with the countries which opted not to implement the programmes in their economies (Vreeland, 2007:4). For example, China received very few loans but achieved high level of sustainable growth without the support of IFIs (Stiglitz, 2002; Abouharb and Cingranelli, 2007:18). Moreover, the case studies of various countries show that IFI loans tempted government officials and politicians of third world countries towards corrupt practices as well as imposed huge burdens on the poor through debts overhang and the huge interest accrued from them (Abouharb and Cingranelli, 2007:10). It is pertinent to note

however, that accountability⁴ mechanisms have been incorporated within the internal structures of IFIs but lack of proper implementation of these checks is somehow responsible for the failure of Structural Reform Strategies in loan receiving countries.

1.1 IFIs, STRUCTURAL REFORMS AND PAKISTAN

The relationship between IFIs and Pakistan has had a long but turbulent history. During much of this period poverty reduction has been the primary focus of the IFIs activities in Pakistan. There is a contradiction in the policy framework of the programmes introduced by the World Bank and IMF. This is because on the one hand, these institutions seem interested in the efforts to reduce poverty and are often ready to provide funding. But on the other hand, they also emphasise the need of privatization of public institutions, withdrawal of subsidies⁵ as well as the initiation of deep cuts in public expenditure.

Like other developing countries, Pakistan is facing pressure from these financial institutions to follow the liberalization and deregulation of its economy (Gardezi, 2004: 435). Since achieving independence, Pakistan has constantly battled problems of growing poverty, high increase in the external debts and soaring inflation. Pakistan adopted the policy of downsizing as per directions from the IFIs, but this resulted in high rate of unemployment (Cheema, 2004: 25-26). One important factor is that many of the lendings agreed with the IMF have not been actualized as further tranches of loan were cancelled due to Pakistan's failure in fulfilling

⁴ The World Bank set up the Department of Institutional Integrity and an Audit Committee to increase the accountability of its programmes in the member countries. The World Bank also formed an Inspection Panel to check the breach of its "policies and procedures" in the member states (Curtin and Wessel, 2005: 81).

⁵ It has been advised by the IFIs that the government of Pakistan must withdraw all subsidies by the end of 2008 and all cross subsidies by the mid of 2009 (The Nation, 2008).

conditionalities. All these have meant that Pakistan had and continues to face testing times in its economic and social affairs.⁶

The Structural Reform Strategies introduced in Pakistan may be divided into three phases. The first phase of Structural Adjustment Loans (SALs) starts with the first formal lending under the structural adjustment program to Pakistan in 1988. From then on, continuous lendings were extended to the successive democratic governments of Benazir Bhutto and Nawaz Sharif. The Structural Adjustment Programmes were attached with policy conditions proposed to encourage financial development which emphasized macro-economic discipline and related structural factors. The IFIs insisted on 'neoliberal economic reforms' when providing funding for Structural Adjustment Agreements (SAAs) to developing countries (Abouharb and Cingranelli, 2007: 63). According to some critics, the SAPs remained unsuccessful although the World Bank and IMF have claimed a few success stories. Most of the SAPs failed to reduce impoverishment and were unable to provide the basic facilities of life especially to third world countries (Jauch, 1999; Ikejiaku, 2008:2-3; Gelinas, 1998: 75).

The World Bank with the help of foreign donors initiated Social Action Program Project (SAPP-I) in 1992/1993 with the aim of achieving better results in basic health care, primary education, family planning, sanitation and availability of safe & clean water to remote areas of Pakistan. In 1996, the Social Action Program Project (SAPP-II) was started after the failure of SAPP-I. The primary focus of SAPP-II was also on social reforms like SAPP-I but especially to provide the essential services to women and poor people. The IFIs and Pakistan under the management of World

⁶ Pakistan faced a very hard time due to its incomplete projects, which were started with the help of these institutions, for not fulfilling the 'conditionalities' attached with loans, and further instalments were cancelled before its completion (Cheema, 2004).

Bank invested a huge amount of which 25% of the money came from foreign sources intended for the Social Action Program Project during 1993-1998. Not much good came out of from it was a failure. Although, there are different reasons for its failure, a major one could be attributed to the decision by the government of Pakistan to downsize SAPP especially in the last two years of the programme (Anwar, 2006: 4; Easterly, 2001:15).

The Enhanced Structural Adjustment Facility (ESAF) was an IMF programme meant to provide economic support to poor countries with a life span from December 1987 to 1999. As a pre-condition, the Pakistani currency was to be devalued again by seven percent, duties on imported items were reduced and the scope of General Sales Tax was extended to more than two hundred and fifty items. All these was meant to fulfil the criteria for more instalments from of the ESAF loan. Despite attempts to fulfil loan obligations, the Benazir government was unable to meet the conditionality requirements set by the Donor Institutions as more than 80% of the revenue collection was consumed on ‘debt servicing and defence expenditure’ (Gardezi, 2004: 431).

The second phase known as ‘Second Generation Reforms’ started in Pakistan when General Pervez Musharraf took over the control of government and declared himself ‘Chief Executive’ of Pakistan. In 1989, following a report by the Economic Commission for Africa (ECA), good governance was declared as an important element for the achievement of sustainable development. The World Bank played a pioneer role while taking good governance as a basic condition for borrower countries at the time of applying for new loans (World, Bank, 1989: 60-61). Pakistan’s government made good governance a policy objective and in August

2000, the Second Generation Reforms were introduced by President Musharraf with a slogan of “empower the impoverished” (ICG, 2004: i). The main purpose of the Second Generation Reforms was “high growth and sustainability, building the institutional and governance capacity” as well as to create business friendly atmosphere in Pakistan. The major focus of these reforms was on the Civil Service, Decentralization and Devolution of local government, Judiciary, and Police and a partnership between civil society and government as a basis for good governance. Further, the promotion of good governance in public, private and financial sectors required the cooperation of the public, a system of checks and balances, accountability, poverty reduction, greater equality and the culture of rule of law and the institutions according to global standards (GOP, 2010).

The Second Generation Reforms performed well for a few years but were unable to achieve their set objectives. Some of the reasons related to misuse of power, appointments of non-technical persons (especially army officials) in technical posts, and the use for political victimization of institutions such as the National Accountability Bureau (NAB) established to promote accountability under General Musharraf’s regime (Naseem, 2008: 26).

The third phase is the Poverty Reduction Strategy Paper phase. In November 2000, Pakistan began the Interim Poverty Reduction Strategy Paper (IPRSP) and then PRSP-I in December 31, 2003. It was decided to initiate PRSP-II from 2008 to 2010 with the possibility of extension in the period after the completion of PRSP-I. Unfortunately, the Pakistan’s Ministry of Finance failed to effectively enforce the PRSP-I because of corruption, misuse of funds, bad governance and lack of accountability (UNDP, 2009: 7,9).

However, the World Bank has shifted its focus and since the early nineties, is trying to make the rule of law and good governance as one of the policy conditions attached to loans (Curtin and Wessel, 2005: 81). Sachiko and Durwood (2005) and Ghosh et al (1999) suggest that in any country, rule of law and good governance are important factors for the attainment of sustainable development. The economy progresses toward sustainable and equitable growth if the legal and administrative system of a country is anchored on rule of law and good governance.

Conversely, a culture of corruption, bad governance and disregard for rule of law would emerge where there is absence of institutional and normative structures. The key indicators of good governance are transparency, accountability, efficiency and rule of law, which are accessible if there is cooperation between loan recipient countries and IFIs. However, it is impossible to complete this objective within a short span of time. It is a continuing process, which requires the attention of the world actors and IFIs (Sachiko and Durwood, 2005: 16; Ghosh, 1999: 2, 15-17).

No doubt, the IFIs have focused recently on rule of law and good governance in their programmes but there is a need for serious efforts in the case of Pakistan. This is because while there is an attempt in recent IFI strategies to promote principles of good governance and rule of law in Pakistan, they do not seem to be making any significant headway. This may be due to fault lines in Pakistan's domestic political system, part of which is also driven by competing strategic interests of U.S. and Western Powers.

1.2 ARGUMENT AND OBJECTIVE OF THE THESIS

This thesis argues that IFIs involvement in Pakistan domestic affairs has aggravated social injustice rather than alleviating it. The absence of social justice in Pakistan

results from the interaction between IFI policies and weak structures of governance and the rule of law. Although the IFIs, have, through their policies, recently attempted to place emphasis on rule of law, good governance and development, these have been ineffective partly because the policies and approaches have been, by default and design, aligned to the strategic interests of the U.S. and Western powers. This has meant that neither the country's interest nor its pressing domestic circumstances have been primary frames of reference in the formulation of IFIs interventionist policies in Pakistan. To effectively establish this, there is particular focus on the impact of IFIs structural reform strategies on the rule of law, good governance and development in Pakistan.

Once the scope of IFIs impact is ascertained, a line of enquiry is pursued which explores the extent to which elements of rule of law and good governance could be useful in addressing problems of social justice as experienced by Pakistan. Hence, this predicament is the major focus of the research. The choice of Pakistan as a case study is motivated by a number of factors. Firstly, Pakistan has been a major borrower of IFIs lendings for quite some time. There is a perception that in the views and estimations of many the country's woes have been aggravated by the involvement of IFIs in its domestic affairs. Secondly, in most of the cases, the aid is disbursed to Pakistan to protect U.S geostrategic interests in the region given the considerable influence of the U.S on decision making of IFIs. Thirdly, public discontent towards U.S policies has been on the rise. Fourthly, Pakistan is my country of origin and so I have a vested interest in the key questions that formulate this thesis.

1.3 METHODS AND METHODOLOGY

1.3.1 Methods

The primary research method deployed in the completion of this thesis has library based, which involved the collation and analyses of existing primary material, academic literature and scholarly writings on the subject. These include policy documentation of IFIs in respect of Pakistan and academic commentaries relating to legal frameworks and charters of IFIs, soft-law materials, national legal instruments, monographs and works on rule of law, good governance, and social justice in Pakistan. The nature of the study requires reference to a wide range of socio-legal materials.

1.3.2 Methodology

The methodology involves a socio-legal analysis of the delivery of ‘social justice’ in relation to IFI policies in Pakistan. My perspective on social justice emerges from the work of Upendra Baxi, John Rawls and Amartya Sen especially in relation to the interaction between justice, fairness and human suffering in the social conditions of people from the developing world. The utility of these perspectives to the thesis is paramount given that they provide the bases through which the impacts of structural reform strategies of IFIs on the rule of law, good governance and development in Pakistan could be determined. It is worth noting that these individual theorisations are distinct in their methodologies, but nonetheless, unified in so far as they attempt to advance alternative visions for theories on social justice and the betterment of the lives of people.

1.4 SCOPE OF THE STUDY AND RESEARCH QUESTIONS

1.4.1 Scope and Limits of the Study

This study is primarily an assessment of the impacts of Structural Reform Strategies of IFIs on the rule of law, good governance and development in Pakistan. As a result, the line of enquiry will be restricted to the examination of the SRSs introduced by the World Bank, IMF and some other international institutions such as the UN, UNDP and ADB, and their impact on the rule of law and good governance and development in Pakistan. Given the long history of interaction between Pakistan and IFIs, the study will limit its enquiry from the period spanning 1980-2009. Related issues central to the enquiry will involve an examination of:

- i. The mechanisms of the IFIs to promote development in Pakistan including the legal and administrative framework for the promotion of good governance, rule of law and the alleviation of poverty.
- ii. The legal framework that has been put in place for the promotion of rule of law, culture and good governance at the international level.
- iii. The legal and administrative measures that the government of Pakistan has taken in order to promote the culture of rule of law and good governance.
- iv. The internal reasons for the failure of rule of law and good governance in Pakistan.
- v. The efforts of the government and IFIs for development in Pakistan.
- vi. The nature of state obligation under international law because of a country's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

- vii. The obligations of the World Bank and IMF under international law to uphold the measures of rule of law and good governance.

1.4.2 Research Questions

The thesis seeks to argue that the Structural Reform Strategies of IFIs in Pakistan have aggravated the issues of social justice rather than alleviating them. However, in early 1990s, the World Bank considered good governance as an important element for the achievement of sustainable development. It plays a major role while taking it as a pre-condition to borrower countries for further loans. While IFI policies have attempted to focus on Human Rights, good governance, the rule of law and development, these have been ineffective partly because of the U.S. and Western Powers' influence in IFI policies.

The study seeks to pose and critically examine a number of questions:

- What is the relationship between the rule of law and good governance?
- What is the impact of Structural Reform Strategies of IFIs on the rule of law and good governance in Pakistan? In other words, in what ways are these SRSs helping to consolidate a culture of institutional corruption, accountability deficiencies and erosion of legitimacy?
- What are the internal reasons for the failure of rule of law and good governance in Pakistan?
- How can Social Justice be promoted in the context of Structural Reform Strategies?

The subsequent questions are:

- To what extent are the policies of IFIs responsible for the problems in the Pakistan?

- To what extent, is the government of Pakistan able to give effect to the policies of IFIs?
- Or are both equally responsible for the aggravation of the problems in the country?

1.5 STRUCTURE OF THE THESIS

Following this general introduction the research is outlined in seven subsequent chapters. Chapter two outlines the theoretical and critical structure that supports the thesis. The theory is based on the concept of ‘Social Justice’ as largely represented in the writings of Amartya Sen.

Chapter three argues that the geo-strategic position of Pakistan has often served as a site for contestation, which mostly serves the interests of bigger powers such as the U.S. The chapter shows that due to its strategic location, Pakistan has great importance for China, India, United States and even Russia. Moreover, Pakistan is the only viable option and cheapest route for the reconstruction of war-torn and landlocked Afghanistan. Its importance has become more pronounced in the aftermath of “9/11” terror attacks, the precursor to the current American-led war in Afghanistan. The energy deposits of Central Asian States are also a big temptation for the U.S. administration.

While studying the IFI lendings in Pakistan, it has been observed that the U.S. plays a dominant role in the decision making of these institutions including decisions about loans to the borrower countries. The historical background of Structural Reform Strategies of IFIs introduced in Pakistan during various regimes in relation to U.S. dominance has been discussed in the chapter.

Chapter four contextualizes the concepts of good governance and rule of law and their relevance to economic development. For the last two decades, the IFIs have been focussing on these conceptions as drivers of development. In addition, the Millennium Development Declaration adopted by the United Nations in September 2000 identified good governance as an effective tool for the eradication of poverty and realisation of sustainable growth. The accountability and transparency mechanisms within the IFIs are considered as key to internal governance. The importance of these issues in the context of Pakistan is assessed.

Chapter five follows on with an overview of the rule of law and good governance in Pakistan. The concepts of rule of law and good governance are not explicitly mentioned in the Constitution of Pakistan. In spite of the constitutional provisions and judicial interpretations, there has been a major problem in the application of rule of law and good governance. This has been attributed to the influence of the executive on the judiciary. Consequently, until recently, these principles have not really been effectively localized in Pakistan. Of late, there have been times when an independent judiciary prompted the relative consolidation of rule of law and good governance. The chapter explores the obstacles and challenges to a culture of rule of law and governance in Pakistan and the role played by the IFIs in the limited reforms adopted thus far.

Chapter six focuses on the internal factors that have undermined the conditions of rule of law and good governance in Pakistan and its probable consequences. While accepting that there are many factors attributable to Pakistan's internal challenges, the chapter suggests that corruption is one of the major factors. And so a general overview of the concept of corruption, its forms, causes, consequences is provided.

In addition, the paradigm shift in the policies of the IFIs aimed at confronting corruption is engaged as is the role of media. Also explored are Pakistan's anti-corruption initiatives.

Chapter seven interrogates the impacts of Structural Reform Strategies of the IFIs on the rule of law, good governance and development in Pakistan. The absence of Social Justice in Pakistan results from the interaction between IFI policies and weak structures of governance and the rule of law introduced by the government of Pakistan. While IFI policies have recently attempted to emphasise human rights, good governance, the rule of law and Human Development, these have been ineffective partly because IFIs submissiveness to geo-strategic interests of the U.S and Western powers.

Chapter eight consolidates the findings and put forward recommendations. It construes the themes of research by reconciling the analysis and study with an evaluation of the future development of SRSs with the view to adequately incorporating rule of law and good governance in Pakistan so as to give effect to social justice.

CHAPTER TWO

SOCIAL JUSTICE

Theoretical and Analytic Framework

2.1 INTRODUCTION

The purpose of this chapter is to outline the theoretical framework of the thesis. The theory is based on the concept of 'Social Justice' as represented in the writings of Amartya Sen. His scholarship on social justice is vast and spans many decades. For the purpose of this chapter however, emphasis is placed on the notion of human capabilities which is one of the key components of Sen's social justice conception (Sen, 1999: 75). Sen contends that inequality discourages the healthy economic activities that can shatter development processes (Sen, 1999). To avoid this, Sen suggests the need for political freedom which guarantees economic development and good governance especially in developing countries. He notes that:

Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states....Sometimes lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger (Sen, 1999: 3).

In Sen's view, the poor can play an important role in society if they are provided freedom and choice of life according to their own wishes (Sen, 1999). What he seems to be suggesting is that they should have a choice to decide their fate rather than be tied up by unwanted social programmes and poverty reduction policies. This approach is an express review of structural adjustment and the predictable effects of these policies on human lives.

Sen's preoccupation with poverty and the social conditions of the poor has been engaged by other scholars albeit from different dimensions. Rawls for example highlights the concept of inequality and its effects on the structure of society with emphasis on the rights of the least advantaged (Rawls, 1999: 13). He contends that institutions can attain social justice. Although there exist some disparities, the theories of Rawls and Sen are similar in relation to the rule of law. Rawls for example suggests that the rule of law is an important element for liberty.

Baxi similarly confronts the conditions of poverty and inequality with a line of argument that distinguishes him from Sen. He argues that "people are not naturally poor but are made poor, that impoverishment is a dynamic process of public decision-making in which it is considered just, right and fair that some people become, or stay impoverished" (Baxi, 1988: vi). He points out that bad governance in poor underdeveloped countries is as much a responsibility of nation states as it is of global institutional structures. In the main, Baxi's writings have been predominantly focused on the dynamics of inequality and human sufferings with extensive analyses on the distinction between poverty and impoverishment. He attributes responsibility for this to a predominantly market-friendly human rights culture. However, he also suggests that human rights are not necessarily Eurocentric, and that cultural diversity is important for the future of human rights.

While Baxi's approach to impoverishment and human rights is a useful alternative, this thesis however adopts Sen's 'Capability Approach' as the key constituent of the theoretical framework upon which social justice is analysed. Firstly, Pakistan's problems are aggravated by the lack of development whose causes are multidimensional. These include poor governance arising from disconnect in the

power relations aimed at propping up the strategic political interest of the U.S. and western powers. For there to be development in Pakistan, there needs to be good governance which is an essential commodity in the realization of development. Secondly, this full potential for development can best be realized by empowering people, so they can utilize their full capabilities. It is plausible to suggest therefore, that Sen's capabilities and social justice approaches provide the link for the interfaces between capabilities and good governance, which are important elements for human centred development.

2.2 SOCIAL JUSTICE–A HISTORICAL AND PHILOSOPHICAL OVERVIEW

2.2.1 Early Formulations

The notion of Social Justice is not new. Over the past centuries, there have been numerous prepositions as to what Social Justice should and must entail. Social Justice has been perceived as an essential ideal by different civilizations ranging from ancient Greece, Rome and medieval societies.

In Plato's teachings, the concept of justice enjoys a central place. Plato was unsettled by the dying moral values of Athens. He was of the opinion that justice was the only means to save the Athenian society as well as the Greek world from atrophy. In his conception of justice, Plato asserts that, "justice is a 'human virtue' that makes a person self-consistent and good; socially, justice is a social consciousness that makes a society internally harmonious and good". According to his vision, justice strengthens individuals' bond, which forms the society and justice does not mean the rights of the powerful but the collective benefits of the whole society (Plato, 1997; Bhandari, 1998).

Aristotle is considered to be one of the most important political theorists of the nineteenth century who propagated the notion of social justice through its concept of “distributive justice”. Aristotle’s “distributive justice” constitutes the idea of fairness and equality and advocates for the distribution and sharing of public assets, political authority, honours, executive offices, common properties with the citizens while keeping in view the criterion of merit. According to his theory ‘the principle of equality’ stands among equals (McCarthy, 2009: 34). Subsequently, the concept of “Social Contract”⁷ developed by Hobbes,⁸ Locke⁹, Rousseau¹⁰ and Kant’s notion of society provide a foundation for John Rawls “Theory of Social Justice” in the twentieth century (Rawls, 1972: 11).

2.2.2 Modern and Contemporary Theories

In recent times scholars such as Rawls, Baxi and Sen have propounded numerous and sometimes-varying interpretations of social justice. Rawl’s formulation of social justice underlines ‘the basic structure of society’ or efforts to enable public institutions to be sensitive to fundamental rights and exercise responsibilities to facilitate the delivery of public goods. By key institutions, he means the political structure and major financial and social engagements. Rawls advocates for the notion of social justice founded on the concept of welfare state in the redistribution of wealth. Moreover, he suggests that the idea of justice can be attained by the use of an artificial mechanism which he calls the *original position*, in which each one decides

⁷ According to this theory, the people are the source of power that provides the strength to the state for maintenance of social order through the set principles of rule of law (Friend, 2004).

⁸ Thomas Hobbes advocated the concept of “authoritarian monarchy” in 1651, which later on provided a basis for the idea of “constitutional monarchy” (Ibid).

⁹ John Locke presented the concept of “liberal monarchy” in 1689, which was later theorised as liberal democracy (Ibid).

¹⁰ Jean-Jacques Rousseau advocated the notion of “liberal republicanism” in 1762, which resulted in the idea of “republicanism” (Ibid).

principles of justice behind a *veil of ignorance*. The “Veil” portrays a picture of a person’s realities (Rawls, 1972: 7, 11-12). He notes that:

No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like...The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain (Ibid, p. 12).

His theory is founded on the primacy of social justice as an essential commodity where “all social values, liberty and opportunity, income and wealth, and the basis of self-respect are to be distributed equally unless an unequal distribution of any, or all, of these values is to every-one’s advantage” (Rawls, 1972: 62). Rawls restricted the scope of his two principles of justice by disallowing global distributive hypothesis and by offering its applicability within the domestic boundaries, which lacks in consideration of the core issues of third world countries like Pakistan.

Others such as Martha Nussbaum have examined the merits and tension in Rawls’ capability approach. She argues that Rawls propagates the concept of society as “a closed system isolated from other societies” while drafting its principles. Secondly, she suggests that Rawls formulates a kind of a constitutional order which is neither applicable to the international economic and political structure nor provides any concern about the redistribution of wealth from better off to deprived states. Thirdly, Nussbaum argues that Rawls’ equality principle is not relevant to the real world and supports her point by citing the G8 dominance on states as an example of the

violation of the Rawlsian equality principle. Nussbaum examines another of Rawls' book "The Law of Peoples" in a bid to explore some of the issues not covered by 'A Theory of Justice'. In the Law of Peoples, Rawls draws attention to the issues of the real world and suggests a solution by which basic structure of the society reflects the principal focus at national level and then to have a look at the issues among states. Rawls suggests a solution to eliminate poverty by introducing sound economic policies (Nussbaum, 2001: 5-7).

Nussbaum points out that Rawls fails to take into consideration the international economic system, which is responsible for strict and unequal treatment with poor states, which cannot be rectified by strong domestic policies alone. She notes that the Rawlsian theory is imperfect or flawed, as it does not provide a liberal set of human rights or human capabilities as basic standard for universal application. She adds that Rawls is strongly in favour of interference by ways of military, economic, or political sanctions on the states that have been declared guilty of imperfect norms. However, Nussbaum is of the opinion that this action cannot be justified entirely against the principles of justice but in special conditions could be applied as a last option prior to some conditions of legitimacy. In addition, there is need to draft some global principles of justice, which could work better across societies (Ibid, 12).

Upendra Baxi, like Rawls, considers the value of freedom and equality through human rights and social justice. He offers a thoughtful concept of social justice by giving a new meaning to the words like '*poor*' and '*poverty*' with '*impoverish*' and '*impoverishment*'. He notes that "people are not naturally poor, but are made poor, that impoverishment is a dynamic process of public decision-making in which it is considered just, right and fair that some people may become, or stay impoverished"

(Baxi, 1988: vi). Most of Baxi's scholarly work revolves around the conceptions of 'inequality and human sufferings'. As a passionate social justice advocate Baxi asserts that "a social activist who believes that the human rights have a future only when the human suffering is taken seriously" (Baxi, 2000: 1184).

2.3 AMARTYA SEN AND SOCIAL JUSTICE

Perhaps few contemporary theorists have devoted so much to issues that revolve around Social Justice as Amartya Sen. As an academic, noble laureate and economist, Sen has written extensively and devoted well over three decades of his professional life to issues relating to Social Justice. These range from inequality, poverty, famine, human freedoms and very recently, identity and violence. The essence of Sen's conception of Social Justice has particular resonance with this thesis on a number of tangents which will be explored in this chapter.

2.3.1 An Appraisal of Sen's Social Justice Theory

Sen's definition has shaped and informed most of his works in this area for almost three decades. In the 1970s, Sen's works were preoccupied with the notion of social justice in relation with social problems in an economic outlook. He establishes a relationship between poverty, inequality and unemployment further correlated with the "income criterion". He believes that an individual receiving fewer wages compared to his extended labour hours may be categorized as "unemployed". He argues that the idea of income cannot be ignored in the study of unemployment (Sen, 1973: 1457). Moreover, he portrays his discourse of the basic capability equality as a different formulation of equality after rejecting "the claims of utilitarian equality, total utility equality and Rawlsian equality to provide a sufficient basis for the equality aspect of morality" (Sen, 1979: 220). Sen argues that basic capability equality is multidimensional. His dominant writings in this period focus on the issues

of discovering the equitable means of income for deprived people, famines and sustainable food rates attracted considerable attention from global institutions as well as national governments (Ibid).

Moving on to the 1980s, Sen's idea appeared to be concentrated on the explosion of social problems around the world especially in third world countries such as Pakistan. In this period, he focuses on issues relating to poverty and living conditions for ordinary human beings. He believes that poverty requires the attention of wealthy nations especially after the end of World War II and engendered various questions to tackle it but it was quite significant to recognize "whether the poor relatively speaking are in some deeper sense absolutely deprived" (Sen, 1983: 168). Sen further linked the capability approach to standard of living and portrayed this relationship theoretically for phase onward and even real practical use (Sen, 1984: 88). He considers that poverty is a rigorous disappointment in the way to access fundamental capabilities as it disintegrate the abilities to get the things which are ultimately significant. Moreover, the capabilities are not only manipulated by individual earnings but also by public services (Dreze and Sen, 1989: 15).

Sen examines a correlation between the two different but interrelated concepts of "Human Capital and Human Capability in order to realize the procedures of social and economic progress". The first one relates to expertise, while the second is about the capacity of people to choose life according to their own wishes (Sen, 1997: 1959). He is adamant that poor people can play an important role in society if we provide them freedom and choice of life according to their own wishes. In a way, he notes that they should have a choice to decide their fate rather than to be tied up by unwanted social programmes and poverty reduction policies. He illustrated two

diverse situations in a very good way and alleged that in one condition a person who desires to fast can do so but in some other circumstances a person is doing the same act because he has no food to eat given the lack of an option (Sen, 1985: 49). Therefore, Sen asserts that the former act is performed by will whereas the latter is performed without any intention. This conception is an express reconsideration of structural adjustment and expected outcomes of these strategies on human lives. The principal focus of this approach is on the problem of inequality. It steers in the direction of a different strategy, which will be helpful in supporting the economic growth, safeguard of the weak and macro-economic adjustment.

Most recently, Sen's book "The Idea of Justice" further explores his notion of "Capability Approach" which was highlighted in his previous book "development as freedom". He asserts that,

When people across the world agitate to get more global justice – and I emphasize here the comparative word 'more' – they are not clamouring for some kind of 'minimal humanitarianism'. Nor are they agitating for a 'perfectly just' world society, but merely for the elimination of some outrageously unjust arrangements to enhance global justice (Sen, 2009: 26).

Sen suggests a historical division from Sanskrit fiction on morals and jurisprudence that two diverse expressions – *niti* and *naya* deal with justice. The word 'niti' means governmental excellence and behavioural accuracy whereas 'naya' represents broader notion of justice. The proper implementation of the former concept can bring about highest degree of community benefits and justice while the latter one deals with the execution of the set of laws and policies (Sen, 2009; 20). He assesses in general the benefit for a person and notes that "any substantive theory of ethics and

political philosophy, particularly any theory of justice, has to choose an informational focus, that is, it has to decide which features of the world we should concentrate on in judging a society and in assessing justice and injustice.” He goes on to say that the benefits of a person are to be reviewed “in the capability approach by a person’s capability to do things he or she has reason to value”. The fundamental idea is to underline the liberty of an individual to perform certain acts or attain the objectives according to his or her own choices and the idea of capability is therefore correlated with availability of sufficient chances to achieve this (Sen, 2009: 231-32).

In *Development as Freedom* Sen’s major focus is on poverty, disparity, freedoms and capabilities. He argues that the rights of smaller groups must be protected by the discrimination of the majority groups with the aim of rectifying imbalances. He points out that high per capita income is not a guarantee of greater life expectancy of the people of a given country but the availability of public services like spending on health and education which can improve living standards. He considers the assurance of rights without progress cannot be attained and therefore, economic activities would hardly flourish. He argues that the engagement of state institutions for economic growth, political and social rights of the people is imperative for the assessment of a certain level of economic growth. He goes on to say that “inequality has an important role in the development of famines and other severe crises.... But more than that, famines and other crises thrive on the basis of severe and sometimes suddenly increased inequality” (Sen, 1999: 44-46, 187, 212).

Sen explores five different kinds of instrumental freedoms, which he says complements other freedoms of the individual’s approaches of life according to their own wishes. These are (i) political freedoms, (ii) economic facilities, (iii) social

opportunities, (iv) transparency guarantees and (v) protective security. He believes that these freedoms facilitate the advancement of the common capability of an individual to live without further restrictions and quite helpful to support each other. According to Sen *political freedoms* means that people are totally free to choose their own representatives with option to examine and censure establishments. In addition, the people have liberty to express their political opinions and to enjoy their other democratic rights as well as free media to help out the individuals to pick among various political parties. *Economic facilities* deal with the chances available to use the financial assets “for the purpose of consumption, or production, or exchange”. The financial privileges of individuals are concerned with the assets accessible, comparative rates and the functioning of the market. The economic growth not only enhances the revenue and opulence of a state but also consistently increases the financial privileges of the people. *Social opportunities* relate to the fundamental freedom of an individual for better standard of living such as opportunities of literacy and health services etc. *Transparency guarantees* include the freedom of access to information which plays a significant role in reducing corrupt practices, economic negligence and dishonest transactions. *Protective security* includes social security networks like unemployment allowance and emergency aid for protecting the people from social crises such as hunger (1999: 38-40).

2.3.2 Capability Approach

The dimension of Sen’s perception of social justice that is of particular interest to this thesis is the capability approach. In this approach, the influence of some early and modern philosophers such as Adam Smith and John Stuart Mill is evident. Sen

has developed this concept through various articles¹¹ with his *Development as Freedom* constituting an important component of his theory. Sen argues that his capability approach is not limited in its application and can evolve a broad range of functions related to human welfare and growth. According to Sen, capabilities are “the substantive freedoms he or she enjoys to lead the kind of life he or she has reason to value” (1999: 87). He did not mention a complete list of human capabilities which has sometimes been subject to criticisms. However, leaving it open provides an opportunity for individuals to describe their own inventory of capabilities. As Alkire notes, by not offering a comprehensive list of fundamental capabilities Sen actually exhibits admiration “for the agency of those who will use this approach”. As Sen argues,

The problem is not with listing important capabilities, but with insisting on one pre-determined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why (2005: 158).

He advocates that the instrumental freedoms noticeably increase the capabilities of the human beings but the most important aspect is the intervention of the state and society to make sure the accessibility of these freedoms to the people. The key concept of the capability approach revolves around the development of actual freedoms that human beings benefitted from. Therefore, the development cannot prosper without the concept of basic freedoms available to the people and also places it as core objective of the strategies adopted by these countries. The active

¹¹ Amartya Sen has developed his notion of “social justice” and “Capability Approach” through his valuable writings for almost three decades (Sen, 1979; 1984a; 1985; 1985a; 1985b; 1992; 1993; 1995; Dreze and Sen, 2002).

participation of the people is imperative to devise their own fate rather than to contribute as inactive beneficiary “of the fruits of cunning development programs” (Sen, 1999: 38-41, 53).

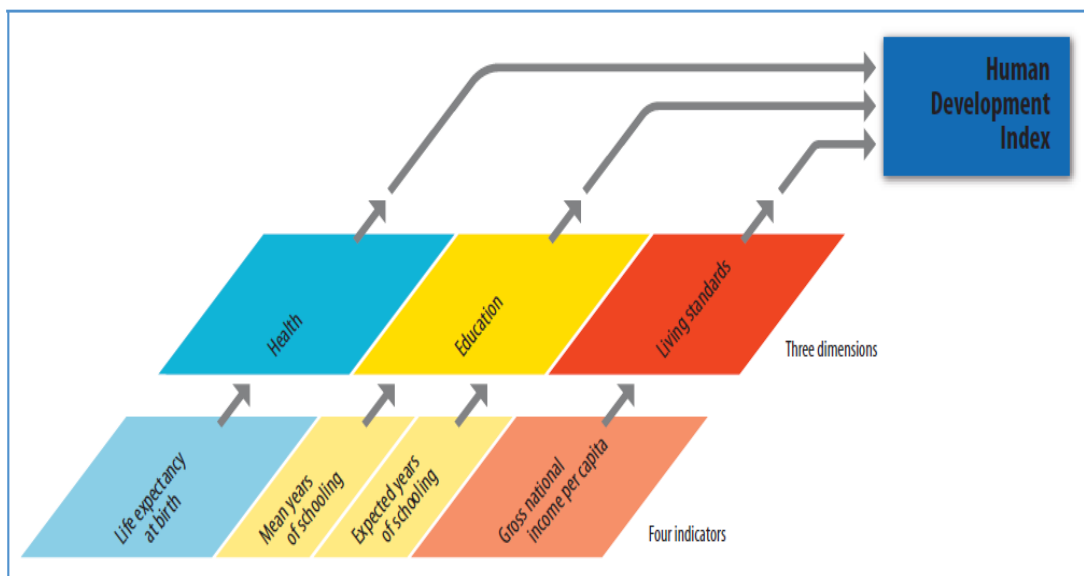
2.3.3 Utility of Sen’s Capability Approach

As seen above, the primary thrust of the capability approach is human development in terms of “instrumental freedoms”. There are a number of dimensions that are relevant to this especially as regards to Pakistan. The capability approach provides a platform through which a socially dysfunctional order can both be engaged and rectified. Sen’s capability approach played a significant role in providing ethical bases in the evolution of Human Development Reports (HDRs) initiated by Mahbub ul Haq.¹² Haq conceived HDI which moved the focus of international institutions, IFIs, Non-Governmental Organizations (NGOs), globalizers and scholars from traditional income based approach of economics towards public focused strategies of development. The HDI proved to be an effective substitute to the traditional thin income-based approach. In 1990, “The Economist” commented on HDI: “Moses made the first recorded attempt; Plato, Rousseau and Marx had shots at it. The United Nations Development Programme had high standards to match in trying, as it does in a new report, to define and measure ‘human development’” (UNDP, 2010: iv, 14).

The HDI has been shown below in figure 2.1 in terms of four indicators and three dimensions.

¹² Mahbub ul Haq of Pakistan is the pioneer of “human development” who with his thoughtful insight conceived the “Human Development Index (HDI)”. It adopted the human welfare based approach dissimilar to the traditional income based on GNP approaches which only included literacy, well-being and income.

Figure 2.1 Components of Human Development Index – The HDI: Three Dimensions and Four Indicators



Source: “The Real Wealth of Nations: Pathways to Human Development. Human Development Report 2010”, (UNDP, 2010: 13). http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf

UNDP in its recent report concludes that states who have stable institutions (anti-corruption, the culture of rule of law, quality of civil servants, asset structure and inner commitment), progressive expenditure on pays and commodities were encouraging to rapid development in the HDI whereas at times of low spending produced inconsistent results in the HDI (UNDP, 2010: 58).

Sen argues that inequality plays an important role in the growth of deprivations (Sen, 1999: 44). UNDP has established a negative correlation among inequity and growth. The three dimensions; education, health and income of HDI are not compatible with disparity and produce adverse results, whereas the decrease in disparity can produce considerable social growth. However, it is not problematic to establish the dynamic interactions. Generally, the development outcomes in wellbeing and learning can be achieved by enhancing facilities to deprived sectors of the society. In most societies, especially those in developing countries, the children of privileged people tend to

have access to opportunities which enhance their wellbeing and education. However, this is often in stark contrast to children from deprived families who are often denied similar opportunities by virtue of their social conditions. The deprivations could be confronted by extending the access to wellbeing and learning facilities to the poor in order to have better results in growth and reduce disparities. It is also important to put in place mechanism of addressing disparity such as monetary design which can be used as a device for the attainment of better equity. Government expenses on amenities and social safety develops the delivery of wealth as well as facilities such as wellbeing and various levels of learning. Sometimes, the powerful pressure groups and internal politics incapacitate the state machinery to tax powerful sectors of the society and as a result the governments are forced to allocate meagre resources for the deprived. It is highly desirable to increase resources with positive growth and that governments should enhance their incomes before disbursements. It might also be helpful if developing nations increase their tax net in order to have better outcomes in development (UNDP, 2010: 58).

Sen has suggested that the comprehensive development framework articulated in the HDRs may enhance the lives of people by enlarging objects which they like. This includes access to good health care, opportunities to make a decent living, and the capacity to contribute in social activities. Sen considers two key indicators: “evaluative aspect” and “agency aspect” as important aspects of human development (Sen, 2002). The former measures progress in individual’s lives, while the latter concept revolves around human capabilities and based on the performance of people to do something to attain such development. The concept of human progress is generally linked with the “evaluative aspect” (Fukuda-Parr, 2003: 303).

Sen's 'Capability Approach' constitutes a significant part of "the conceptual foundations of the human development discourse underpinning today's dominant understanding of development and to the establishment of the United Nations Development Programme's annual Human Development Reports" (Chandler, 2011: 2). The UN and other international institutions have in collaboration with governments begun to streamline their development policies in line with the capability approach. A case in point is the MDGs which have been framed around a humanistic approach rather than the income based aspect only (HDCA, 2008: 2). The recent Human Development Report (HDR) entitled "the Real Wealth of Nations: Pathways to Human Development" considers people as real wealth of nations. This concept of 'human development' has not only been influencing HDRs for the last two decades, but has also informed the formulation of around six hundred National Development Reports as well as regional documents sponsored by the UNDP.

There is some strong evidence that governments can promote meaningful reforms for the betterment of their public even in the midst of internal tension. Many states registered success after spending on learning and well-being in spite of having low development in income. In contrast, states that followed another path failed to produce improvements in education, life expectancy and overall living standards. Development is not a spontaneous process, as it involves on the one hand, the persistent cooperation of international partners, while on the other hand, it also requires political commitment and proactive management of resources (UNDP, 2010: iv). As the HDR note:

Human development is the expansion of people's freedoms to live long, healthy and creative lives; to advance other goals they have reason to value; and to engage actively in shaping development equitably and sustainably on a shared planet. People

are both the beneficiaries and the drivers of human development, as individuals and in groups (2010: 2).

The report argues that it is essential to interact with them so as to save the upcoming generations as well as to check that human expansions are justifiable. In addition, it must be capable to deal with organizational inequalities. This approach provides a universal application and to all classes of the society. It is certainly without limitations, healthy and dynamic to offer a model for the new era. Human growth does not necessarily rely on literacy, well-being and earnings but it requires a strong participation of individuals in progress, fairness and sustainability, fundamental features of the liberty individuals have to lead the lives according to their own choices. The phenomena of empowerment coupled with knowledge and responsiveness in many regions of the world increase the capability of the individuals to make knowledgeable selections and grasp regimes liable for their acts. Moreover, the concept of human development is a comprehensive structure which contains the Millennium Development Goals (MGDs) by means of wider doctrines of human rights, democracy and contribution to form passages for modification. The pervasive assistance organised by the MDGs encourages discussion and pushes developments in fundamental human growth preferences (UNDP, 2010: 2, 3, 6, 17).

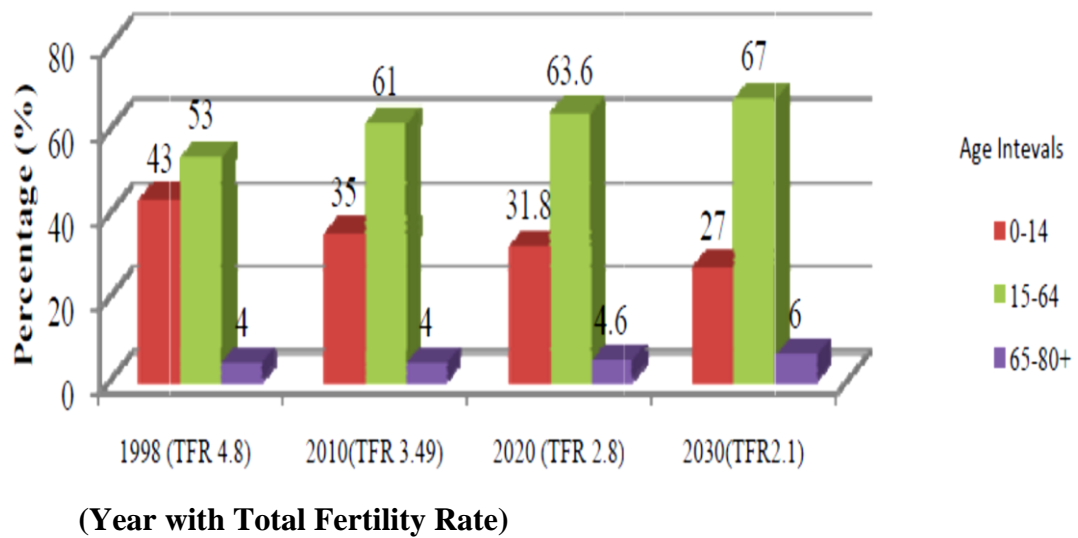
A large number of scholars have engaged Sen's Capability Approach. The objective of these scholars has been to initiate an effective framework for the assessment of individual welfare and public organization (Nussbaum, 1988; Qizilbash, 1996; Jasek-Rysdahl, 2001; Alkire, 2002; Clark, 2002; Robeyns, 2003). In order to test the 'Capability Approach' in case of Pakistan, it is essential to establish the connection among the pragmatic approach of Structural Reform Strategies (the rule of law, good

governance and development) of the IFIs through the prism of social justice as theorised by Sen.

While analysing the impacts of the SRSs on the rule of law, good governance and development, it is necessary to consider how the SRSs structure helps the governing rules at domestic level that supplements the attention of players involved in the system. This outlook of SRSs structure allows the acceptance of the challenge of doctrines posed by global players. Therefore, Sen's capability approach provides an opportunity to construct a structure of policies based on social justice which are closely linked with the framework of these IFIs embedded in the domestic affairs of Pakistan. As Goerne (2010: 16) has asserted, the capability approach can provide a valuable inspiration for public policy analysis.

The capability approach has a forward looking attribute to it as well. Sen (2000: 5) himself considers sustainable development as "development that promotes the capabilities of present generation without compromising capabilities of future generations". The capability approach can be applied in many dimensions in the case of Pakistan for example; the valuable of human resource can be turned into a skilful labour force. With a population of around 180 million, Pakistan is the sixth most populous country in the world. Statistics indicate that around 60% of the population is between 15-64 as shown in figure 2.2 below.

Figure 2.2: Age Composition of Pakistan from 1998 to 2030



Source: National Institute of Population Studies, Planning and Development Studies.

2.3.4 Limitations of Sen's Capability Approach

Despite his erudition, Sen's formulation has not gone unchallenged. Over the years, additional perspectives have been provided to further illuminate aspects of his social justice theory. For instance, whilst B.S Chimni accepts the viability of the capability approach in principle, he suggests that Sen does not deal with the imbalances of power both at national and global levels (Chimni, 2008). This thesis suggests that these imbalances are crucial for the absence of good governance in Pakistan because internal factors coupled with IFI's policies and western strategic dimensions contribute to poor governance. Chimni notes that Sen circumvents "dealing with hard questions of power and social conflict" on a number of tangents.

Firstly, Sen was fully conscious of the power connection in the social order but did not perceive welfares of prevailing class being replicated in national edifices. Secondly, his study was unable to discover data with reference to the actual world circumstances. Crucial also was the fact that he did not outline strategies for establishing stable synthesis between efficiency and equity concerning global trade

particularly of underdeveloped nations. He favours two things at the same time: free trade and the objectives of spending in learning and wellbeing. The issue is not about drastic mismatch among both aims but the lack of some considerable effort to address potential tensions. Moreover, he shuns the idea to involve in strategy dialogues with global bodies such as the WTO contrary to perceptions that it is significant in practical application of “Development as Freedom”.

Thirdly, his development concept stresses on the significance of public debates in formulating the social strategies but is deficient in discovering delivery of corporate control over social practices in the contemporary economy. Fourthly, Sen considers the individual as significant tool of social change but ignores in discovering the role of unified efforts in determining public strategies. The importance of earlier and modern public movements in making public change is consequently overlooked. Therefore, Sen’s notion of development is not so much clear as to “how to get from here to there i.e. from development to underdevelopment as freedom”. Fifthly, he has not adequately factored the international financial and political constructions i.e. the role of dominant countries and global social programmes in relation to development. Finally, “Sen is the classical liberal who has faith in the institutions of the market and state to deliver even under capitalist dispensation...His liberal humanism therefore remains problematic” (Chimni, 2008: 3, 7-11). He further suggests that:

If the situation has to change a coalition of key third world States (such as Brazil, China, India, and South Africa) have not merely to offer a structural critique of existing global political economy but also use their collective power, in coalition with other developing countries, to compel changes that facilitate the realization of the goal of “development as freedom”. In this regard global social movements (both old and new) have to play a crucial role in ensuring that the ruling elite in developing

countries do not simply endorse the various normative and institutional proposals on international economic relations emanating from the developed countries led by the United States. In short what is needed is a complex internationalism of States and global social movements to usher in reforms in international economic relations and law that can help fulfil the aspiration of people of the third world for “development as freedom” (Chimni, 2008: 19).

Despite these limitations, Sen’s contribution to the debate on social justice has been as remarkable. In a scholarship spanning many decades, he enriched public discourse, enhanced policy engagement and activated renewed interest in the quest to confronting problems of inequality, poverty and disease. As this chapter has shown, his concept of capability approach provides basis for the formulation of approaches towards combatting social injustice particularly in countries such as Pakistan.

2.4 CONCLUSION

The chapter has set out to explore the concept of social justice as represented in the writings of Amartya Sen as its theory. The foremost thrust of Sen’s thesis is that the poor can play a crucial role in society if they are provided freedom and choice of life according to their own wishes (Sen, 1999). He suggests that they should have a choice to decide their fate rather than be tied up by unwanted social programmes and poverty reduction policies. As seen above, the primary thrust of the capability approach is human development in terms of “instrumental freedoms”. The capability approach provides a platform through which a socially dysfunctional order can both be engaged and rectified. The approach has been useful in providing ethical bases in the evolution of Human Development Reports (HDRs) initiated by Mahbub ul Haq.

The relevance of the capability approach to Pakistan is profound. In recent years, Pakistan has been faced by severe problems because of underdevelopment contributed by variety of factors. These include poor governance which is based on the abuse of power by the powerful and political rather strategic political interest of the U.S. and western powers. It is highly recommended that to introduce the good governance structures immediately in order to achieve development as well as to empower people, so they can utilize their full capabilities. Therefore, Sen's capabilities and social justice approaches provide the interfaces between the capabilities and good governance which are important components human centred development.

CHAPTER THREE

PARADOX OF STRUCTURAL REFORM STRATEGIES IN PAKISTAN

3.1 INTRODUCTION

This chapter examines the Structural Reform Strategies of the World Bank and IMF, which were introduced in Pakistan during the military and post-military regimes. The central argument of this chapter is that the geo-strategic position of Pakistan has often served as a site for contestation, which mostly serves the interest of bigger powers such as the U.S. Due to its significant geographic location; Pakistan is of great importance to China, India, United States and even Russia. Moreover, Pakistan is the only viable option and cheapest route for the reconstruction of war-torn landlocked Afghanistan. As a frontline ally, Pakistan's geostrategic position has become more pronounced in the wake of the American led war in neighbouring Afghanistan.

The chapter is structured in five parts. Part II discusses the historical background and geo-strategic significance of Pakistan as well as the nature of the Pakistan-U.S. relations. The focus here is an assessment of the role of Pakistan's geo-strategic position and foreign policy interactions between the U.S. and Pakistan. Part III examines the Structural Adjustment Reforms of the World Bank and IMF, introduced in Pakistan in 1980s and onwards. The aim of this section is to provide a critical analysis of the policies introduced in Pakistan by the IFIs. Part IV considers the relationship between the World Bank, IMF and the U.S. It assesses the weighted voting power of the U.S., which is reflected in the lending policies of the IFIs. It examines the neutrality of the World Bank and IMF and the internal and external influences. Part V concludes the chapter and summarises key arguments.

3.2 HISTORICAL AND GEO-STRATEGIC SIGNIFICANCE OF PAKISTAN

The Islamic Republic of Pakistan¹³ has a total area of 803,943 sq. km and is located in the Western part of the Indian sub-continent. Pakistan borders India on the East and Southeast, Afghanistan on the West and North, Iran on the Southwest, China on the Northeast and the Arabian Sea on the South (Mohiuddin, 2006: 4-5). Pakistan has significant geographic links with China, Middle East, Iran, Afghanistan, India and Central Asian states;¹⁴ Tajikistan is less than a hundred kilometres away from Pakistan. In fact, Pakistan is a bridge between South, West and Central Asia. The ancient trade route commonly known as the “silk route” not only connects Europe and Asia for the trade of “silk and spices” but also for cultural exchange, religious norms and talent exchange.

Afghanistan, Iran and Central Asian States have smaller populations in comparison to China and India but are rich in energy resources so both emerging economic giants are also interested in their natural resources. Moreover, Pakistan is the key base and cheapest route for the reconstruction of war-torn Afghanistan. China could reap great benefits by having access to Pakistan’s Gawader port¹⁵ located only 2500 km from

¹³ It has four provinces: Article 1 sub-Article (2) of the Constitution of Pakistan 1973 defines that “the territories of Pakistan shall comprise----- (a) the province of (i) Baluchistan, (ii) North-west Frontier, (iii) the Punjab and (iv) Sindh; (b) the Islamabad Capital Territory; (c) the Federally Administered Tribal Areas; and (d) such states and territories as are or may be included in Pakistan, whether by accession or otherwise”. The state of Jammu and Kashmir is a disputed region between Pakistan and India. On 19 April 2010 by 18th Amendment, the name of the North-West Frontier Province has been replaced with “Khyber Pakhtunkhwa”.

¹⁴ The five Central Asian states Kazakhstan, Tajikistan, Turkmenistan, Kyrgyzstan and Uzbekistan located around the Caspian Sea Region have approximately 46% of the world’s gas reserves and almost third largest oil reserves (Fishelson, 2007).

¹⁵ The “Deep Seaport” is located in the South-west of Gawader, a city of Baluchistan province of Pakistan. The port of Gawader got its base in March 2002 and successfully completed the first phase with three berths in the period of three years. It was estimated that the second phase with nine more berths will be completed in 2010 which was started in 2005 and would have the capacity of further expansion according to future requirements. Gawader Port is one of the best ports in the world and is unique and beneficial in many ways, not only for Pakistan, but also for China, Iran, Afghanistan and Central Asian States. It is at the brink of energy enriched Central Asia and the Caspian Sea. First, it is strategically very important for the defence of Pakistan and this was first realised after the war of 1971 with India when Karachi was declared under the range of Indian missiles. The Gawader Port is 450 km away from Karachi and considered safer than Karachi. Therefore, this tempted the Government of

Xinjiang the only Muslim dominated province situated in northern China. On the other hand, the nearest Chinese port is 4500 km from Xinjiang and Iranian and Turkish ports are almost at the same distance and are of little value to China. Therefore, Gawader port is the best possible option for China's fast growing economy and opening of new avenues (Mohiuddin, 2007: 3-4).

Pakistan's relationship with the U.S. forms a key background for this study. During the Cold War period, the U.S. and Soviet Union eagerly searched for new allies. In fact, the PAK-U.S. friendship structure was erected in the first quarter of 1950s on mutual-interest and 'Cold War' needs. The Kashmir Liberation War had already exposed certain weaknesses of Pakistan. The Indo-Soviet links left no option for Pakistan except to join the U.S. and to play the role of key ally in the containment policy against the Soviet communist regime. In 1954, Pakistan entered into a Mutual Assistance Agreement with the U.S. In 1955, Pakistan became a member of the Baghdad Pact, which transformed into the Central Treaty Organisation (CENTO). During the 'Cold War' in 1962, the secret reconnaissance U2 flights against the Soviet Union were also arranged from Peshawar (Pakistan) which was not only marked with red ink on the world map by the Soviet authorities but Khrushchev himself said that we shall, "eliminate Peshawar from the map".¹⁶

Pakistan to set up its third naval base in Gawader. Second, it is more economically beneficial for Pakistan and acts as a bridge between the Europe and Asia. China is the major investor in Gawader project because this project provides it the opportunity to access new markets with cheap freight charges and as well as energy resources from Central Asian States through the shortest route. India has some worrisome concerns on Gawader Port, along with some other external forces, which are not happy with this. Pakistan's stability project had painted a tainted picture before the 'Baluchi' tribal leaders who think that they have been bypassed and discriminated from the benefits of this port, and they create obstacles in the way of this project. Moreover, *Al Qaeda* extremists are also not in favour of Gawader port as they think that it will create insecurity for them and they have challenged the writ of Government many times by kidnapping and murdering the Chinese engineers and some other locals and foreigners. All things considered, this project could be a goldmine for Pakistan if the Government of Pakistan is able to address these issues of insecurity. (Haider, 2005: 95-97)

¹⁶ In 1962, during the 'Cold War' era, a U.S. detective aircraft flew over the Soviet Union from Peshawar military base and the pilot who jumped by parachute was arrested by the Russian security

The security of Pakistan and U.S. interests in the region became interlinked because of the Soviet threat. It thus became necessary for the U.S. administration to support Pakistan. The U.S. gave Pakistan two billion dollars in aid which included 508 million dollars for defence expenditures from the period 1953-61. The U.S. withdrew military aid from Pakistan during the 1965 and 1971 wars with India. This era is known as the casual relationship period¹⁷ between the United States and Pakistan. In spite of the fact that East Pakistan was dismembered in 1971 and the Indian nuclear tests in 1974 created further imbalance of power in the region, only a small amount of financial aid was provided to Pakistan. Support was suspended by the Carter Administration in 1979 on the basis that Pakistan was developing Uranium Enhancement Capability¹⁸ (Kronstadt, 2006: 2).

Nazar (2003) suggests that after the start of Strategic Arms Limitation Talks (SALT) with Soviet Union and initiation of friendly relations with the People's Republic of China, the U.S. lost interest in Pakistan. The U.S. remained a neutral and silent spectator at the time of dismemberment of East Pakistan. This resulted in a common perception among the people of Pakistan that the Americans are opportunist and unreliable friends and used Pakistan merely as a tool for fulfilling their geopolitical interests in this region (see Kronstadt, 2006: 2).

forces. The U.S. administration rejected the blame for violation of the Russian borders but the Soviet premier *Nikita Khrushchev* had brought the pilot in public. The Russian Administration had taken some serious steps and threatened Pakistan. At that moment, the situation created insecurity for Pakistan (Ali, 2005: 89).

¹⁷ During the period of 1971 to 1979, the United States, which was Pakistan's defence partner, did not fulfil its promises to Pakistan especially in the war of 1971 with India. The U.S. administration established diplomatic relations with China with the help of Pakistan and Henry Kissinger secretly visited China in July 1971 (Nazar, 2003; Kux, 2001: 194).

¹⁸ Most of the members of American Congress had concerns about the Pakistani nuclear Program, which was started in 1974 by Z.A. Bhutto, the first democratically elected Prime Minister of Pakistan who was later executed by the regime of General Zia-ul-Haq. Therefore, with the delivery of aid, the Congress made sure that Pakistan would not indulge in the Nuclear Enhancement activities although it was necessary for the security of Pakistan as India had already achieved Nuclear Capability which was a major threat not only for Pakistan but also for the entire region (Hewitt, 1997: 95-96; Cohen, 2004: 140-142).

The late Pakistan Prime Minister Z.A. Bhutto introduced a major shift in foreign policy and came closer to China, while also making efforts to maintain friendly relations with the Soviet Union. Bhutto (1979) disclosed this in his book “If I Am Assassinated” that the U.S. administration was unhappy with his nuclear proliferation policy and friendly relations with Arab countries.¹⁹ On July 5, 1977, the Army Chief General Muhammad Zia ul Haq took over the control of government as Chief Martial Law Administrator (CMLA) and executed Bhutto in 1979 after a trial that included charges of murder. General Zia introduced the so-called ‘Islamic Reforms’ just to seek public legitimation for his prolonged dictatorial regime. A worrisome situation developed for Pakistan when the Carter administration tilted towards India for closer association, while Pakistan was in the phase of isolation due to its military regime (see also Nazar, 2003).

Kronstadt suggests that the Soviet Invasion of Afghanistan in late 1979 forced the old friends to revive their links, so Pakistan was, once again declared a close associate and trusted friend by the U.S. Administration. On assurance of becoming a frontline ally of the U.S. in Afghanistan, a financial assistance package of 3.2 billion dollars for a five-years period was approved for Pakistan in 1981 (Kronstadt 2006: 2). Singh notes that President Zia²⁰ of Pakistan provided safe passage for the American weapons supply to the Afghan “*Mujahedeen*”. Almost three million ‘Afghans’ migrated to Pakistan and most of them spread all over the country rather

¹⁹ It is mentioned in his book that Shirin Tahir Kheli, who was an assistant professor of political science at the temple university U.S.A, published an article in Asian Survey in 1978 and that during her survey about the nuclear reprocessing plant agreement between Pakistan and France, she came to know through a source that “outgoing American ambassador (in Islamabad) had gone so far as to tell-Bhutto bluntly that if he did not back down he would no longer stay in power!”. Mr Bhutto’s personal statement is another evidence of the same threat. (Bhutto, 1979: 21)

²⁰ In September 1978, General Zia took oath as the President of Pakistan. According to the American Administration, Zia and his close companion General Akhtar Abdul Rehman, along with and some other members of the regime were considered as key policy makers against the Soviet invasion of Afghanistan. At that time, Zia was a blue-eyed boy of the Americans for furthering their policies in Afghanistan against the Soviet Invasion.

than to stay in the refugee camps. A large number of Taliban based '*madrasahs*' were set up in the border areas of Pakistan and Afghanistan. The basic purpose of their establishment was to provide religious teaching based on extreme dogmatic views with special emphasis on '*jihad*'²¹. The CIA not only provided full support to Pakistan's Inter-Services Intelligence (ISI), but also encouraged the setting up of training camps in the border areas of Afghanistan and Pakistan and recruitment of Muslim '*jihadis*' from all over the world. They also encouraged the development of extreme dogmatic views against the Soviet Invaders.

The Reagan Administration spent almost six billion dollars for the maintenance and training of '*Mujahedeen*' camps and a vital role was assigned to the Pakistani agencies. Finally, in 1989 the Soviet forces retreated from Afghanistan. For halting the incursion of Soviets, CIA and Pentagon assisted in the training of a large number of extremists (*jihadis*) in bordering areas of Afghanistan and Pakistan, providing them with large cache of weapons. Singh (2007: 58-59) points out that in 1988, Osama Bin Laden set-up *Al Qaeda* in Afghanistan a year before the end of Soviet war but the Americans kept their eyes shut. Until that time, Osama Bin Laden and other *mujahedeen* were respectable *Jihadis* but 9/11 changed the whole scenario. After successfully winning the proxy war against the Soviet Union, the U.S. silently stepped back leaving the huge burden of Afghan refugees and *jihadis* on Pakistan.

In 1990, once again, Pakistan's nuclear program came under discussion in the U.S. Congress and President George H.W Bush (Senior) without realising the severity of

²¹ The word '*Jihad*' as '*Holy War*' is misunderstood by the western world. In Islam '*Jihad*' means a defensive war for sustaining Justice, Human Rights and Fair Play (Zawati, 2001: 111). Patterson argues that the concept of '*Holy War*' stemmed from Judeo-Christian theology rather than from Islam. He has given the example of crusades to support his argument that were fought for economic and political interests. He highlighted the U.S. interests, double standards and the character of people who first fought against the Soviet invasion and then turned against the U.S. Patterson mentioned that the U.S. supported the so-called Islamic '*Jihad*' during the Soviet Invasion of Afghanistan, which has no connections with the true sense of '*Jihad*' (Patterson, 2008: 48, 51).

the circumstances again suspended military as well as economic aid to Pakistan under the pretext of the Pressler Amendment.²² The Clinton Administration relaxed the policy on some food related items and assistance to NGOs but failed to provide F-16 fighter planes and their spare parts, which were urgently required by the Pakistan Air Force and for which Pakistan had already paid in 1989. Ultimately, the matter was resolved between the U.S. and Pakistan administration and it was decided to pay compensation of \$325 million in cash and \$140 million of spare wheat instead of supplying F-16 to Pakistan (Kronstadt, 2005: 2-3).

After Soviet departure and the pulverization of pro-Soviet Najibullah regime, the well-trained '*Afghan Mujahedeen*' took over the control of Kabul in 1992, and a civil war soon followed. In September 1996 a former freedom fighter, Mullah Omar gained control of Kabul and gradually established the '*Taliban*' government with the support of '*Madrasah*' trained supporters. They got control of almost 85% of Afghanistan, brought peace and enforced their own strict interpretation of the '*sharia*' within their controlled areas. (Singh, 2007: 60).

During this period, the U.S. Administration ignored Pakistan's vulnerable economic condition and failed to appraise the growth of terrorism in South Asia. Neighbouring India exacerbated the gravity of the regional situation with a series of nuclear test explosions in May 1998, thus threatening the very survival of Pakistan. It was in these tense moments that Pakistan, ignoring all warnings from the U.S. and G-7 countries, challenged Indian hegemonic designs in South Asia by successfully made

²² In September 1984, President Reagan sent a written warning to the President of Pakistan about "serious consequences" on nuclear proliferation programme (Haass, 1998: 162). The Pressler Amendment (in the name of Senator Larry Pressler) was approved by the U.S. Congress in 1985, which required imposition of military and economic sanctions unless the President of Pakistan provided an annual a certificate of assurance for not obtaining nuclear weapons capability. It is surprising that this condition was only for Pakistan. The U.S. President was authorized to waive these conditions after being satisfied with the nuclear non-proliferation efforts of Pakistan (Caravelli, 2008: 81).

nuclear test explosions at Chaghi.²³ The ‘World Actors’²⁴ used their voting powers in IMF/World Bank and immediately imposed economic sanctions on both India and Pakistan. The sanctions were removed following guarantees on nuclear non-proliferation by Pakistani Prime Minister Muhammad Nawaz Sharif in a meeting with President Clinton at Washington DC in December 1998 (Gardezi, 2004: 431).

On October 12 1999, General Pervez Musharaf replaced Prime Minister Nawaz Sharif through a coup and declared himself as Chief Executive of Pakistan. The Constitution was held in abeyance, parliament was dissolved and the Prime Minister was indicted in an ‘aeroplane hi-jacking case’. The superior judiciary was forced to take a fresh oath of allegiance under the Provisional Constitutional Order (PCO) (DAWN, 2007a). The international community reacted swiftly by suspending economic and military cooperation with Pakistan. The international community and some IFIs demanded the restoration of democracy. When General Musharaf assured the world community that he would institute some fundamentals of democracy such as human rights and freedom of the press, the United States promised continuation of IMF/World Bank aid (Cheema, 2004: 20).

The Terrorist Attacks on the U.S. in September 11, 2001, opened a new chapter of PAK-U.S. relationships. The “US-led counter-terrorism” campaign against the ‘*Taliban*’ regime was a total failure without the close co-operation of Pakistan. According to the U.S. Intelligence Agencies, the terrorist attacks inside the U.S. were planned by Afghan-based ‘*Al Qaeda*’ in close collaboration with the ‘*Taliban*’ government. This provided an excellent opportunity for U.S. led NATO forces to

²³ Chaghi is a district of Baluchistan province in Pakistan.

²⁴ The term has been used for U.S. and Japan, which have the major voting power in the World Bank/IMF. These two countries with their joint voting power or the U.S. alone can decide the lending fate of any borrower country.

invade. They had success in Kabul and some of its adjacent provinces but they could only maintain partial control. According to the latest media reports the ‘*Taliban*’, after 7/8 years are regaining control in the lost areas and the U.S. installed Afghan government, in spite of NATO force’s full support, is gradually losing ground. Singh (2007) and Hayward (2004) hold the view that the two former U.S. Presidents Carter and Reagan are responsible for the origin of “Global Terrorism”²⁵ which is now a growing threat not only for the U.S. but also for the entire world. They also believe that the terrorist attacks including “9/11 took place because of the short-sighted policies” of preceding U.S. governments. Actually, the Americans had planted the nurseries of Afghan *Mujahedeen* (*jihadis*); they now had grown up to become powerful groups, which are not controllable by their former masters (Singh, 2007: 59-60; Patterson, 2008: 51; Hayward, 2004: 230).

General Musharaf as the key ally of the U.S. against the war on terror assigned himself the role of President of Pakistan and the Chief of Army Staff, in total defiance of the scheme of the Constitution.²⁶ This weakness was fully exploited by the U.S. Administration. Due to its vulnerable position, the Musharaf government requested economic assistance and in return offered support on the fight against terror. To further closer co-operation, Pakistan was declared an important ‘Non NATO’ partner of the U.S. in mid-2004. In return, Pakistan was extended loans,

²⁵ Singh and Hayward believe that both former U.S. presidents were responsible for the policies of providing training and arms, which even included the stinger missiles to the Afghan *Mujahedeen*, which were used against the Soviet invaders without considering the after-effects. At that time, the American Administration thought that these were far away from their country and that the American trained *Mujahedeen*/*jihadis* were watching their interests in the region. They were called “*the Afghan Boys*”, the “*Afghan Veterans*” and “*the Freedom Fighters*” by the U.S. administration but now the situation is reversed and term ‘*Terrorists*’ is now used for the American trained former *Afghan Mujahedeen*. He also added that the U.S. secret mission to help *Mujahedeen* was named as “Operation Cyclone”. (Singh, 2007: 59-61; Hayward, 2004: 230).

²⁶ Article 43(1) of the Constitution of Pakistan 1973 clearly mentioned that, “the President shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services”.

grants and rescheduling of debts with the help of the U.S. from IFIs (Momani, 2004). The U.S. and Afghan forces across the border were also supporting the operational plans of the Pakistan army but not allowed by the government of Pakistan to enter in its internal boundaries for joint actions.

Tensions have been on the rise since the region which has culminated in the loss of lives. The situation intensified in 2005 when the Afghan government blamed Pakistan for providing a safe haven to militants in the Pakistan-Afghanistan border. In the midst of the tension, the U.S. used hi-tech remote control 'aerial drones' loaded with missiles to hit suspected *Al Qaeda leaders* and hiding places of terrorists within Pakistan's border areas. Most of the people and political leaders of Pakistan were of the opinion that the Pakistan army itself is fighting with the militants efficiently so there is no justification of 'drone' attacks by the U.S. forces. The U.S. 'drone attacks' are killing many innocent civilians. They have also created hatred towards Americans on both sides of the border. Moreover, drone attacks are against the principle of sovereign equality and are in violation of the UN Charter.²⁷ The Pakistan Government had in several occasions protested against these drone attacks (Kronstadt, 2006: 4-6).

Unfortunately, in the financial year 2007-08, there were some unexpected circumstances for Pakistan. Many big incidents happened like the removal of Chief Justice of Pakistan,²⁸ tragedy of 'Lal Masjid',²⁹ full scale military operation in FATA

²⁷ Article 2 (1) of Charter of the UN clearly states, "The Organization is based on the principle of the sovereign equality of all its Members" (Sellers, 1996: 312). Moreover, Article 2(4) of the same Charter states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"(Karoubi, 2004: 125).

²⁸ On Friday March 9, 2007, President General Pervez Musharaf summoned Chaudhry Iftikhar, the Chief Justice of Pakistan (CJP) and forced him to resign because of some frivolous allegations. The Chief Justice refused and was subsequently detained in the Army House for five hours. Soon after, he was removed as the Chief Justice of Pakistan. The CJP was put under house arrest in his official

and NWFP, ‘Lawyers Movement’³⁰ brutal murder of Karachi citizens in May 2008, assassination of Benazir Bhutto,³¹ frequent attacks by suicide bombers and a worsening law and order situation. This left a negative impact on the economy and gave rise to political instability (Chandran, 2008: 1).

residence until March 13, 2007, where he was denied visitors (Hassan, 2008: 2). The recent decisions by the Supreme Court stood in the way of General Musharraf’s ‘Neo-liberal Post 9/11 Agenda’. Moreover, few well-known cases such as Privatization of Pakistan Steel Mills (which is considered as a major asset of Pakistan’s economy), missing person’s case after 9/11 and accountability of Intelligence Agencies were considerable issues for General Musharraf as he required the Court to decide according to his own wishes (Hassan 2008:2). The CJP was reinstated on July 20, 2007, following intense pressure from the movement started by the majority of lawyers and civil society groups. After resuming office, the Chief Justice ordered intelligence agencies to present the missing persons in the court (Hassan, 2008:3). The most crucial situation arose when the question of President’s eligibility in the next elections came before the Supreme Court. However, General Musharraf was allowed to contest the Presidential election, but was aware that the Supreme Court was not prepared to give him support on the basis of holding two government offices. In view of the Supreme Court, this act was unlawful under Article 43(1) of the Constitution of Pakistan 1973. Unfortunately, he was elected President of Pakistan with the support of his puppet parliament and Pakistan People’s Party for the second term. In the meantime, Musharraf lost the American confidence to some extent for not providing enough support in so-called ‘war on terror’ (Kiesow et al 2008: 14). While Musharraf’s eligibility case was pending before the Supreme Court, he went on to suspend the Constitution and subsequently detained all the judges of the Supreme Court in their official residences except for four who took oath under the ‘new order’ on the same day. The judges were forced to take a fresh oath under the PCO but the majority rejected this on the basis that it was unconstitutional. The judges were once again detained at their various residences (Tariq, 2008). In the aftermath of the general elections of 2008, the newly elected Prime Minister Mr. Yousaf Raza Gilani ordered the release of the detained judges. On 18 August 2008, General Musharraf resigned and Asif Ali Zardari (the husband of deceased Benazir Bhutto) of PPP was elected as the President of Pakistan on September 6, 2008. Upon assuming office, Mr Zardari adopted the same policy as Musharraf and reinstated some of the judges of the Supreme Court except the Chief Justice. Zardari was not willing to reinstate Chaudhry as his cases of corruption were pending before the Supreme Court. However, in the wake of the ‘Long March’, Chaudhry Iftikhar was reinstated as Chief Justice on March 16, 2009 (Tariq, 2008).

²⁹ The ‘Lal Masjid’ (Red Mosque) located in the very heart of Islamabad (the capital of Pakistan) was famous for teaching and training of ‘*Mujahedeen*’ during the Afghan war against the Soviet Invasion of Afghanistan. According to some analysts, General Zia had very closer links with the Red Mosque administration (during General Zia regime, these CIA supported radical clerics expanded their tentacles). It turned into a home-grown battlefield and a confrontation started between the Lal Masjid administration and the Pakistan government when the students and administration of Lal Masjid challenged the writ of government. They demanded that the governmental authorities should implement ‘*Sharia*’ (Islamic system) in the country at the earliest and an immediate implementation on the policy of non-cooperation with the U.S. They built up pressure on government through abductions, violent acts and violent speeches, damage to the government and private properties, disregard of human rights, threats to foreigners particularly women, etc. The negotiations were conducted at all levels among the clerics and government officials but failed and ultimately General Musharraf directed for military operation. In fact, it was extremely difficult for Islamabad Administration to start operation against its own citizens. Because of the clash, more than 150 militants died whereas 50 were arrested. In reality, this extreme situation was mishandled by the administration, as a result of which, retaliatory suicide bomb attacks targeted different parts of the country (Kiesow, 2008: 13-14; BBC, 2007).

³⁰ See Footnote 28 for details

³¹ Benazir Bhutto was assassinated on December 27, 2007 when she returned back to Pakistan after eight years of self-imposed exile.

On December 27 2007, Benazir Bhutto, the renowned Pakistani politician was assassinated. The Government of Pakistan announced three days of national mourning. The assassination provided a psychological and emotional support to PPP in the general elections held on February 18, 2008. The two coalition partners (PPP& PML-N)³² won a majority of seats in the general elections. PPP emerged as leading party in the centre whereas PML-N was the largest in Punjab province. Syed Yousaf Raza Gilani of PPP was appointed Prime Minister of Pakistan and after few months, President Pervez Musharaf on the threat of impeachment resigned on August 18, 2008. Mr Asif Ali Zardari, spouse of the late Benazir Bhutto and the co-chairperson of PPP was elected as the new President of Pakistan on September 6, 2008 (Tariq, 2008; Kiesow et al, 2008: 16).

However, the gulf between the coalition partners widened and culminated in the imposition of emergency rule in Punjab. PML (N) launched an offensive campaign against this unconstitutional act and targeted President Asif Ali Zardari. PPP leadership failed to take appropriate steps. On this issue, the weaker stance of PPP encouraged PML (N) leadership and on March 16 2009, they joined anti PPP alliance and actively participated in the Long March for the restoration of the deposed Punjab Government. The U.S. and Britain were very concerned about the internal strife and political unrest prevailing in the country. The two major coalition partners and signatories of the Charter of Democracy were marching towards a clash, which had a negative impact on the 'War on Terror'. This was an awkward situation for international players, who used their 'good offices' to bring about an uneasy settlement of the differences between the two mainstream parties.

³² The coalition was formed on the basis of the 'Charter of Democracy' which was signed by two former Prime Ministers of Pakistan, Mr. Nawaz Sharif of Pakistan Muslim League (PML) and Benazir Bhutto of PPP in London on 14th May, 2006.

The burning issue of *Taliban* insurrection was awaiting the newly elected coalition government. The *Taliban* occupied a few areas such as Swat and Buner in the North West Frontier Province of Pakistan. Underlying this demand was a cultural and power related conflict. Although the government made a peace deal with these tribal clerics, their demands were multiplying. The Government intended to regulate the Pakistani *Taliban* by peaceful means instead of use of force. In fact, this policy of appeasement was based on the idea that they should confine and be tackled more effectively in a specific area. The U.S. Administration was not in accord with this peace deal. The Pentagon Officials believed that the use of force is the best possible option against the *Talibans* (Kronstadt, 2009: 7-8).

Ultimately, the security forces of Pakistan had started action against Pakistani *Talibans* with full strength from Swat in late April 2009. The government of Pakistan, Finance Division in its report of PRSP-II points out that the ‘War on Terror’ in Pakistan aggravated the condition of unemployment and Law and Order in the war affected areas and as a result, a large number of local peoples displaced from their houses who took shelter in the camps. The government of Pakistan is spending a lot of money on the ‘war against terrorism’ despite worsening economic situation. The approximate cost of ‘War against Terrorism’, which is increasing every year can be seen below:

Table 3.1: Cost of ‘War on Terror’ to Pakistan (Rs billion)

	FY2004/05	FY2005/06	FY2006/07	FY2007/08	FY2008/09
Direct Cost	67.103	78.060	82.499	108.527	114.033
Indirect Cost	192.000	222.720	278.400	375.840	563.760
Total	259.103	300.780	360.899	484.367	677.793

Source: “Poverty Reduction Strategy Paper (PRSP)-II”, Ministry of Finance, Government of Pakistan, 2009: 06, <http://www.finance.gov.pk/admin/image s/poverty/PRSP-II.pdf>.

The U.S. and the developed world seem not to adequately appreciate that Pakistan is a major victim of terrorism, while also playing an important role in the frontline

against terrorism. After 9/11, Pakistan has been helping the U.S. to secure its geo-strategic interests in the region, although this has created many problems for the Pakistan. In fact many American think tanks have admitted that winning of war against terrorism is near impossible without the help of Pakistan. The Government of Pakistan was hopeful that the Obama Administration would stop drone attacks and cross-border infiltrations. Not much has changed (Kronstadt, 2009: 4, 11, 24).

3.3 STRUCTURAL REFORMS IN PAKISTAN UNDER THE WORLD BANK AND IMF

As shown in the preceding section, the historical and geo-strategic significance of Pakistan is important for U.S. interests in the region. However, in the post 9/11 era, Pakistan as a non-NATO ally has attained a considerable importance in U.S-led war on terror. Yet Pakistan is facing severe threats of growing terrorism, while also confronted with economy crisis. The U.S. and IFIs have shown interest in helping salvage Pakistan's ailing economy. Pakistan has been involved in a series of Structural Adjustment lendings with the World Bank and IMF but the economy is still unable to achieve the desired outcomes. There are a number of factors responsible for the failure of Structural Reforms of the World Bank and IMF in Pakistan.

In 1944, a year before the end of Second World War, the Bretton woods institutions were set up at the Conference in New Hampshire (IMF, homepage). According to Abouharb and Cingranelli, the IMF was set up because of the belief that the international world had been unable to address the financial problems that confronted "Germany during the late 1920s and early 1930s". The major focus of the IMF policies was to ensure global economic stability through balance of payments

methods to member countries. However, the World Bank was set up to cope with the economic instability of post-World War II Europe and subsequently, the financial well-being of the developing world. The bank first focused on project lending³³ until the late 1970s and then shifted from 'project to structural adjustment lending' in the 1980s. These lendings were attached with policy conditions proposed to encourage financial development emphasizing macro-economic factors as well as structural factors (Abouharb and Cingranelli, 2007: 57-58).

The SAP takes its origin in 1980s in the aftermath of the debt crisis of early 1970s and this was the period when the organization of Petroleum Exporting Countries (OPEC) enhanced the petroleum rates and deposited their profit in western banks. These banks were intended to disburse loans to the developing countries with the understanding that these countries will buy the commodities of industrialised states. The industrialised countries introduced a chain circle to generate more money from these loans as well as to explore markets for their industrial products. George (1995: 21) notes that developing countries borrowed money from these banks for development sometimes at low interest rates. But studies have indicated that most of the money has been wasted on useless projects or looted by corrupt elites (Jauch, 1999; Ng'ambi, 2009: 48-49).

In early 1980s, the U.S. Federal Reserve increased interest rates considerably to reduce inflation and as a result, the developing countries, which borrowed money at cheapest interest rates, were compelled to pay back at higher interest rates. The situation led to the debt crisis and pushed these countries to sign up new loans for the payment of old ones. Many paid back monies borrowed but still remained highly indebted. A classic example is Mexico which announced in 1982 that it was unable

³³ The World Bank focused on the support of building public services such as dams and power plants.

to pay its debts. This situation created an opportunity for the World Bank and IMF to step in by offering new loans in the shape of SAPs attached with certain conditionalities (Jauch, 1999; Ng'ambi, 2009: 48-49; Bond, 2003: 21-22).

The Structural Adjustment Programs (SAPs)³⁴ were introduced by the World Bank and IMF for the improvement of financial stability and speedy economic growth of developing countries. The main purpose of the SAPs was to decrease the monetary inconsistency of the loan receiving countries and ensure that money lent would be utilized for fulfilling the specific purpose of the loan. In 1981, the proposal of SAPs got its origin “when the administration in the U.S. and Thatcher administration in the UK” and their coalition partners suggested that further conditionalities be attached to loans to the developing countries (Abouharb and Cingranelli, 2007: 63). The IFIs insisted on ‘neoliberal economic reforms’ when providing funding for Structural Adjustment Agreements (SAAs) to the developing countries (Ibid). Some of the economists, international experts and scholars from “Caribbean and Latin America” such as Abugre (2000: 5) and Ikejiaku (2008: 2-3) acknowledged ten financial reforms known as “Washington Consensus”, enforced in 1990 after the debt crisis of early 1980s. These financial improvements are for SAAs, including “fiscal discipline, financial liberalization, unified and competitive exchange rates, tax reforms, trade and investment liberalization, deregulation, privatization, macroeconomic stability, and protection of property rights” (Abouharb and Cingranelli, 2007: 63). According to a number of critics, the SAPs have had little success although the World Bank and IMF have claimed a few success stories. Most

³⁴ The World Bank and IMF designed SAPs for developing countries with a special focus on “macro-economic conditions” which were declared mandatory before applying for lendings to these financial institutions. The main characteristics of the SAPs were “Privatisation, Liberalisation and Economic Stabilisation measures”. Unfortunately, the SAPs failed to achieve the targets and aggravated poverty rather than alleviate it (Abugre, 2000: 5-6).

of the Structural Adjustment Programmes failed to reduce impoverishment and were able to provide the basic facilities of life especially to the third world (Jauch, 1999; Ikejiaku, 2008: 2-3; Gelinas, 1998: 75; Jones, 2001: 14).

Rittich (2005: 200) suggests that the Comprehensive Development Framework (CDF) is known as the beginning of ‘Second Generation Reforms’ in the World Bank presented by the Bank’s President for discussion (Wolfensohn, 1999). The CDF takes into consideration issues of “social, structural and human” factors. The key areas such as education, health, human rights, rule of law and good governance highlighted as the issues of prime importance in CDF for sustainable development. The World Bank endorsed in a statement that CDF was to be now regarded as a base in development policy for the achievement of sustainable development (World Bank, 1999).

In 1989, following a report on the Sub-Saharan African Crisis, the World Bank concluded that the absence of good governance was central to the African Development Crisis (World Bank, 1989: 60-61). It is pertinent to note that the World Bank was the leading financial institution to realise the importance of good governance. The World Bank replaced its SAPs with Poverty Reduction Strategy Papers (PRSPs), with good governance as a basic condition for the loan receiving countries (Curtin and Wessel, 2005: 81).

The Economic Commission for Africa (ECA) in its report strongly condemned the SAP in Africa (Dibua, 2006: 41). The World Bank administration tried to refute the impression of negative impacts of the Adjustment Programmes in most of the Sub-Saharan African countries through different speeches and successive reports from time to time. Bryceson and Bank (2001: 5) and Dibua (2006: 41) notes:

Neo-liberal policies, championed by the World Bank and International Monetary Fund (IMF) ...have not secured 'economic take-off'. Rather there has been growing immiseration through livelihood displacement, physical infrastructural decay, and social service breakdown. In a bid to deflect criticism, the World Bank has co-opted a post-modernist perspective ...documenting the 'voices of the poor'.

In September 1999, the Poverty Reduction and Growth Facility (PRGF)³⁵ were introduced for the reduction of poverty and enhancement of growth level in low income and highly indebted poor countries (HIPC) by IMF lendings. The IMF introduced PRGF by substituting its Enhanced Structural Adjustment Facility (ESAF) on the same terms and conditions, which correlated to PRSPs.³⁶ The PRGF programmes, were modelled in such a way that they became the sole responsibility of the IMF. These programs were designed with the help of World Bank Staff and the mechanism of conditionalities attached with loans was the joint effort of the IFIs (IMF, 2007). The PRGF Programmes were intended to focus on three fundamental objectives as explained by the IMF:

First, the principles of broad public participation and country ownership are central to the PRGF"... Second, PRGF-supported programs reflect closely each country's poverty reduction and growth priorities and, as long as macroeconomic stability is maintained, seek to respond flexibly to changes in country circumstances and pro-poor priorities....Third, PRGF-supported programs focus on strengthening governance, in order to assist countries' efforts to design targeted and well-prioritized spending...(IMF, 2009a).

The IMF and the Independent Evaluation Office (IEO) received in 2002 and 2004 respectively satisfactory reports about the PRGF noting that it is helpful "to higher

³⁵ See footnote 2 for details.

³⁶ See footnote 3 for details.

public expenditure and Pro-Poor Spending” (IMF, 2007). Although the IMF claimed some success stories but there are failures as well. Rustomjee (2004: 21-22) attributes this to the “inadequate level of voice and representation in the IMF” and focussing on “the traditional stabilization objectives of the IMF” as one of the major factors for the failure of the PRGF in the Sub-Saharan African countries.

The late 1990s attracted considerable debate for change in the old international developmental approach of economic governance. The IFIs policies were strongly criticised in the wake of the East Asian Crisis of 1997 and the failure of SAPs in developing countries. As a result, “the 1999 review of the HIPC forced the IFIs to seek a solution to link debt relief to poverty reduction”. All these factors contributed and in September 1999, the World Bank and IMF in their joint meeting initiated Poverty Reduction Strategy Paper (PRSP) a new framework for better relations with poor countries, which “centred on the development and implementation of Poverty Reduction Strategies (PRSs) by recipient countries as a precondition to accessing debt relief and concessional financing”. In 2001, the World Bank initiated Poverty Reduction Strategy Credits (PRSCs) as new framework of funds from International Development Association (IDA) for recipient countries also related to PRSPs. The PRSPS approach was adopted by these financial institutions with the view to enabling the borrower countries to set their objectives for poverty reduction as well as persuade donors to lend according to the circumstances and feasibility of the borrowers. (UNDP, 2009: 3 & 5; Christiansen and Hovland, 2003: 4).

3.3.1 Initial Structural Adjustment Loans (SALs)

Pakistan obtained membership of the World Bank/IMF in 1950. The World Bank has been providing financial assistance to Pakistan since 1952. The IMF has also

played a decisive role in providing economic stability and structural adjustment lending to Pakistan since 1988. Thus the Bretton Woods institutions³⁷ are deeply involved in the Structural Adjustment Programmes (SAPs) and the Structural Reform Strategies (SRSs) adopted by Pakistan after 1988 (Cheema, 2004: 17).

The Bank's strong support to Pakistan has played a significant role in its economy for the last 57 years. The Bank has provided about 15% of financing to Pakistan for public investment programs during the past decades. The World Bank sanctioned 242 loans worth 13 billion dollars including 146 interest free IDA³⁸ credits³⁹ for this period. For example, in 2002 the Bank disbursed up to 860 million U.S. dollars.⁴⁰ The major portion of the bank's funds (about 85%) has been spent in some mega projects⁴¹ for the rehabilitation and expansion of physical infrastructure. The rest "has been used for the balance of payment adjustment loans in support of structural reforms" (World Bank, 2002: 5).

The Structural Adjustment Program (SAP) was first introduced in Pakistan in 1982 during General Zia-ul-Haq Regime. At that time, Pakistan was one of the major loan recipients of the World Bank and IMF. The military government discontinued further instalments⁴² after receiving the first SAP loan. As mentioned earlier, the Soviet

³⁷ The term is commonly used for the World Bank and IMF.

³⁸ The International Development Association (IDA), was established in 1960, is a part of the World Bank and helps world's poorest countries. The main object of IDA is to reduce poverty by granting interest free loans and funding for projects that enhance monetary development, decrease inequalities and increase living standards of the peoples. The 78 poorest including 50% of African countries are receiving funding for primary community welfare from IDA (World Bank, 2009).

³⁹ For example less than 1% service charges and 35 years maturity time.

⁴⁰ It was the maximum amount ever sanctioned in the history of World Bank-Pakistan economic relationship on very flexible terms and conditions.

⁴¹ The major portion of the amount has been invested in major projects such as Indus Basin Irrigation and Drainage System, Telecommunications network and WAPDA, basic education and health services all over the country, national highways system and provincial roads, water and sanitation system in major cities, towns and rural areas, Karachi Port, gas production, transmission and supplies, and oil production and refining etc (World Bank, 2002:5).

⁴² Actually, the Economic Advisors of the military government advised to discontinue further instalments after receiving the first of SAP loan instalment, on the basis that the public did not accept

invasion of Afghanistan changed the entire situation and on becoming a frontline ally, Pakistan received financial assistance of 3.2 billion U.S. dollars in 1981. Pakistan's foreign loan liabilities had doubled after the Zia period (GOP, 1996).

Baxter (2004: 137) suggests that due to a crisis in the textile industry, which was a major source of income, "the continued twin fiscal and foreign exchange deficits" coupled with decrease in external aid forced the government of Pakistan to look for the support of Bretton Wood Institutions in the late 1980s. It was the beginning of SAPs and "conditionalities that have accompanied the programmes have included target levels for deficits". The World Bank and IMF emphasised that the government of Pakistan should increase the tax income and decrease monetary discrepancy by way of public spending. However, the government of Pakistan was unable to decrease expenses "on defence and debt servicing" but ultimately extended cuts to certain development projects.

After the first formal lending under the SAP to Pakistan in 1988, a series of continuous lendings were maintained during the successive democratic governments of Benazir Bhutto and Nawaz Sharif. The major emphasis was on "financial & trade liberalization, deregulation, reliance on free market and privatization". Nawaz Sharif launched a policy of privatisation of national assets, deregulation of business and industry and lifted the control over foreign exchange. In more than three years of Sharif's rule, the World Bank and IMF having being satisfied with his economic policies disbursed four hundred million dollars of SAP loans to Pakistan (Gardezi, 2004: 430). However, these 'First Generation Structural Adjustment Reforms' showed poor results in attracting foreign investment in Pakistan (Naseem, 2008: 25).

these adjustment policies and the government would become unpopular among the masses (Gardezi, 2004).

The World Bank with the help of IFIs started the Social Action Program Project⁴³ (SAPP-I) in 1992/1993 for getting better results in basic health care, primary education, building girls schools, family planning, sanitation and availability of safe & clean water to remote areas of Pakistan. In many respects, this was a precursor to the ‘Second Generation Reform’ discussed below. The education sector which was a primary focus of the project produced disappointing results. However, the project failed to achieve the required objectives and the major reasons for its failure were “to fully identify and address the institutional constraints, lack of a widely agreed methodology and format for monitoring and evaluation,” poor quality of education and absence of teachers from the schools (Paul, 2000: 4-5; Easterly, 2001: 15).

In 1996, SAPP-II was started after the failure of SAPP-I. The primary focus of the SAPP-II was also on social reforms like SAPP-I but especially to provide the essential services to women and girls and “generally for the poor” (World Bank, 1999a). The IFIs and Pakistan under the management of the World Bank invested about \$8 billion inclusive of 25% foreign support on the Social Action Program Project during 1993-1998. The project turned out to be a failure. Although, there are certain reasons for its failure, a major one could be attributed to the decision by the government of Pakistan to downsize the SAPP especially in the last two years of the programme (Anwar, 2006: 4; Easterly, 2001:15) which is apparent in the table given below:

⁴³ SAPPs were planned into two parts with the collective efforts of IFIs and the government of Pakistan for expenses on social services and to decrease poverty. The total amount allocated for SAPP-I was US\$ 4.02 billion comprising 76% share by the GOP and the remainder by the IFIs. The overall cost for SAPP-II was US\$ 10.561 billion for which GOP had to provide almost 80 % of the total amount (Ali, 2008: 25).

Table 3.2 Social Action Program Project (SAPP)

Social Action Program Project spending as percent of GDP	
1992/93	1.70
1993/94	1.72
1994/95	1.88
1995/96	2.05
1996/97	2.35
1997/98	1.69
1998/99	1.60

Source: “The Political Economy of Growth without Development: A Case Study of Pakistan”, Easterly, 2001: 16,
<http://www.nyu.edu/fas/institute/dri/Easterly/File/Pakistan.pdf>

In 1993, Moeen Qureshi a senior World Bank official was invited and appointed as interim Prime Minister of Pakistan. He enforced Structural Adjustment Policies, in the process devaluing the Rupee by 10%. The people of Pakistan faced rises in the prices of consumer goods and high inflation because of Mr Qureshi’s economic reforms. He was succeeded by a democratically elected Prime Minister, Benazir Bhutto, who during her second tenure negotiated with the World Bank/IMF through the Enhanced Structural Adjustment Facility (ESAF).⁴⁴ Under these new arrangements, a loan of one and half billion dollars was provided in instalments. As a pre-condition, Pakistan’s currency was to be devalued again by seven percent, duties on imported items were reduced and the scope of General Sales Tax was extended on more than two hundred and fifty items to fulfil the criterion for getting more instalments of the ESAF loan. In spite of these initiatives the Benazir government was unsuccessful in attaining the conditionality targets set by the donor institutions as more than 80% of the revenue collection was consumed on ‘debt servicing and defence expenditure’. After the first instalment, further disbursements of ESAF were ceased because the Benazir government failed to fulfil the other important conditions of the ESAF loan including the cutting of budget deficit by 5.6% of the GNP to 4.0%. The World Bank/IMF management after having detailed discussions with the

⁴⁴ The IMF provided economic support to the poor countries by ESAF programme from December 1987 to 1999.

representatives of Pakistan's government at their Headquarters decided to replace the ESAF with standby loan of six hundred million dollars at the interest rate of five percent (Gardezi, 2004: 431).

On November 5, 1996, when the people of Pakistan were experiencing Structural Adjustments, the Benazir government was dissolved a second time by a Presidential Order.⁴⁵ In 1997, Mr. Sharif of Pakistan Muslim League won the elections after defeating Benazir Bhutto of the Pakistan People's Party (PPP).⁴⁶ After taking over the office of Prime Minister, he followed the same policies as the previous government and proceeded further with Structural Reforms. The people of Pakistan were forced to rely on Structural Reforms for economic survival during deteriorating economic conditions. At that moment, Pakistan faced a very hard time when sanctions were imposed because of atomic explosions. The Sharif government announced a state of emergency in Pakistan by freezing foreign currency accounts worth \$11 billion. The economy of Pakistan was jolted by the threat of default and even the American think tanks portrayed Pakistan "a failed state" (Haass and Rose, 1997).

On December 1998, a meeting was arranged in Washington DC between the Prime Minister of Pakistan and the American President by which the fate of Pakistan's economy was decided with certain conditions i.e. 'to observe nuclear non-proliferation' and peace dialogue with India. The IMF promised to provide financial assistance to Pakistan provided these conditions were fulfilled. For this, they had to overcome a reluctance based on the feeling that the democratic governments would

⁴⁵ In 1996, President Farooq Leghari dissolved the government of Benazir Bhutto on the charges of corruption and mismanagement under Article 58(2)b of the Constitution of Pakistan 1973.

⁴⁶ It is a common perception that the working class and peasants of PPP had not shown any whole-hearted involvement because of the introduction of unacceptable conditionalities attached with 'Structural Adjustments' by Benazir Government, which adversely affected the domestic budgets of low-income and poor people of Pakistan.

find it uncomfortable to comply with conditionalities attached with loans (Gardezi, 2004: 431-432).

In 1997, the World Bank supplied a credit of 250 million U.S. dollars to improve the banking system of Pakistan, which was in a state of crisis. The main purpose of this lending was to make solid efforts for state-owned commercial banks in the achievement of further skills, profitable policies and excellence. (Cheema, 2004: 23). The IMF released about 1.31 billion dollars for Pakistan in its three year's period under PRGF from December 6, 2001 to December 2004. In return, the government of Pakistan had to implement the IMF led policies. The government followed the process of privatisation and reorganisation of public assets and banking sector reforms under the conditions of IMF (IMF, 2004). In June 1999, the Bank agreed to disburse 90 million U.S. dollars to sustain the Pakistan Poverty Alleviation Fund (PPAF). The main aspiration of the program was to provide access of various facilities and means of communication to the deprived classes of Pakistan (Cheema, 2004: 23).

3.3.2 Second Generation Reforms

On October 12, 1999, General Pervez Musharaf took over the control of government and declared himself Chief Executive of Pakistan. As a result, the international community immediately suspended Pakistan's economic and military assistance programs. The International Community and Financial Institutions demanded for the restoration of democratic rule. The military government requested for economic assistance with an assurance to fulfil all conditions of IMF and World Bank attached with loans (Craig and Porter, 2006: 197, Cheema, 2004: 20).

The World Bank considered good governance as an important element in the achievement of sustainable development especially following the publication of a by the UN's Economic Commission for Africa (ECA) in 1989 (World Bank, 1989: 60-61). The Bank has since advocated for and adopted "accountability, government efficiency in terms of planning and social services to the public, the rule of law culture, an independent judicial system, a system of checks of balances, separation of powers and control of corruption" as key new conditionalities (Santiso, 2001: 5; Kaufmann, Kraay and Zoido-Lobaton 1999: 11).

As noted above, the failure of the First Generation Reforms under successive Structural Adjustment Programmes required a new strategy. Some independent regulatory authorities were set up such as the Print and Electronic Media Regulatory Authority (PEMRA), Oil and Gas Regulatory Authority (OGRA), National Electric Power Regulatory Authority (NEPRA) and Pakistan Telecommunication Authority (PTA) to attract the foreign investment in these areas. In August 2000, the 'Second Generation Reforms' were introduced by President General Pervez Musharaf with a slogan of "empower the impoverished" (ICG, 2004: i). The main purpose of the 'Second Generation Reforms' was "high growth and sustainability, building the institutional and governance capacity" and to create the business friendly atmosphere in Pakistan. The major focus of these reforms was on Civil Services, Decentralization and Devolution of local government, Judiciary, and Police, with the belief they could improve good governance. For the promotion of good governance the public and private enterprises in financial sector, cooperation of public, system of checks and balances, accountability, poverty reduction, equality and the culture of rule of law and "World Class" institutions were the issues of prime importance (GOP, 2010).

Naseem (2008: 26) acknowledges that the ‘Second Generation Reforms’ had impact for a few years but were largely unable to achieve their set objectives. Some of the important reasons were misuse of power, appointments of the non-technical persons on the technical posts especially the army officials, political persecution by the different institutions. For example, Husain is of the opinion that the National Accountability Bureau (NAB) a strong and effective institution to curb corruption was established soon after assumption of power by General Musharraf to promote accountability but appeared to have been used for political victimization (Husain, 2007: 7).

On November 1999, Mr. Shaukat Aziz a Citibank Executive was appointed as Finance Minister with a team of forty financial professionals. He offered his services free of cost to breathe life into the economy of Pakistan. He was asked to take charge of Economic Affairs, Finance, Statistics, Planning and Revenue Divisions. He was later offered the seat of Prime Minister of the hybrid government⁴⁷ after the resignation of Mir Zafarullah Khan Jamali in the 2004. On August 28, 2004, Mr. Aziz took over as a Prime Minister of Pakistan and retained the functions of Finance Minister (BBC, 2004).

The military government after a year’s efforts succeeded in getting a stand-by-credit of \$596 million from the IMF. In addition, it had been decided between the IMF and Pakistan that this program would run up to the end of 2001. At that time, Pakistan was on the brink of default. There was an essential need of IMF assistance for rescheduling the Paris Club debt. It demanded some urgent and solid steps to cope with the issue of economic disturbances and to restore reliability before the IFIs. General Musharraf had no alternative but to accept all conditions set out by the IMF

⁴⁷ The blend of democratic set up with military dominance.

to qualify for financial backing. Consequently, the relationship between the IMF and Government of Pakistan improved and it agreed to disburse a PRGF loan to Pakistan for the period of three years. The PRGF was a package of 1.3 billion U.S. dollars that performed well and Pakistan had obtained half of twelve instalments up to September 2003 (Cheema, 2004: 20).

In the meantime, the World Bank's first disbursement of 350 million U.S. dollars was approved for tax reforms and for boosting the confidence of foreign investment. The Bank financed Pakistan under the Structural Adjustment Credit (SAC) scheme. After the end of SAC-I, SAC-II was started in 2002. The World Bank attached some mandatory supplementary conditions to the government with SAC programs, with a focus on monetary improvements and reformation of the government. In December 2003, after the successful completion of SAC programs, the World Bank pledged for more lendings to tune of 368 million U.S. dollars. Moreover, the World Bank supported Pakistan in literacy and health sectors. As a result, for the last few years, the interference of World Bank in the internal affairs of Pakistan has been frequent.

In 2003, the Bank distributed around 1.226 billion dollars which was the biggest amount ever sanctioned for Pakistan. The main aim of the Country Assistance Strategy (CAS) 2003-05 was to restructure the local institutions in the course of programs consisting of review and critical package, construction of departmental capability and demand-focused lending.⁴⁸ Generally, the funding of the World Bank was aimed at structural reforms, improvement of the institutions as well as creates a congenial environment for the financial activities. For the last three years, Pakistan made it possible to absorb the monetary shocks due to its organisational, structural,

⁴⁸ 'Demand focused loaning' means loaning for the achievement of specific developmental targets in the economy.

economic and tax restructuring modifications (Cheema, 2004: 23-24). Cheema is of the view that the critics argue that sometimes the conditionalities of the World Bank and IMF are unsympathetic to the borrower countries but in the case of Pakistan, these was not the case as they brought “about macroeconomic stability in the country in the 1990s” (ibid, 24-25).

It is plausible to suggest that the conditionalities worked for a short time in case of Pakistan but I disagree with this assumption as the problems of Pakistan as well as other borrower countries have increased after the introduction of World Bank and IMF led reform programmes. As indicated in Part-I that a number of scholars have observed the remarkable political involvement of the U.S. in both the IFIs (Swedberg, 1986; Leaver, 1996; Smit, 2004; Faini and Grilli, 2004; Eldar, 2005: 509, Parenti, 1989 cited in Abouharb and Cingranelli, 2007: 116).

3.3.3 Poverty Reduction Strategy Papers (PRSPs)

Pakistan is one of the sixty developing countries who took up the Interim Poverty Reduction Strategy Paper (IPRSP) in November 2000 and then PRSP-I in December 31, 2003. As indicated above, the PRSP was intended to signal a shift in the lending relationship with emphasis on poverty reduction. The nature of PRSP was ‘National Ownership’ or public and private partnership in collaboration with the International Financial Institutions or country-driven strategies for poverty reduction in the member states (IMF, 2009). In 2004, an amount of 300 million U.S. dollars was released for Pakistan in its initial phase of three years. It was set up under the supervision of the Ministry of Finance, which was responsible for its smooth running and monitoring. It was decided to initiate PRSP-II after the completion of PRSP-I. According to the Ministry of Finance, Government of Pakistan, the PRSP-II has to be

completed in the period of three years from 2007-09⁴⁹ with possibility of extension in the period (UNDP, 2009: 7).

UNDP has pointed out that the Pakistan government failed to reduce poverty because of unequal distribution of wealth, absence of land reforms, direct taxation, heavy defence budgets, corruption of ruling class and powerful “feudal industrial interests”. Bad governance, which affects the poor badly, is one of the reasons for deepening poverty in the country (UNDP, 2009: 9-10; Haq, 1997: 69, 244). In one of its poverty assessment reports, the World Bank (2002) pointed out that:

Issues of governance for instance in the form of the lack of accountability, are at the heart of many of the difficulties encountered in mitigating poverty and broadening access to social services in Pakistan. Neither debt reform nor the mere availability of donor funds is likely to dispel these problems (World Bank, 2002c).

However, it is pertinent to note that accountability⁵⁰ mechanisms are available in these International financial institutions but lack of proper implementation is responsible for the failure of structural reform strategies in the loan receiving countries. The Asian Development Bank notes that:

A number of factors explain the existence of an increase in poverty in the last decade. However, poor governance is the key underlying cause of poverty in Pakistan... Governance problems have also resulted in inefficiency in provision of social services, which has had serious implications for human development in the country” (ADB, 2002: 2; UNDP, 2009: 9).

⁴⁹ In this report, it was acknowledged that due to non-availability of the final copy of PRSP-II, the entire assessment had been made on the basis of PRSP-I, although the draft summary of PRSP-II was available from April 2007 (UNDP, 2009: 7).

⁵⁰ See footnote 4 for details.

The poor people had never been the priority of the government of Pakistan and this is one of the reasons for the rapidly increasing gap between the poor and the rich. Ishrat Husain, Governor of the State Bank of Pakistan points out that:

Pakistan is facing many difficult challenges. One third of the population still lives below the poverty line. Human Development indicators remain low as almost half of the population is illiterate, infant and maternal mortality rates are high, access to quality education and health care particularly by the poor is limited, income and regional inequalities are widespread, infrastructure shortages and deficiencies persist, skill shortages are taking a toll in the economy's productivity while at the same time, there is high unemployment and underemployment (Husain, 2005:12; Kiesow et al, 2008: 10).

In the PRSPs of Pakistan, the important and basic issues such as education, health care, food items, living facilities, social security, law and order and good governance have not been addressed properly. The UNDP concludes that the government of Pakistan has been unable to reduce poverty in both the PRSP-I and PRSP-II. It has been said that the major cause of the ineffective poverty reduction plans is the failure in the delivery system and permanent features of disparity which clearly indicates the deficiency of governance structures in Pakistan (UNDP, 2009: 32). Pakistan is a signatory to the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights. Moreover, the Constitution of Pakistan guarantees Civil, Political, Economic, Social and Cultural Rights to all citizens. It has been suggested that the issue of poverty should be considered as rejection of rights and not just a lack of structural inability in the distribution of social services (UNDP, 2009: 25).

In 2004, the economy of Pakistan achieved self-reliance by decreasing budget deficit, collection of foreign exchange reserves, foodstuff, mounting manufacturing construction and maintained annual growth of more than five percent. The country attained primary macroeconomic strength accompanied by wide range of development in economic measure. At the same time, the country was fighting with problems of recovering investment, eradication of public sector deficits, better infrastructure and growing public sector improvements. Creation of new jobs and the responsibility for poverty reduction were two major issues before the military government requiring some urgent and solid steps for planning. No doubt, at that time, the economy of Pakistan had achieved self-reliance (Cheema, 2004: 1).

In May 2005, Pakistan received a package of four and a half billion U.S. dollars from the World Bank for a period of three years. Moreover, the World Bank promised to add about 900 million to 1.5 billion U.S. dollars in this package in coming years. The lendings were primarily for restructuring public spending, income tax structure, economic region and public service in a way to decrease the budget and trade discrepancy (Mumtaz, 2006: 3-4).

According to the IMF, in 2005-06, the economy of Pakistan had gone through numerous shocks triggered by the disastrous earthquake of October 8, 2005, a considerable increase in the worldwide prices of oil and less favourable climatic conditions, which badly affected the crops. Nevertheless, inflation dropped from 9% to 7.6% by the end of June 2006 (Ministry of Finance, Pakistan 2006: 1).

The World Bank disbursed a total amount of 1.5 billion U.S. dollars in its FY06, which made Pakistan to be ranked as the fourth largest loan receiving country in the world. Subsequently, in 2006, the Board of Directors of the Bank approved CAS for

Pakistan for a period of three years. It was to help Pakistan to attain the targets of growth for upcoming years. An amount of around one billion U.S. dollars was disbursed to deal with the unpleasant after-effects of October 2005 earthquake. The money was handed to the government to help in rebuilding and repairing of houses. The World Bank decided to disburse the total amount of 6.5 billion U.S. dollars in its CAS 2006-09 for Pakistan. In 2006, the economy of Pakistan showed some positive indicators for prosperity. However, one of the biggest challenges was to decrease the poverty level with the help of rapid growth projects so that the poor would be facilitated by this progress. The main emphasis of these lendings was on ‘SME⁵¹’, to improve infrastructure and economic segments (Buckley, 2006; 39-40). Unfortunately, the financial year of 2007-08 came up with some unexpected circumstances for Pakistan which left impacted negatively on the economy but also gave birth to political instability as well (Chandran, 2008).

The power rivalry⁵² among different organs of the state has ruined Pakistan’s economy. The people of Pakistan are faced with recurrent problems such as repeated de-valuation of currency, rise in inflation rate up to 25% per annum, rapid increase in the prices of commodities, wheat crisis, energy crisis, leadership crisis and the recent crash of Pakistani Stock Markets (The Economist, 2008). In fact, the so-called stable economy was a ‘bubble economy⁵³’ based merely on the numbers game, as the ordinary and poor persons did not benefit from economic growth. Given below are some of the tables showing statistical figures about Pakistan foreign debt liabilities.

⁵¹ The term Small and Medium Enterprises (SME) is commonly used in IFIs and its basic function is to promote small businesses.

⁵² A clash of power between the different organs of the state and among politicians has been evident obvious in Pakistan since its creation. There are several examples of the executive’s interference in the affairs of Judiciary and Legislature through a misuse of its powers (Sattar, 2008).

⁵³ The term ‘bubble economy’ means the economy, achieved stability for a very short period and then collapsed. It was presumed that in the Musharaf period the economy acquired strength but actually it was based on wrong footing (GoP, 2010: 12)

Table 3.3 Trends in External Debt and Foreign Exchange Liabilities (US\$ billion)

Year	Total External Debt	Foreign Exchange Liabilities	Total External Debt And Foreign Exchange Liabilities
1989-90	19.2	2.7	21.9
1990-91	20.0	3.2	23.2
1991-92	21.9	4.5	26.4
1992-93	23.9	5.7	29.6
1993-94	26.9	7.1	34.0
1994-95	28.7	7.3	36.0
1995-96	29.8	9.1	38.9
1996-97	29.5	11.0	40.5
1997-98	30.3	12.4	42.7
1998-99	33.5	4.1	37.6
1999-2000	32.2	5.7	37.9
2000-01	32.1	5.0	37.1
2001-02	33.4	3.1	36.5

Source: "Macroeconomic Stability of Pakistan: The Role of World Bank and IMF (1997-2003)", Cheema, 2004:7,
<http://www.acdis.uiuc.edu/Research/OPs/Cheema/CheemaOP.pdf>

Table 3.4 External Debt and Foreign Exchange Liabilities End June (US\$ billion)

Year	Total External Debt	Foreign Exchange Liabilities	Total External Debt And Foreign Exchange Liabilities
2003	33.3	2.1	35.4
2004	33.4	2.0	35.4
2005	34.0	1.4	35.4
2006	35.9	1.3	37.2
2007	39.0	1.3	40.3
2008	44.5	1.7	46.2
2009	50.7	1.3	52.0

Source "Pakistan Economic Survey 2007-08 and 2009-10- EXTERNAL DEBT AND LIABILITIES", Ministry of Finance, Government of Pakistan,
<http://www.finance.gov.pk/admin/images/survey/chapters/09-External%20debt08.pdf> (See also
http://www.finance.gov.pk/survey/chapter_10/08_Public_Debt.pdf)

Table 3.5 Structure of External Debt and Liabilities (EDL) (End March 08)

COMPONENT	% SHARE
Paris Club	31.6
Multilateral	46.9
Other Bilateral	2.6
Short-Term	1.3
Private Non-Guaranteed	5.4
IMF	3.1
Other	6.2
Forex Liabilities	2.9

Source "Pakistan Economic Survey 2007-2008- EXTERNAL DEBT AND LIABILITIES", Ministry of Finance, Government of Pakistan,
<http://www.finance.gov.pk/admin/images/survey/chapters/09-External%20debt08.pdf>

Given below is the recent inflation rate, which is not showing any positive indicator in the economy of Pakistan.

Table 3.6 Inflation Situation in Pakistan (July 2008-February 2009)

Month	Consumer Price Index (CPI)	Wholesale Price Index (WPI)	Sensitive Price Indicator (SPI)	Core Inflation (%)
July	24.3	34.0	33.9	14.7
August	25.3	35.7	33.0	16.4
September	23.9	33.2	31.1	17.3
October	25.0	28.4	32.7	18.3
November	24.7	19.9	29.8	18.9
December	23.3	17.6	25.8	18.8
January	20.5	15.7	20.8	18.91
February	21.1	15.0	23.4	18.85

Source: “Review of Economic Survey of Situation: (July-February 2008-09)”, (Economic Advisor Wing) Finance Division, Government of Pakistan,
<http://www.finance.gov.pk/admin/images/ecoSituation/ReviewEconomy-Jul-Feb.pdf>

The World Bank has recently informed the government Pakistan that almost half of the Pakistani population will be unable to buy food if the situation remains the same in the coming years. In the same report, it is further advised to withdraw the subsidies⁵⁴ immediately on food items. The World Bank further warned that the prices of wheat in Pakistan are relatively low compared to the international market, which is one of the basic reasons of wheat smuggling to the neighbouring states (Iqbal, 2008). Goncalves (1996: 6) argues that SAPs causes ruthless sufferings to the peoples of Zimbabwe and Zambia. According to Goncalves the word ESAP, which means “Economic Structural Adjustment Programmes” has now been changed with “Ever Suffering African People”. The peoples protested against the unsympathetic conditionalities to withdraw subsidies on basic food items after food insurrection started which forced the IFIs to withdraw the conditions (Jauch, 1999: 6).

In the case of Pakistan, however, it is the responsibility of Pakistan government to control smuggling rather than to withdraw subsidies on food items in these circumstances. At present, Pakistan is facing serious food crisis but withdrawal of

⁵⁴ See footnote 5 for details.

subsidies is not the only solution to this problem as the poor are already unable to buy food easily due to growing rise in the prices of food items. For Pakistan, “fight against terrorism” is a big challenge that the government of Pakistan accepted after becoming a major ally of the U.S. President John F. Kennedy observed many years ago that “the only thing worse than being an enemy of the United States is being an ally” (The Atlantic Council, 2009: 1). The economic condition of the so-called emerging ‘Asian Tiger’ is vulnerable and needs some urgent cooperation from the ‘Friends of Pakistan’ for its deteriorating economy as well as to combat with the growing dangers of terrorism. Below are some statistical data about the World Bank lendings to Pakistan since 1999 to 2006.

Table 3.7 Pakistan: World Bank Lending FY1999–2005

(In millions of U.S. dollar, as of September 30, 2004)

Project Name	Fiscal year Approved	Amount	Disbursed
Structural Adjustment Loan	1999	350.0	350.0
Poverty Alleviation Fund	1999	90.0	90.0
Trade & Transport	2001	3.0	2.3
NWFP On-Farm Water Management Project	2001	21.4	3.7
Structural Adjustment Credit	2001	350.0	343.9
Banking Sector Restructuring and Privatization Project	2002	300.0	211.2
Structural Adjustment Credit II	2002	500.0	510.3
Community Infrastructure & Services	2003	20.0	8.2
Banking Sector Technical Assistance	2003	26.5	14.2
Sindh Structural Adjustment Credit	2003	100.0	106.4
NWFP Structural Adjustment Credit	2003	90.0	95.8
Partnership for Polio Eradication	2003	20.0	20.0
HIV/AIDS Prevention Project	2003	37.1	8.2
National Education Assessment System	2003	3.6	0.5
Highways Rehabilitation	2004	200.0	25.2
Poverty Alleviation Fund II'	2004	238.0	84.1
Punjab Education Reform Program	2004	100.0	100.6
Sindh On-Farm Water Management Project	2004	61.1	2.9
NWFP Community Infrastructure II (CIP2)	2004	37.1	2.1
PK Public Sector Capacity Building Project	2004	55.0	10.5
NWFP SAC II	2004	90.0	90.0
Poverty Reduction Support Credit I	2005	300.0	300.0
Tax Administration Reform Project	2005	102.9	3.1
Banking Sector Development Policy Credit	2005	300.0	300.0

Source: “IMF Country Report No. 04/411-Pakistan: 2004 Article IV Consultation,...”.

IMF, 2004:51, <http://www.imf.org/external/pubs/ft/scr/2004/cr04411.pdf>

Table 3.8 Pakistan: World Bank Lending FY 2003–05

(In millions of U.S. dollar, as of Sep 30, 2005)

Project Name	Fiscal year Approved	Amount	Disbursed
Taunsa Barrage Emergency Rehabilitation	2005	123.0	3.1
Punjab Education Reform II	2006	100.0	100.0
Improving Financial Reporting and Auditing II	2006	84.0	0.0

Source : “Pakistan : 2005 Article IV Consultation... IMF Country Report No. 05/409”, IMF, 2005:51, <http://www.imf.org/external/pubs/ft/scr/2005/cr05409.pdf>

These programs have been started by the World Bank to facilitate economic stabilization, reduce literacy, alleviate poverty etc. Funds were therefore provided for better infrastructure and good governance. According to critics, the World Bank programs in some of the cases caused inconvenience rather than support to the economy of Pakistan. The attachment of tough conditionalities with loans by the World Bank and IMF places political pressure on the loan recipient countries (Cheema, 2004: 23-24; Swedberg, 1986: 383-384).

Currently, the newly appointed Government of President Zardari is facing one of the toughest times in Pakistan’s history. On the one hand, they are fighting against terrorism being a frontline ally of the U.S. and on the other hand, there exists a very poor economic condition which is aggravating the situation of unemployment and poverty in Pakistan. However, the Government of Pakistan has shown some interest in dealing with these issues whilst also desirous for closer collaboration with the U.S.

3.4 RELATIONSHIP BETWEEN THE IFIs AND U.S. INTERESTS

The Bretton Wood Financial Institutions are progenies of post-War economic challenges. At the time of their formation, the institutions were supposed to promote economic and financial cooperation in a destabilised world as well as play an

impartial role as provided for in the statutes of the World Bank⁵⁵ and IMF.⁵⁶ Swedberg (1986: 380) holds the view that the World Bank and IMF policies largely serve the political interests of U.S. and some European states in global financial activities. A number of critics argue that the policies of both institutions reflect U.S. imperial designs rather than the desire to work entirely for the economic stability of borrower countries. However, both the institutions safeguard their policies and emphasize that all decisions are taken by the administrative staff purely on merit and without external influence. No doubt, some success stories favour the policies of World Bank and IMF but in a majority of cases, they fail especially in relation to eradication of poverty, economic stability, unemployment, hunger, clean drinking water, food and issues of human rights.

Arguments have been advanced to suggest that the problems of these countries are increasing rather than decreasing because IMF/WB programmes are manifestly interfering in the internal affairs of borrower countries in the name of 'conditionalities'. The two major factors are the political selections on the key posts and voting strength of the U.S. in both institutions. Moreover, it has also been an established tradition that the managing director of IMF must be a European whereas the President of IBRD a U.S. citizen (Woods, 2006: 199-200; Swedberg, 1986: 377, 379; Leaver, 1996: 1-2; Smit, 2004: 222-223).

The U.S. control over the World Bank and IMF is apparent in the history of these institutions. During and after World War II when the allied forces and governments

⁵⁵ The Articles of Agreement of the IMF (Article-IV, section 3(b)) mentions that "these principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members".

⁵⁶ The article IV section 10 of the International Bank for Reconstruction and Development (IBRD) clarifies that "the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I respectively".

were occupied with the war and stabilisation process, the U.S. attained significant power over the rest of the world with the achievement of financial stability, modern technology, strong political system, industrialization and armed strength as well. The U.S. floated the idea to set up IFIs and this was warmly greeted by European countries. Therefore, the Bretton Wood institutions headquartered at Washington D.C offered the rest of the world a powerful block whose beneficiary and driving force was the U.S. treasury and Congress. Every member state is allowed to cast its vote but voting weight is slightly less than its voting power. The voting power with less voting weight of member countries strengthens U.S. dominance and influence over these institutions as it has the largest weight of the votes. The U.S. is the only country which can use the 'Veto Power' in the Executive Board with the weight of almost seventeen percent votes and can reject the decision of the Board which then needs 85% votes to rebut the veto. Moreover, member countries often hesitate to criticize the U.S. influence with the apprehension of fear of the use of 'Veto Power' on their own programs (Woods, 2006: 15, 17-18, 22, Ranis, 2006: 113, Paloni and Zanardi, 2006: 4).

No doubt, the World Bank and IMF have played a key role in the global economy since their creation. It has been observed that the IFIs lendings are available to the recipient countries "during a balance of payment crisis". However, it is apparent that the lending policies of both institutions have been decided according to geopolitical agendas of the U.S. and some European countries. It is a common perception that the U.S. uses its weight of voting power in the World Bank and IMF lending policies to advance its geostrategic interests (Faini and Grilli, 2004: 2; Korten, 2007: 136).

Stein points out that:

The United States has always had a strong role in the World Bank, especially because of its retention of at least 15 percent of the voting power⁵⁷, which, owing to voting rules within the Bank, gives it unilateral veto power over major matters of substance. This power has resulted in the Bank's being used as a vehicle for pursuing American foreign policy objectives. In addition, the United States has always controlled the appointment of the president of the World Bank (Stein, 2008: 250).

Faini and Grilli observe that the distribution of the staff in the World Bank and IMF is not just and fair:

The overall staff of the IMF is 25% US, 24% European, 7% from other industrial countries such as Canada, Japan and Australia-New Zealand. The staff of the World Bank is 22% US, 13% European and 3% from other industrial countries. Developing country staff would seem to dominate numerically here, but the reported shares could be biased by the presence of much support staff from developing countries in this institution. As far as they go, these figures indicate that the United States has a considerable staff presence in both organizations and so do European nations (Faini and Grilli, 2004: 6-7).

Woods (2003: 16) notes that many members of staff hold PhD in economics and finance from the U.S. or UK universities. More than fifty percent of the senior managers belong to the U.S., the UK, Canada and Australia. According to Keynes (1971: 89) the World Bank and IMF were formed with the understanding that there will be no political interference by any power, group or country. Nevertheless, the dominant role of the U.S. can be seen and felt in these institutions right from the beginning. In a way, these institutions are promoting the U.S. strategic and financial hegemony over the member states.

⁵⁷ At present, the voting power of U.S. in IBRD is 16.40% (IMF, 2009c).

Swedberg (1986) provides an extensive analysis of the World Bank and IMF policies and points out that some critical issues like, political appointments on key posts, the U.S. Veto Power, Weighted Voting Power, direct and indirect interference of the United States had shattered the concept of “Economic Neutrality” of both the institutions. Below are some of the countries and their voting power in the World Bank and IMF.

Table 3.9 Voting Power of Member States in the World Bank and IMF

Country	No. of countries in Group (IMF & IBRD)	Size of Group in IBRD (%)	Size of Group in IMF (%)
The United States	Appointed	16.40	16.77
Germany	Appointed	4.49	5.88
France	Appointed	4.31	4.86
Japan	Appointed	7.87	6.02
The United Kingdom	Appointed	4.31	4.86
China	1	2.79	3.66
Russia	1	2.79	2.69
Saudi Arabia	1	2.79	3.16
Belgium	10	4.80	5.14
Netherlands	13	4.52	4.78
Italy	7	3.51	4.10
Finland	8	3.34	3.44
Switzerland	8	3.04	2.79
Australia	13	3.45	3.44
Canada	12	3.85	3.64
Venezuela	8	4.50	4.45
Egypt	13	2.91	3.20
Indonesia	13	2.54	3.52
Iran	7	3.19	2.42
Brazil	9	3.59	2.42
India	4	3.40	2.35
Peru	6	2.32	1.96
Kenya	20	3.36	3.01
Rwanda	23	1.92	1.35

Sources: “MF Executive Directors and Voting Power” April 18, 2009. <http://www.imf.org/external/np/sec/memdir/eds.htm>; “Voting Power of Executive Directors”, April 18, 2009. <http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDEdsVotingTable.pdf>

It is evident from the above table that the U.S. has more voting power than its original voting weight with the contribution of only 13% in comparison with the

other member states which have less voting power than their voting weight. The weighted voting system creates disparity and clear bias among the U.S. and other member states especially in the developing world. Moreover, the selection criterion of Directors in the 'Executive Board' creates another inequality by empowering some of the rich European countries with more voting power than their voting weight on the one hand and on the other, by disempowering the majority of Developing Countries by the way of giving less voting power as compared to their actual share (Paloni and Zanardi, 2006: 6, Abouharb and Cingranelli, 2007: 108).

For the most part, the World Bank and IMF lending have been used to protect the geopolitical and economic interests of the United States. The World Bank approved loans for Yugoslavia when it came out of Soviet control in 1948. These loans were backed by the U.S. government as a policy objective of the cold war era. Moreover, a series of World Bank loans were sanctioned for Nicaragua in return for providing the U.S. an expedient "base for prosecuting the Cold War in Central America" (Woods, 2006: 33). A support amounting 1.2 billion U.S. dollars by the World Bank has been approved to decrease the influence of pro-Soviet Iraq during 1957-74. In March 1966, the Bank protected the U.S. strategic interests in Southeast Asia when army dictator General Suharto took control of Indonesian government although his regime was facing charges of corruption, human rights violations and liability to meet the Bank's condition but all were ignored (Ibid).

The U.S. led IFI regime helped Pakistan during the Soviet invasion of Afghanistan. In December 2001, Pakistan obtained considerable financial lending from the IMF as a reward of services offered to the U.S. during the Soviet "invasion of Afghanistan". The amount of lending was questionable because it was double the previous one.

Momani stresses that the U.S. had created an impression that without its backing Pakistan would not be able to obtain loans and after that received the gratitude of making a favourable atmosphere for IMF assistance to it (Momani, 2004). Pakistan might have faced difficulties in getting loans from the World Bank and IMF had it reneged on its promise to support Washington in the war on terror (Vreeland, 2007: 41-42).

The American Mutual Security Act of 1951, S. 511(b) endorses the same principle in relation to U.S. financial assistance: “no economic or technical assistance shall be supplied to any other nation unless the President finds that the supplying of such assistance will strengthen the security of the United States” (Woods, 2006: 34).

The Breton Wood Institutions are highly politicised regarding their role in the field of economic policies, which are influenced by the United States. These institutions are being used by the U.S. for protecting its geopolitical, economic and geo-strategic interests in the World. Woods (2003: 15) suggests that the leading staff in both international Financial Institutions serve the interests of the U.S. and “never present a recommendation which risked U.S. disapproval”. The senior managers always mindful not to incur the wrath of the power players and so are more than inclined to rubberstamp funding requests that suit them.

3.5 CONCLUSION

The chapter has set out to argue that the geo-strategic position of Pakistan has largely been used for the advancement of U.S. interests in the region. It has demonstrated that the World Bank and the International Monetary Fund were created by the Bretton Woods Agreements and the purpose of their creation was to provide financial and economic support to war-torn Europe after World War-II. The focus of

the Bretton Wood institutions later shifted towards developing countries to help with balance of payment adjustments, poverty related programmes, structural reforms, reconstruction and growth plans in the developing countries.

The experience of developing countries with the World Bank and IMF participation in their economies has been mixed. Supporters of these institutions argue that their assistance is necessary in solving the economic problems of the member countries. However, opponents of the World Bank and IMF roles in the economies of developing countries make a case that these institutions have created myriad problems for the member countries. They charge that these institutions are highly politicised and in turn make decisions based on political considerations, rather than mindful of the economic realities of a particular member country. The major criticism is on “conditionalities” attached to the loans, which cause complications for the achievement of sustainable economic development in the member countries. It is evident that internal factors are also responsible for the failure of Structural Reform Strategies but most of the policies of IFIs are aggravating the situation because of political involvement in their decisions. The dominant position of weighted ‘Voting Power’ and effective ‘Veto Power’ of the U.S. in the decisions of World Bank/IMF is creating disparity among member countries.

As far as Pakistan is concerned, poverty reduction has been the major focus of both institutions. There is a contradiction in the policy framework of the programmes introduced by the World Bank and IMF as on the one hand these institutions are interested in the efforts to reduce poverty and are ready to provide funding but on the other hand emphasise the privatization of public institutions, withdrawal of subsidies and deep cuts in public expenditure. Pakistan is facing serious problems of increasing

poverty, heavy burden of external debts and the soaring inflation rate since the introduction of World Bank and IMF Structural Reforms in its economy.

CHAPTER FOUR

THE CONCEPTUAL UNDERPINNING OF GOOD GOVERNANCE AND RULE OF LAW IN THE INTERNATIONAL FINANCIAL INSTITUTIONS

4.1 INTRODUCTION

This chapter aims to contextualize the concepts of good governance and rule of law and their relevance to economic development. For the last two decades, the International Financial Institutions (IFIs) have been focussing on good governance and rule of law as drivers of development. The Millennium Development Declaration adopted by the United Nations in September 2000 identified good governance as an effective tool for the eradication of poverty and realisation of sustainable growth. The accountability and transparency mechanisms within the IFIs are considered as key to its internal governance. It is important to note that these issues have become significant in contemporary IFI strategies in Pakistan.

In order to understand these diverse conceptions, the chapter has been structured in five parts. Part II examines the notion of good governance and recent trends in the IFIs developmental perspective. Part III undertakes a historical overview of the rule of law and its application in contemporary world through IFIs. Part IV considers the internal accountability and transparency mechanisms of the World Bank and IMF in relation to good governance. Part V concludes the chapter and summarises key arguments.

4.2 DEFINING ‘GOOD GOVERNANCE’

Good governance is a broader term that includes the rule of law. Also, as mentioned in the previous chapter, there are factors⁵⁸ that are responsible for the paradigmatic shift in the policies of IFIs towards good governance and rule of law as major conditionalities for borrower countries. In this chapter, the term good governance as

⁵⁸ See section 3.3 of last chapter for further details

a policy objective and key conditionality of the IFIs for borrowing countries and the notion of rule of law in reference to IFIs will be examined. It will further look at the accountability and transparency mechanisms in relation to functions provided by the IFIs.

The expression governance originated from the Greek word *kubernan*, which means, to steer. The term governance has been elaborated by the American Heritage Dictionary as “the act, process, or power of governing; government;” whereas the Oxford Advanced Learner’s Dictionary defines it as “the activity of governing a country or controlling a company or an organization; the way in which a country is governed or a company or institution is controlled”. The concept of good governance is relatively new. Although there is no comprehensive and uniform definition of good governance, there have been attempts by scholars, United Nations and IFIs to expound the notion (Chowdhury and Skarstedt, 2005: 13).

According to the World Bank, good governance means “the manner in which power is exercised in the management of a country’s economic and social resources for development” (World Bank, 1992:3). The Bank further explains that good governance facilitates open and progressive policy-making. It ensures that countries are able to attain financial progress, social progress and strong institutions. Achieving it though depends on the capability of countries and how they plan, prepare and execute strategies as well as assume responsibilities (1994). The World Bank’s interest can be traced back from its finances to the countries for sustainable growth as poor governance can risk its lendings if not properly utilised.

United Nations Development Programme (1997) suggests that governance means an application of monetary, executive and political power to administer all problems of

the state at all stages. It embodies means, procedures and organizations, through which people individually as well as collectively express their concerns, use their lawful rights, fulfil their duties and resolve their disputes.

For the last two decades, the issue of good governance attributed a significant attention to the achievement of sustainable economic development in international financial governance (Rittich, 2005: 200). In the 1990s, issues such as the collapse of communism in the former Soviet Union, the growing geopolitical interests, the 'neo-liberal' economic hegemony and the increase of multinational corporations draws the attention of World Bank towards the role of law in development. The contemporary conception of Law and Development Movement (LDM), which initially started in America, was premised on the belief that law might expedite the social, political and economic association of third world countries with the western world (Barron, 2005: 5; Rose, 1998: 94). The development partners recognized two significant functions of the Rule of Law. Firstly, ROL as a guarantee for the smooth performance of a market economy, a safeguard for property rights, third party implementation of agreements, and a reputable market friendly atmosphere. Secondly, ROL can facilitate good governance, the appearance of a democratic set up, and the protection of fundamental human rights. The modern LDM enhanced the ROL expression and clearly grasp it to use as an objective for development strategy. Since the 1990s, the World Bank has provided 2.9 billion dollars for 330 ROL related assignments (Barron, 2005: 9; Trubek, 2004: 2).

The primary focus of the Bank's policies was to consider the legal system simply as practical instrument free from any political influence and impartial in connection with ethical and philosophical matters. This concept was suitable for floating the

market-fundamentalist approach at the international level authorised by the Washington Consensus⁵⁹ (Williamson 1999). The Washington Consensus considered as a powerful and only potential choice or replacement for the communist led market-based strategies for better development objectives to the global world. The World Bank and IMF put pressure on the states by way of strict conditionalities attached with their lendings who were not willing to welcome the Washington Consensus. One significant feature which convinced the developing states to acknowledge the novel economic concept was the changing nature of global legal institutions. The creation of WTO in 1995 and numerous business pacts and trade conventions gave strength to the new economic shift and provided a favourable atmosphere for supplementary descriptions of the Washington Consensus (Ibid).

As shown in chapter 2, Sen's perception of development is different to the other writers. He is of the opinion that development is not only concerned with economic growth but also in a broader sense, indispensable in the realisation of the individual's capabilities. Sen has provided a new approach to the developmental thinking of a contemporary society and said that the development actors and intellectuals must include all spheres of social life such as legal, social, economic and political as they contribute to the growth procedure. These factors of social life worked collectively but each one equally bears a significant responsibility to increase individual's capabilities. He suggests that it is useless to provide rights to socially and

⁵⁹ The expression 'Washington Consensus' was primarily introduced by the U.S. economist John Williamson in a background paper entitled 'What Washington means by Policy Reform' to refer to policy package advocated by the influential Washington-based institutions, particularly, the World Bank, IMF, the U.S. Treasury and neo-liberal think-tanks. In the beginning it was designed for implementation in the Latin American countries in 1980s, but later on the scope of Washington Consensus was broadened to include rest of the developing countries. The key elements of the Washington Consensus were fiscal discipline; financial liberalization and capital account liberalization; trade liberalization; liberalization of foreign investment regime; market-based exchange rate; deregulation; privatization; labour reforms; tax reforms and protection of property rights (Williamson, 2004: 2-4; 2002).

economically disadvantaged peoples without securing them from other key obstacles in their way of practicing these rights. Sen is of the opinion that the World Bank can formulate an efficient policy for legal and judicial development provided it has been able to draft some relationship between law and other parts of social life. Moreover, he points out that focus on law and market is significant but without establishing a relationship between the legal and the social spheres is counterproductive (Sen, 2006: 38, 47-48). However, the Bank's legal branch or legal officers did not take into consideration Sen's recommendations to establish this relationship (Faundez, 2009: 4, 9).

In 1999, the Poverty Reduction Strategy Papers (PRSPs) were introduced in order to quash the rigorous outcomes of Structural Adjustment Programmes (SAPs). The Poverty Reduction Growth Facility (PRGF) of the PRSPs was declared as a pre-condition for applying further lendings which includes conditionalities in shape of privatization and liberalisation. Of course, these generally come at the expense of the poor having access to basic facilities of life such as health and education. The borrower countries were however, unable to implement them completely (Wood, 2006; Chidaushe, 2008: 2). The PRSPs approach adopted four dimensions to poverty reduction. The four core elements were “‘pro-poor’ growth, focusing on ‘empowerment creating growth’... investment in human capital typically the health and education sectors... ‘good governance’ which has grown from anti-corruption and public accountability measures... ‘social safety nets’” (Craig and Porter, 2001: 1). However, the results of various studies commissioned by the United Nations Commission on Human Rights, Independent Researchers and NGOs illustrate that PRSP-PRGF are the replacement of the same SAPs programme and both the World Bank and IMF have not been successful in demonstrating the effectiveness of their

strategies to decrease poverty (Joy, 2003: 21; Focus on the Global South, 2003: 17). The lacklustre results of the Structural Adjustment Programmes especially in African countries considered as the major reasons for change in the policies of IFIs (Jauch, 1999: 4). The World Bank in its 1989 report on *Sub-Saharan Africa: from Crisis to Sustainable Growth* identified the element of lack of governance as a considerable cause for the African Development Crisis (Curtin and Wessel, 2005: 81; Singh, 2003: 6).

Michel Camdessus concedes that:

The widening gaps between rich and poor within nations, and the gulf between the most affluent and most impoverished nations, are morally outrageous, economically wasteful, and potentially socially explosive. Now we know that it is not enough to increase the size of the cake; the way it is shared is deeply relevant to the dynamism of development. If the poor are left hopeless, poverty will undermine the fabric of our societies through confrontation, violence, and civil disorder. We cannot afford to ignore poverty, wherever it exists, whether in the advanced countries, emerging economies, or the least developed nations. But it is in the poorest countries that extreme poverty can no longer be tolerated; it is our duty to work together to relieve suffering (IMF, 2000).

In practice, the international agencies including the IFIs introduced a major shift in their policies. In reference with the issues referred above and in the previous chapter that although the strategic interests of big powers are still active, they have provided an opportunity to third world countries through the IFIs to develop better conditions of good governance and rule of law which had not been previously considered. The IFIs incorporated good governance as an essential element in their policies for borrower countries seeking for new lendings. The former United Nations Secretary

General Kofi Annan perceived good governance as key to development noting that “good governance is perhaps the single most important factor in eradicating poverty and promoting development” (Abdellatif, 2003: 1). At the present, it is almost impossible to receive aid from bilateral as well as multilateral loan packages without a pledge to undertake good governance measures (Singh, 2003: 2; Wouters and Ryngaert, 2004: 15).

The question that arises here is whether the governance structures introduced by the IFIs are universal in their character or vary from country to country? Wouters and Ryngaert note that the international governance or good governance structures of the IFIs are not different from the national good governance structures. The key elements of good governance like participation, accountability, transparency and efficiency can be applied globally because of their universal character. They consider that the appropriate elements of good governance portrayed by the IFIs are essential for every one (2004: 14).

Diamond is of the opinion that whilst there are various aspects of good governance, the following five key elements are significant to the concept of well-established civic society. The first one is *the capacity of the state*, which means to serve for the betterment of society by having better understanding of policies and set of laws and to train the public servants in their respective fields. It also requires a capable bureaucracy that encourages reliability to public policies and obligations relatively by providing incentives to those officials who carry out their duties well. While addressing the second element, which is *commitment to the public good*, he poses a question on the establishment of this fidelity. Then he suggests that the devoted and committed administration may produce it or it may originate from a system of moral

standards or principles of the society that understands and a development of institutional inducement that rewards well-organized service to a common person or society. In each contemporary society, it must be the responsibility of institutions to punish for any breach of public trust (Diamond, 2005: 4).

The third element is *transparency*, which involves the general public access to information about the governmental policies, financial matters, public procurement and personal assets of public servants including politicians. He observes that the fourth element *accountability*, which closely linked with *transparency*, requires that all the governmental authorities should be responsible for their unjustified acts before the public as well as to some particular body that is fully authorized to check their conduct and can enforce sanctions in case of any misconduct (Ibid).

The fifth element is *the rule of law*, which demands that everybody is equal before the law regardless status. The rule of law is the only viable option to safeguard peoples from capricious acts of influential public and private groups. Diamond concludes that if these five elements of good governance are observed properly, they can generate a collective aspiration culminating in the adherence to law which are not only important for political progress, but also crucial for investment and market friendly environment (Diamond, 2005: 5).

The World Bank, IMF, ADB and UNDP have adopted similar approaches and paid significant attention to the four key elements of good governance. Kaufmann et al (1999: 2-3) have identified six key indicators of good governance. These are:

- ♦ **Voice and Accountability (VA)** – This represents the extent to which a country's citizens are able to participate in selecting their government, as well

enjoy freedom of expression, freedom of association, and a freedom of the press.

- ♦ **Political Stability and Absence of Violence (PV)** – This is the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically motivated violence and terrorism.
- ♦ **Government Effectiveness (GE)** – This relates to the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.
- ♦ **Regulatory Quality (RQ)** – The ability of the government to formulate and implement sound policies and regulations that permits and promotes private sector development.
- ♦ **The rule of law (RL)** – The extent to which agents have confidence in and abide by the rules of society, and in particular, the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
- ♦ **Control of Corruption (CC)** – The extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests (See also Santiso, 2001: 5; Trebilcock and Daniels, 2008: 7).

Michael Camdessus,⁶⁰ the former President of the IMF has suggested that:

Good governance is important for countries at all stages of development. . . Our approach is to concentrate on those aspects of good governance that are most closely

⁶⁰ Former IMF Managing Director, July 2, 1997.

related to our surveillance over macroeconomic policies—namely, the transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity (IMF, 1997).

The World Bank in its consecutive reports of 1992 and 1994 highlighted the importance of ‘good governance for Development’. It concludes that the measures of liberal economic policies, transparency and predictability in governmental policies, effective administrative accountability mechanisms in the context of strict checks and balances over the actions of decision-making bodies, public and private partnerships, are all desirable indicators for sustainable economic growth (Ghosh et al, 1999: 2).

The Asian Development Bank acknowledges that accountability, participation, predictability and transparency as four core elements of good governance. The bank emphasised the establishment of effective accountability mechanisms in order to check the efficiency of public officials. Participation means encouragement of the public and private partnership in all areas including devolution of power at grass root level. Predictability requires a congenial and fair environment for the resolution of financial disputes, just and efficient government policies and laws. Moreover, transparency promotes the awareness of governmental policies, rules, regulations and judgments to the public. Access to information clarifies governmental policies, which may ultimately boost economic activities in the private sector and reduces corruption in public offices (ADB, 1995: 8-12).

The UNDP adopted accountability, transparency, participation, rule of law and equity as fundamental elements of good governance. Taken together, they ensure the

economic, social and political preferences, the rights and voices of the impoverished peoples in the distribution of growth incomes. Governance splits up into the three branches: “administrative, political and economic”. ‘Administrative governance’ is the procedure of policy execution. ‘Political governance’ is the course of management to plan strategy. ‘Economic governance’ means administrative procedure that influence a country's economic performance and its associations with other economies (UNDP, 1997).

Haq proposed the concept of “humane governance” which means the contribution of the peoples in state, public and private partnership which is favorable for human development. Haq’s three tier conception of “humane governance” based on “good political governance”, “good economic governance” and “good civic governance” are similar to the three subsets of governance adopted by the UNDP. Haq further noted that ‘good political governance’ in terms of accountability, transparency and the rule of law are impossible to achieve without the contribution of independent and unbiased legal and democratic institutions. Good economic governance is closely related not only to the efforts of financial strength, safeguards to property rights, promoting friendly environment for economic activities but also to the equal distribution of wealth and social justice as well. The third element consists of civil society groups such as the media, specialist groups and corporate sector. These are considered effective devices for protecting the primary human, economic and political rights of impoverished minorities which are not covered by the other two elements of “humane governance” (Haq, 1999: 8).

4.2.1 Impediments of ‘Global Governance Agenda’

One of the key problems considered as a major obstacle to good governance in the third world is the huge foreign debts portfolio of these states. Kananaskis (2002) considers that ‘debt relief’ is not an assurance for a long-term economic growth or progressive fiscal development. The heavily indebted poor states can attain their objectives if they pursue principles of good governance.

There has been a lot of debate in academic circles over the issue of debt relief to Heavily Indebted Poor Countries (HIPC) especially in the late 1980s and 1990s. The powerful nations and IFIs realised that the debt burden on the developing countries is a major obstacle to development. The World Bank has taken some steps to decrease their debt burden by placing emphases on exports. Moreover, the HIPC programme was designed to provide debt assistance to heavily indebted countries (Welch and Nuru, 2006: 170). However, the most important question here is to what extent has debts relief reinstated the process of development in these states? Different scholars have approached this question differently. Easterly (2002) notes that poor states have been rewarded enormous debt reliefs which in turn resulted in bad strategies and poor institutions as well as in creating ethical vulnerability in order that bad course of action remains persistent in these countries. Sachs (2002) perceives this issue in a different way and acknowledges the debt relief as a little incentive that was not enough to pay the foremost creditors as well as insufficient to support development or poverty alleviation.

Bräutigam advocates that foreign aid linked with good governance can play a constructive role a country’s progress. The countries that have better conditions of rule of law, well-established public institutions and strong political leadership enjoy

economic development and individual progress. However, the present aid programmes are more supportive of bad leadership than good ones and aid administrators who spend public money on worthless projects receive more incentives and as a result, rarely produce meaningful results. Bräutigam on the other hand suggests that in some particular cases the donors and borrowing countries should decide to stop most of the assistance programmes in ten to fifteen years after getting some strength in their economic growth. To support his argument, he gave the examples of Taiwan and Botswana, who have minimized their reliance on foreign assistance considerably. This has allowed them to raise the standards of living of their peoples. These two countries under strong leaderships relied on their private sectors as a tool for development and an increase in foreign exchange through export promotion, which ultimately provides them a launching pad for their economy towards a self-sufficient economy (Bräutigam, 2000: 54).

Combatting corruption has been identified as another key element of 'good governance' by the IFIs. (Hobbs, 2005: 2). For the last decade, the menace of corruption had become a priority for the World Bank especially in relation to its governance policies in the third world. Recently, the Bank declared 'zero tolerance' towards corruption or the misappropriation of funds disbursed to the borrowing countries (World Bank, 2004: 2-3). However, the issue of Corruption will be discussed in greater detail in chapter 5.

There is a wealth of materials on reform strategies, which point out those political conditions have deep impact on financial performance of a country. The studies provide a broad analysis of continuing relationship between economic development and good governance (Shimomura, 2005: 1). Sharma (2007) and others suggest that

“political and economic institutions” are the two key features, which provide a favourable environment for better economic performance (Acemoglu et al, 2002: 56). Poor Governance is not only a dilemma for states but also constitutes a major hurdle in the functioning of formal institutions. The elements of good governance can only be achieved by building state capability. Sharma concludes that good governance is not only effective for the protection of human rights but also invaluable for economic growth and development of living standards (Sharma, 2007: 30, 34, 53).

Gill on the other hand, points out that the disciplinary neo-liberalism consists of three “C’s” “Credibility, Consistency and Confidence”. He describes “disciplinary neo-liberalism” in terms of the three C’s as; a government should have strong institutional infrastructure, “consistency” in its laws and policy-making and reliability in its application as well as to remove the insecurity of investors by protecting property rights, enforcing predictable economic policies, ensuring better law and order situations (2000:4).

Bendana is of the view that good governance determines efficiency in relation to market-friendly developments and private sector reforms. He asked whether the markets are acquiescent to democratic institutions as publicized by the World Bank 2002 document’s heading “Building Institutions for Markets?” (World Bank, 2001) It is worth noting that the state is an important mechanism in supporting progress which is widely accepted by the World Bank in its pro-market strategies of the 1980s in “the World Development Report of 1997 - the State in a Changing World” (World Bank, 1997). In this document, the indirect role of the state as a collaborator and facilitator has been well articulated. However, the good governance reform strategies

are going to be implemented by rich powerful nations and international corporations very cautiously circumvent the queries relating to the real purpose and focus of the development. The rich powerful nations who are driving the development agenda make use of it to fulfill their personal interests (2004: 2-3).

4.2.2 The Millennium Development Goals (MDGS)

The United Nations 2005 World Summit Outcome adopted a number of resolutions:

To reaffirm that good governance is essential for sustainable development; that sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation; and that freedom, peace and security, domestic stability, respect for human rights, including the right to development, the rule of law, gender equality and market-oriented policies and an overall commitment to just and democratic societies are also essential and mutually reinforcing (UN, 2005: 7; UN, 2007: 16).

The United Nations held development symposiums during the 1960s to 1990s which ultimately resulted in the Millennium Development Goals (MDGs). The United Nations emphasized economic development in its first three decades (1960s-1980s). In the 1990s, the United Nations shifted its trend towards the issues of “good governance, the rule of law, powerful institutions, economic stability and eradication of poverty, social justice and control of corruption” and introduced MGDs. The Millennium Development declaration was adopted by the General Assembly of the UN in September 2000 (Wagner (2000); UNAIDS; Alarcon (2003: 37)).

The main emphasis of the Millennium Development Declaration is on the following:

- 1- Eradicate extreme poverty and hunger.

- 2- Achieve Universal Primary Education.
- 3- Promote Gender Equality and empower Women.
- 4- Reduce Child Mortality.
- 5- Improve Maternal Health.
- 6- Combat HIV/AIDS, malaria and other diseases.
- 7- Ensure environmental sustainability.
- 8- Develop a global partnership for development (Abdellatif, 2003: 1).

The United Nations Millennium Development Declaration has gone through a series of scrutiny and validation processes. The first was the Doha Round on international trade in 2001, and the second, in March 2002, was reaffirmed in Monterrey, Mexico during the ‘International Conference on Financing for Development’ when heads of the powerful nations developed a structure for international progress with strong emphasis on Goal 8. After that, In Johannesburg, South Africa, the United Nations member states participated in the ‘World Summit on Sustainable Development’ and discussed environmental issues in relation with Goal 7 of MDGs. Again, in 2005 World Summit Outcome it was emphasised that the developing nations should streamline their ‘national development’ framework according to the Millennium Development strategies by the end of 2006 (UN, 2007: 1-2).

The UN Secretary General has nominated UNDP to act as the custodian of the Millennium Development Goals. Its role as custodian is to assist in securing national agreement around the MDGs and to observe development by publishing national MDGs Reports. However, the MDGs are economically reasonable and possible to achieve. It simply requires cooperation and finances of world powerful nations. It is estimated that fifty billion U.S. dollars is needed annually to realise the stabilisation

of developing nations, especially in Sub-Saharan Africa. Therefore, it will consume a small portion, which is just 0.16 of 1% of annual global income. (Alarcón, 2003: 38).

In the MDGs good governance is identified as an effective tool in the eradication of poverty and sustainable growth. The World Bank is considered as a pioneer International Financial Institution that attached good governance as one of the conditionalities to loan recipient states (Chaudhry, 2009: 339). It is highly appreciated that the World Bank, the IMF and the United Nations have declared Millennium Development Goals as policy objectives for the achievement of real development at the country level (Welch and Nuru, 2006: 170). In the 1990s, the IFIs through a considerable change in its policies made it mandatory for the borrower countries to implement and establish rule of law under the good governance agenda in their countries before applying for further lendings (Tamanaha, 2003: 3).

4.3 THE CONCEPT OF RULE OF LAW

John Locke (1980: 32) said:

The end of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For, in all the states, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law: and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.

The phrase 'rule of law' is derived from the French expression *la principe de legalite* (the principle of legality). It demands that a government must be structured on the principles of law so as to mitigate arbitrary powers (Singh, 2007: 112; Massey, 2001:

21). In some ways, the concept of rule of law dates back to the old concept delivered by Coke and Dicey. There is a perception that Sir Edward Coke was the initiator of this notion of the rule of law in England. Coke said that the authority of king is not supreme but subject to God and law and in this way he declared the authority of law supreme as compared to executive authority (Wintgens, 2007: 60).

The World Bank and IMF have been involved in legal and judicial reforms since the 1980s. Despite this development, some scholars have suggested that rule of law may be a highly sensitive subject matter due to its political nature. Others argue that these reforms are implemented without taking into consideration the particular circumstances of host countries. However, in reference to these reforms, some of them still insist that the procedure is extremely complicated and extensive as it is much difficult to transform the legal and social attitudes within a short time. Therefore, the Bank modified its reforms agenda from time to time after growing pressure from the critics. The World Bank soon acknowledged that it is almost impossible to achieve success without taking into consideration the institutional structure within which law is entrenched. As a result, it became the main reason for bringing governance agenda into legal reform, which expanded its scope towards broad development framework (Tshuma, 2000; Nader, 2006; Upham, 2002; Faundez, 2000; Carrothers, 2003; Davis and Trebilcock, 2001).

4.3.1 Diceyan Concept of the Rule of Law

Magna Carta 1215,⁶¹ known as the first formal great charter of freedoms or the constitution of liberties in England states that “no free man shall be taken or imprisoned or diseased or exiled or in any way destroyed, nor will we go and send

⁶¹ Magna Carta 1215 is known as the first written charter of English liberties, which was given by King John on pressure from the people. Many of the provisions of Magna Carta are still a part of the present constitution of UK. (See for more details Encyclopaedia of Britannica p. 628)

for him, except under a lawful judgment of his peers and by the law of the land” (Magna Carta, 1215, Clause 39). In the late 19th century, A.V. Dicey promoted this dictum of rule of law in series of lectures delivered at Oxford University. Dicey was strongly against the investiture of wide discretionary powers in the hands of executive authorities and in his opinion “wherever there is discretion there is room for arbitrariness” (Dicey, 1885: 198). AV Dicey builds up the idea of Sir Edward Coke in his book ‘The Law of the Constitution’ written in 1885. Dicey’s concept of the rule of law is based on three fundamental principles:

- 1) Supremacy of Law;
- 2) Equality before Law;
- 3) Predominance of Legal spirit.

In his first principle, Dicey emphasised the need for the supremacy of law which mitigates the abuse of power. He noted that “no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land” (Dicey, 1885: 172). The principle is about the removal of wide discretionary powers from the English legal system and the supremacy of law and law alone (Gordon, 2005: 2-3).

The second principle pertains to the equality before law. According to Dicey, when we consider “rule of law” as the guiding principle, it requires that all citizens including public officials are equal and no one is above the law. He added that every man whatever his rank, position or status is subject to the ordinary law and ordinary courts of the land and no preferential treatment will be given to any person, as all are equal in the eyes of law. Dicey made critical comments about the *‘Droit*

*Administratif*⁶², in France. He argued that the dual system of courts in France which creates disparity by treating public servants and citizens at different legal systems negate the principle of equality.

In the third principle, Dicey observed that the present constitution has been developed by the judgments of the English courts. He explained that the cases, which were presented before the court for the determination of individual rights and these decisions of the courts developed the constitution. Therefore, in a way, Dicey declares that the English courts are the protector and guarantor of the rights of individuals (Dicey, 1885: 208).

During Diceyan period, many of the administrative tribunals were established in England, which clearly denies his discourse of the rule of law. Dicey strongly criticised the French concept of '*Droit Administratif*' but Dickenson considers Dicey's approach as unreasonable. He said that the French administrative system is better than the common law system as it is functioning well because of the nature of control of powers of the administrative authorities. He added that the '*conseil d'Etat*' (the council of state) is no doubt a part of executive but practically a court (Dickinson, 1927: 35-37).

The question that may be asked here is to what extent has Dicey's theorisation of the rule of law as discussed above relevant to Pakistan. In addition, how might his vision relate to the complex social order that characterise modern Pakistani society? To establish this, it is imperative to note that Dicey's notion of the rule of law was conceptualised within a mind frame of a well-ordered society based on certain

⁶² In France, there is a concept of dual legal system such as special tribunals and special laws for public officials and common law and common courts for ordinary person (Apple and Deyling, 1995: 25).

western values and *Westphalian* model of the nation state. Although Pakistan may conform to some of these, its complex social order as subsequent chapters will show, give rise to serious challenges.

4.3.2 The Modern Concept of Rule of Law

The Diceyan concept is different from the modern concept in a number of ways. The Diceyan notion of ‘the rule of law’ provides a strong basis but is unable to fulfil the requirements for its application in a contemporary society. Dicey’s three fundamental principles are narrow in their function whereas the modern concept of ‘the rule of law’ introduced by the IFIs is broader in its meaning and outreach, which entails ‘a universal human good’. It sets out guiding principles for all modern day governments for the realization of their objectives in the legal, economic and social spheres.

Rawls describes the rule of law as the rule of a structure of reasonably clear set of laws which have some bearing with the function of social organization (1971: 235). Raz like Rawls calls upon ‘the social coordinative function of the law’ and asserts that “the rule of law means literally what it says: the rule of laws. Taken in its broadest sense this means that people should obey the law and be ruled by it...this is the basic intuition from which the doctrine of the rule of law derives: the law must be capable of guiding the behaviour of its subjects...” (1983: 212, 214).

Chen took a new approach and presented the Diceyan concept of rule of law in a contemporary society that:

- (1) No arbitrary exercise of governmental power in excess of its authorization is permitted;
- (2) both the government and private citizen are subject to the law with all classes of people entitled to a fair and equal procedure in any court of law; and
- (3) the courts shall be strengthened to enforce constitutional rights;

otherwise abstract constitutional statements are merely a bill of rights in a book (Chen, 2000: 107).

Tamanaha observes that there are different thoughts about the meaning of the rule of law as few think that it safeguards personal rights. Some of them consider the democratic set up as an integral part of the rule of law. Others note that the rule of law requires an equal treatment of laws for all persons, which should be clear and informed beforehand. Many also describe the rule of law as ideal for the achievement of economic, social, educational and cultural objectives in a lawful and dignified manner (2004: 3).

Amartya Sen (1999) articulated in his 'Development as Freedom' that freedom is used to endorse not only economic development but also to enhance the human capabilities in the wider sense. Development as Freedom enhances the promotion of human rights and the rule of law as policy objectives or tools to achieve higher standards of development. Similarly, the IFIs realized the same thing that the social concerns cannot be ignored in the process of development (Rittich, 2005: 202).

Therefore, the IFIs have also played a role in devising a modern concept of the rule of law. The new perception of the rule of law formulated at the International Commission of Jurists⁶³ offered a contemporary thinking of the notion. The International Congress of Judges, practicing lawyers, scholars and Jurists of law from almost 53 countries, gathered in New Delhi in January 1959 to discuss and analyse the conditions of rule of law and the dispensation of justice all over the world. The participants argued that the principles of rule of law demands governments to

⁶³ The International Commission of Jurists recognised as Delhi Declaration, 1959, arranged to openly discuss and analyse the conditions of rule of law and the dispensation of justice all over the world, through evaluating the criminal process, legislative, the executive, the judiciary and the legal profession. It was later verified at Lagos in 1961 (Harlow, 2006: 197; Sharma, 2004: 128).

provide friendly environment where individual rights could flourish. The dignity of human beings should be ensured by safeguarding their economic, social, cultural, political and educational rights, which are the important fundamentals of rule of law (Chitkara and Sarma, 1997: 263; Harlow, 2006: 197; Sharma, 2004: 128).

The Delhi Declaration, 1959 noted that:

[the] ...function of the legislature in a free society under the rule of law is to create and maintain the conditions, which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality (Raz, 1983: 210-1).

Ibrahim Shihata (1991: 85), the World Bank General Counsel warned that development strategy may not be helpful in the absence of a structure. He further outlined the components of the rule of law:

a) there is a set of rules, which are known in advance, b) such rules are actually in force, c) mechanisms exist to ensure the proper application of the rules and to allow for departure from them as needed according to established procedures, d) conflicts in the application of the rules can be resolved through binding decisions of an independent judicial or arbitral body and e) there are known procedures for amending the rules when they no longer serve their purpose (Shihata, 1991: 85).

Faundez (2009: 3) classifies Shihata's approach as "low-keyed" but clear in its meaning suggesting that the set of laws and institutions must protect market principles of supply and demand that should work without any capricious state act or by unnecessary intervention of the local leaders.

The World Bank identifies five key factors for the promotion of rule of law concept and suggests that every legal system of the world should include as its integral part. Firstly, people should be sensitised about their rights, which helps to guard against rights violation. The bank is concerned about the consistency, transparency and efficiency of laws and as a result attached certain conditionalities with its lendings relating to the ratification and amendment of country's laws such as access to information and the publication of official gazettes. *Secondly*, there should be some practical application of laws. Several developing countries adopt foreign laws in their legal system, which are not compatible with domestic conditions or to "economic, social and technological change" (World Bank, 1992: 32). To draft a new law in replacement of the existing one which is not in operation or temporarily inactive is not the only solution. To analyse the existing laws critically that are temporarily inactive or not in practice is a more viable and pragmatic approach. Law requires a strong institutional set up for its implementation. In recent years, the Bank has been focusing on developing the effective and proficient judicial structure in particular to reform the tax collection procedure and security regulations in order to seek guarantees over the recovery of debts (World Bank, 1992: 32-34).

Thirdly, there should be a proper application of Laws not only on private subjects but also on public officials as well. The acts of governmental functionaries should be justified under some lawful authority. The appropriate and sound implementation of laws by public servants is the primary characteristic of lawful authority and a legitimate concept of justice. Although grant of discretionary powers to the executive authorities is necessary, it should be exercised under a set of guiding principles based on stability, honesty and impartiality. The World Bank is concerned about improving the executive structure in order to decrease the misuse of discretionary powers as

well as to help the states to re-examine, renew and simplify their legal structures for better financial outcomes (World Bank, 1992: 34-35).

Fourthly, there should be an efficient and strong judicial set up in order to safeguard private investment contracts and to provide protection against the arbitrary use of administrative authority. In many developing countries, judiciaries are facing serious problems such as lack of adequate facilities and proper training. The World Bank is however involved in judicial reforms like “Access to Justice and Legal Empowerment Programmes”⁶⁴ in order to develop an effective judicial mechanism for the achievement of speedy and inexpensive justice which is a key to economic development.

Finally, laws amended or waived without any due process of law are not only under the threat of noncompliance but also shake the reliability of that legal structure. The Bank is however interested in enhancing the capabilities of the concerned departments such as the attorney general, the ministry of justice and so forth to adopt proper procedures while drafting, amending and invalidating the laws. But, it depends on the initiatives of these countries while the Bank is ready to provide them proper guidance and technical support (World Bank, 1992: 35-38).

Although, there is voluminous material available to define the rule of law concept, the scholars, policy makers and international institutions have not succeeded in drafting a universal definition. As Tamanaha notes, “there are almost as many

⁶⁴ Access to justice for the Poor is a World Bank international research and growth approach intended to enlighten, design and follow pro-poor progress to justice reform. Access to justice programme is about reform strategies and provides an overview of justice according to the perception of the poor, based on the municipal and conventional framework distinguished with the claim to construct a fair justice structure (World Bank, 2011). The World Bank’s Access to Justice Reforms consists of six broad categories, which include “court reforms, legal aid, information dissemination and education, alternate dispute resolution, public sector accountability, and research” (Maru, 2009: iii).

conceptions of the rule of law as there are people defending it” (2004: 3). However, the Secretary General of the United Nations attempted a broad definition of the term:

The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UN, 2004: 4).

For the last two decades, the UN has brought a key change in its policy by emphasising national level reforms and is playing a key role in the promotion of rule of law in many countries of the world. The rule of law reforms has been provided to countries at the request of their governments. The UN is working on continuing rule of law projects in almost 110 countries worldwide including Latin America, Africa, Middle East and Asia. The UN has started in almost 10 third world countries including Pakistan the access to justice programmes and improvement strategies, constitutional restructuring and legal system development, fighting corruption, legal responsiveness and empowerment, reforms in criminal justice system, gender justice and legal justice related to children etc. The rule of law promotes issues of governance in which all subjects including the state itself is answerable to laws consistent with international human rights principles (UN, 2008: 5-7).

4.4 GOOD GOVERNANCE OF THE IFIs

The reform policies of IFIs have come under severe criticism due to their “secretive, unaccountable and ineffective” policies (Woods, 2001a). The IFIs undertake to

develop “more transparent, more participatory and more accountable” structures within their internal system (Ibid). In addition, in order to determine whether any sort of accountability mechanisms exists in the internal system of the IFIs, it is imperative to analyse the internal system of governance of these institutions. The influence of the U.S. on IFIs has been established, which has already argued, serves the geo-strategic interests of the U.S. (Momani, 2004: 886; Killick, 1995). The accountability culture of the WB has come under criticism because of its exemption from legal obligations by the member states. Under its Charter⁶⁵ the WB is exempted from legal proceedings in the local courts by the member states. Therefore, the Bank has devised several parallel accountability systems to counter these criticisms (Kaluza and Kaluza, 2008:9).

The people living in Least Developed Countries (LDCs) are often not aware of the extent to which the IFIs are responsible for their plights. There is a common perception that IFIs have very little interest in the plight of LDCs. Nevertheless, this issue is critical in its nature and needs further elaboration. In the last few years, the World Bank and IMF have been scrutinized in terms of policy prescriptions and internal governance framework. As far as the internal governance of the IFIs is concerned, the influence of the U.S. and G8 countries has been strong (Welch and Nuru, 2006: 170).

Wouters and Ryngaert are of the opinion that in spite of criticism on its policy reforms in relation to inadequate accountability mechanisms, the World Bank is considered as a pioneer institution for initiating a good governance model within the IFIs. The Bank introduced various accountability mechanisms within its operational

⁶⁵ The Bank enjoyed the immunity with regard to judicial process under Article VII Section 3 of the IBRD Articles of Agreement.

framework so as to address the issues relating to corruption and proper utilisation of aid. The Bank adopted an Information Disclosure Policy and set up a Department of Institutional Integrity, an Inspection Panel as well as Operations Evaluations Department (OED) (2004: 15).

4.4.1 The World Bank Information Disclosure Policy

The World Bank started measures to adopt a transparency policy to make it possible to access information on policies in 1993. In 2001, it was decided by the World Bank authorities to enhance access to information in a wider scale. It is specifically mentioned in the World Bank Information Disclosure Policy that:

Timely dissemination of information to local groups affected by the projects and programs supported by the Bank, including nongovernmental organizations, is essential for the effective implementation and sustainability of projects. Experience has demonstrated that consultation and sharing of information with co- financiers, partners, and groups and individuals with relevant knowledge of development issues help to enhance the quality of Bank-financed operations (World Bank, 2002a: 2).

Wolfensohn in the foreword to the Information Disclosure policy document highlights the importance of the document and said that extended access to information will develop the Bank's discourse on growth and play a significant role in the attempts to decrease poverty and encourage sustainable growth (World Bank, 2002a). During the past few years, the World Bank has provided enormous opportunities for access to information and set up a 'Disclosure Help Desk' for individuals to access its policy material. Moreover, the Bank established Public Information Centres (PIC) in many countries including the 'Info Shop' at Washington D.C. The Bank while taking into consideration the request of NGOs has provided the facility of translation support in 2003 to transform its documents into

local languages. In addition, it provides an access to information about retrospective drafts rather than the existing documents that are under process (Wouters and Ryngaert, 2004: 20). The Bank regularly uploads all the essential information including presentations, research, project reports and yearly reports on its website. The Bank modifies its information strategy from time to time to provide further information to the people (Kaluza and Kaluza, 2008: 10).

4.4.2 World Bank Department of Institutional Integrity (INT)

The World Bank was the first International Financial Institution to initiate internal accountability frameworks within its own structure. The Bank's Department of Institutional Integrity (INT) was established in 1999 by President Wolfensohn to investigate charges of fraud and corruption inside its own organization as well as allegations of indiscipline. Its procedure begins with an initial inquiry held on submission of some charges and in case of any corruption, fraud or bad behaviour may result in stoppage or suspension of further lendings. The Bank official may lose his job or face legal action if charges have been proved against him. However, if the same thing happened in case of any state, it will be the responsibility of that country to pay back the concerned lending amount. In addition, INT keeps the record of these firms and entities in its blacklist who are engaged in nefarious activities. In its functions and conduct, INT works under the directions of the Bank's anticorruption policies. It is the foremost responsibility of all the Bank's ancillary departments such as Professional Ethics Office, the Internal Auditing Department, the Legal Adviser for Procurement, Operations Evaluation Department and the Ombudsman to report without delay (TUNG, 2002: 4; Wouters and Ryngaert, 2004: 15; Kaluza and Kaluza, 2008: 12-13).

4.4.3 The World Bank Inspection Panel

The World Bank executive board established the Inspection Panel in September 1993 to develop its accountability system in response to the U.S. displeasure over the disclosure of news on the breach of the Bank strategies and measures (Enrique and Guernsey, 2008: 1). It is a self-governing institution that hears and resolves allegations filed by persons influenced by infringement of World Bank strategies and measures. The World Bank supplemented considerably in the expansion of international law by setting up this institution and earned a credit for the establishment of first decision-making body to resolve the disagreement between the individuals and international institutions. Its functions are not purely of judicial nature and the rulings are not obligatory or forcefully implemented (Enrique and Guernsey, 2008: 1; Wouters and Ryngaert, 2004: 17; Woods, 2001: 13).

The World Bank is authorised to select three members of the Inspection Panel who perform their duties apparently without any influence of the big organization. The Panel has jurisdiction to hear the charges filed by the parties of the loan receiving countries relating to the breach of World Bank strategies and measures in its project lendings. Generally, the complaints in relation with the International Bank for Reconstruction and Development (IBRD) that supplied lendings to “middle income and creditworthy poor countries” and the International Development Association (IDA) that have special focus on the most deprived states in the world are entertained in the Inspection Panel (Enrique and Guernsey, 2008: 4). Although the World Bank Inspection Panel has very restricted jurisdiction for the enforcement of its decisions, it still plays an important role in transforming the functions of the World Bank through its advice and published reports.

Moreover, the Inspection Panel has played a major role in developing the concept of open and transparent system within the Bank operations (Wouters and Ryngaert, 2004: 19). Kaluza and Kaluza identified a number of issues with the Inspection Panel with a common apprehension concerning whether it really enhances the overall accountability of the Bank. Firstly, the Panel is unable to provide relief to the affected parties except to refer the case for remedial purposes to the management. Secondly, it works under a limited authority and jurisdiction. Thirdly, various NGOs have lamented that the Panel is not free from the influence of the executive directors which is the main obstacle in its way to make it an independent and efficient body. Fourthly, the selection procedure and conditions for the choice of its members is not clear. Fifthly, the public access to information is insufficient as the administration of the Bank is more concerned about the qualification of the complainant rather than the grievance. Finally, critics argue that substantial delays have been observed in the publication of Panel's reports and consequently these are not readily available to the people (2008: 15).

4.4.4 Operations Evaluations Department

It conducts three categories of audits such as country aid assessments, re-evaluation of procedure and reassessment of projects of the World Bank. The Department supports the Bank to promote development aid and carry out free assessment of Bank procedures to the successful completion of the projects. It evaluates the completed projects by its overall achievement and maintainability. It further applies these outcomes and suggestions to formulate and execute the new strategies and aid procedures. The Evaluation Department presents the results of all reports to the Executive Board but the Board is not authorised to choose the Bank projects for OED evaluation. The OED is fully authorised to choose the projects for evaluation

but not free from doubts as the whole process is conducted internally (Kaluza and Kaluza, 2008: 11-12).

In the 1990s, the IMF also brought a big shift in its policies while taking into consideration the elements of good governance by ensuring Transparency and Accountability measures. Although it considered reforming its own structure in the early 1980s, the IMF entered into a new phase by setting up the ‘External Relations Department’ and expanded the scope of its publications. Before the 1990s, there was no access to information in the IMF due to its non-disclosure policy. However, a shift emerged following the appointment of Michel Camdessus as managing director. He launched the IMF website in the 1990s with a strong emphasis on ‘openness’. Thereafter, the IMF maintained a stable correlation between the openness as a prerequisite of good governance and non-disclosure policy as an obligation of global banking (Wouters and Ryngaert, 2004: 21).

4.4.5 The International Monetary Fund Information Disclosure Policy

In 1994, the IMF adopted the ‘Information Disclosure Policy’ after the publication of series of documents on current economic progress in relation with article IV consultations⁶⁶ and policy outline documents. The IMF reformed its disclosure policy through an evolutionary process. At first in September 2002, the Board decided to disclose its documents by publishing them after every 10 years. Then in June 2003,

⁶⁶ The Article IV of the IMF’s Articles of Agreement is about the establishment of an International Monetary System in reference with the exchange rates between member states. The IMF provides an International Monetary System, which seeks to provide a structure that makes it easy to swap merchandise, services and investment between states as well as sustainable economic development. The primary focus is the progressing growth of the organised primary situations, which are important for monetary and economic strength, and for which every country works in close collaboration with IMF, whereas other members ensure a systematic exchange agreement in order to support a consistent structure of exchange rates. The IMF supervises proper functioning of the International Monetary System as well as the duties and responsibilities of every member state. The IMF also provides a strict inspection in relation to exchange rate regulations of the countries and always guides them in terms of those rules (IMF’s Article IV of “the Article of Agreements”).

the Board agreed to publish its proceedings after every five years. The IMF adopted some revolutionary measures in respect of the Disclosure Policy by making it compulsory for member states to publish the PRSP reports otherwise the Board will not endorse them. The Board is conscious of the sensitive information relating to the political issues of member states and allowed removal of such kind of sections from these documents. Although, the IMF provides a substantial access to information for maintaining transparency within the organization and the member states, there were still some legal obstacles to make it available broadly (Holder, 2002: 2-4, 17; Wouters and Ryngaert, 2004: 21-23).

4.4.6 Independent Evaluation Office (IEO)

In July 2001, the Executive Board of the IMF set up an Independent Evaluation Office in order to seek objective and self-governing assessment on the subjects associated with the IMF. There is a presumption that it works without any influence of the IMF administration and the Executive Board. It helps to uphold the knowledge-seeking environment within the IMF, assists the Executive Board in issues relating to its governance and errors. The IEO is considered quite efficient in the publication of its reports after the consideration of the Executive Board. The IEO insists on a wider participation and collaboration of public institutions, civil society and NGOs to choose external examiners of IMF performance (IMF, 2003: 1, 4). However, it is desired that the IMF Independent Evaluation Office has to move forward on the lines of World Bank Inspection Panel. At present, the IEO is not accepting any complaints from individual borrowing countries about the functions of the IMF. Therefore, the procedural mechanisms require some reform in the IMF operations in order to address the issues of good governance (Wouters and Ryngaert, 2004: 24-25).

4.4.7 Code of Conduct within the IMF

The IMF incorporated a code of conduct for its staff in July 1998, which provides that all employees conduct themselves in the highest possible standards. The preamble of Code of Conduct provides that every member of staff bears liability to uphold honesty, reliability and fairness and to promote the idea of good governance in the IMF. In 2000, an Ethics Committee consisting of five Executive Directors was set up by the Executive Board. The purpose of this committee was to deal with the affairs relating to the code of conduct. In the same year, an Ethics Officer appointed by the IMF to carry out fair enquiries in matters relating to the code of conduct and breach of the rules and regulations of the IMF. The Ethics Officer helps to decide the issues which promote good governance in the IMF (IMF, 1998; Wouters and Ryngaert, 2004: 26).

The World Bank and IMF have improved their structures and adopted measures to ensure good governance. However, there is still room for improvement especially the voting power structure of the member countries, selections on key posts in both institutions and the participation of developing countries in the decision making process. In a joint Ministerial Committee of the Board of Governors of the World Bank and IMF the African Governors emphasised that:

In order to enhance the legitimacy of the IMF and the World Bank, the under-representation of developing countries in the decision-making processes of these institutions should be seriously and promptly addressed, as agreed in the Monterrey Consensus. Ministers consider that strengthening the representation of developing countries requires a new quota formula. Such a formula should take into account the vulnerabilities of developing countries, in particular sub-Saharan countries, and reflect correctly the relative economic position of countries in the world economy by

computing gross national income on a purchasing power parity basis. In addition, basic votes should be substantially increased to restore their original role in relation to total voting power (World Bank and IMF, 2004: 3).

4.5 CONCLUSION

Bad governance has been identified as a major cause of problems in developing countries especially Sub-Saharan Africa. Moreover, bad governance breeds corruption and corrupt practices. However, good governance is considered as a prerequisite for development. The IFIs have declared good governance as a precondition for borrowing countries seeking for new lendings. The lacklustre results of the Structural Adjustment Programmes, East Asian Crisis, African Crisis, institutional weaknesses and other factors contributed to provide IFIs an opportunity to reform its policies and to shift its attention towards good governance.

For the last two decades, good governance and rule of law have become the issues of prime importance for the Developed World and the IFIs. However, the global good governance and rule of law policies introduced by the IFIs are not embedded in the local cultures as these have been co-opted without certain considerations such as the institutional and legal structures of developing countries. In the last four decades, the IFIs had gone through enormous changes in their reform policies.

The issues relating to the eradication of poverty, bad governance, worsening rule of law conditions, weak institutional structures, economic instabilities, social injustice and growing corruption forced the United Nations to introduce Millennium Development Goals (MDGs) for “eradication of poverty, universal primary education, women empowerment, reducing child mortality, improving maternal health, combating against HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development”

which have to be achieved until 2015 (Wagner, 2000). The achievement of these goals depends on the mechanism for proper organisation and utilization of external aid. The global governance reforms require sincere efforts, political motivation and consistency.

Although, the thesis is critical of the reform policies of these IFIs, recent efforts for the achievement of global development provide an opportunity to the third world for progressive and improved conditions of good governance and rule of law. However, the role of the IFIs and the World Actors⁶⁷ is important if they are seriously interested in the development of third world countries. The role of the developmental actors should be to encourage good governance by declaring no compromise on the effectiveness of the accountability mechanisms no matter whether they have been provided at national or international level. The political influence of powerful nations should also be removed and the participation of third world countries in these IFIs should be gradually improved. The conditions of good governance and rule of law in third world countries may reduce growing terrorism in the world. For all this, there is a need to support the governments in designing their policy objectives in relation to Millennium Development Goals and to make the lending more effective.

Presently, Pakistan is in a state of war against terrorism and facing some grave threats from terrorist forces. Therefore, the U.S. interests of 'war on terror' supersede good governance and rule of law policies of the IFIs in Pakistan. However, a strong and reformed Pakistan can perform better as a coalition partner of the U.S. on war against terrorism (Hussain, 2009: 11).

⁶⁷ The powerful nations such as the U.S., Japan, UK, France, and Germany.

CHAPTER FIVE

RULE OF LAW AND GOOD GOVERNANCE IN PAKISTAN

5.1 INTRODUCTION

The previous chapter explored the recent trends of International Financial Institutions (IFIs) regarding good governance and rule of law as drivers of development in the world. Moreover, it provided an insight into the Millennium Development Declaration adopted by the United Nations in September 2000. This chapter examines the rule of law and good governance in the context of Pakistan. There has been a major problem in the application of the principles of rule of law and good governance which is partly attributable to the influence of the executive on the judiciary over many decades.

The principles of rule of law and good governance are intrinsic part of the Constitution of Pakistan and this has been reflected in the courts' recent jurisprudence. Yet for the most part of Pakistan's post-independence history the judiciary has been faced with tremendous challenges during both civilian and military rules. As a result, the courts have not really been in a position to entrench the principles of rule of law and good governance in the political culture of Pakistan. However, in recent years, there has been some progress made. The IFIs rule of law project has been influential in promoting this greater respect for rule of law and good governance.

Pakistan is one of the major borrower countries of IFIs and ultimately under an obligation to observe the provisions relating to rule of law and good governance in the country. However, in this chapter my concern is to investigate first the constitutional and political development of Pakistan in different phases in particular

reference to the Constitution of Pakistan 1973, which safeguard the rule of law and good governance, and finally the governance structure for the enforcement of these concepts.

The chapter consists of five parts. Part II provides a brief introduction to the constitutional and political developments during various periods from 1947 and beyond. Part III considers the provisions and the decisions of Higher and Superior courts that safeguard the rule of law and good governance concepts under the Constitution of Pakistan 1973. Part IV examines the governance structure for the enforcement of rule of law and good governance in Pakistan. Part V concludes the chapter and summarises key arguments.

5.2 THE CONSTITUTIONAL AND POLITICAL DEVELOPMENT OF PAKISTAN

Pakistan gained independence from British colonial rule and came into being on August 14, 1947. At the formation of the country, the effective constitution was the revised version of the Government of India Act 1935 with some minor changes and was named the Indian Independence Act 1947 adopted by Pakistan in order to run the affairs of the country. The Government of India Act 1935 provided emergency governance in India. It presented provisions of provincial self-rule for the states and a strong concept of federation with unlimited discretionary powers to the Governor General and Governors (Sethy, 2003: 17). Newberg suggests that the major purpose of the Act was to set up the organization and authority of the Governor General as a symbol of the British Crown. The wide discretionary powers of the Governor General created tension between the centre and the provinces as he was empowered

to dismiss ministers, issue ordinances for unlimited periods, execute legislative authority, declare states of emergency without the consent of ministers or parliament. Newberg has periodized the various stages of constitutional development in Pakistan namely: 1) Constituting the State (1947-1958), 2) Confining Courts and Constitutions (1958-1969), 3) Seeking Justice (1969-1972), 4) Testing Courts and Constitutionalism (1972-1977), 5) Silencing Courts, Muting Justice (1977-1988) and 6) Reviving Judicial Powers (1988-1993) (1995: 36-37, ix).

5.2.1 Efforts towards Constitutional Making (1947-1958)

The Government of India Act 1935 provided wide discretionary powers to the Governor General whereas the Independence Act of 1947 granted the parliament powers of state affairs and the critical task of preparing the Constitution of Pakistan. In 1946, the provinces through indirect balloting elected members of the first Constituent Assembly. Subsequently, the wide discretionary authority of the Governor General once again ignited tension between the federal and provincial politicians. The power to dismiss was withdrawn by the British at the dawn of independence due to pressure from the Congress party. After independence, the first Governor General Mr. Jinnah reinstated these powers in the Independence Act of 1947. However, the said act fully ensured independence of the judiciary and the civil service. Members of the bar were appointed as the judges of superior courts in order to forestall political influence. The judiciary tried to perform their independent role as most of their decisions frequently defied the execution of void executive powers but in reality the politicians repeatedly used the superior judiciary to confront their

rivals and sometimes to restore their complaints⁶⁸, which detracted the judiciary in performing its actual role (1995: 36-37).

The first ten years of Pakistan's independence were crucial in determining the future patterns of events. The most unfortunate aspect of its history is the loss of its top leadership in its early few years after independence. The founding father Quaid-E-Azam Muhammad Ali Jinnah died on September 11, 1948. Therefore, the new-born state faced many problems immediately after its creation but the biggest one was to draft its legal governance structure (Wynbrandt, 2009: 171). There were various critical controversies prevailing at that time for the pattern of the Constitution as Zaidi argues that Mr. Jinnah was willing to declare Pakistan as a secular state. Mr. Jinnah was reported to have said in an interview with Reuter's that "the new state would be a modern democratic state, with sovereignty resting in the people and the members of the new nation having equal rights of citizenship regardless of their religion, caste or creed" (2003:100). Norcliffe (1999: 212), Haqqani (2005: 12) Choueiri (1997: 45). In a subsequent speech, Jinnah declared that the choice of being a Muslim a personal matter of every individual and the state should not be a party to it.

You are free to go to your mosques or to any other places of worship in this state of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the state...We are starting with this fundamental principle that we are all citizens and equal citizens of one state... Now I think we should keep that in front of us our ideal and you will find that in course of time, Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense,

⁶⁸ On various occasions, politicians filed complaints in the superior courts based on worthless issues, to divert the attention of the judiciary.

because that is the personal faith of each individual, but in the political sense as citizens of that state.⁶⁹

Ghazali (1996) suggests that the image of Jinnah as portrayed by Muslim religious organizations such as Jamiat-i-Ulema Hind, Majlis-e-Ahrar-i-Islam and Jamat-i-Islami under the leadership of Maulana Husain Ahmad Madni, Ataullah Shah Bukhari and Abul Ala Maududi is one of a non-believer but the reality is very different. Ghazali states that the main stance of Jamiat-i-Ulema Hind and Majlis-e-Ahrar-i-Islam leaders was that Islam prohibits the concept of nationalism as propagated by the Pakistan Muslim League (PML) but on the other hand, they were supporting the Congress Party's idea of Indian nationalism, which unmasked their so-called ideology and interpretation of Islam. However, Jamat-i-Islami rejected the other religious parties' point of view as well as the idea of a separate state of Pakistan. Abul Ala Maududi asked "why should we foolishly waste our time in expediting the so-called Muslim nation state and fritter away our energies in setting it up, when we know that it will not only be useful for our purposes, but will rather prove an obstacle in our path?" (Maudoodi, 1955: 37). The Pakistan Muslim League concluded that the religious leaders were not able to provide a political solution to the nation due to their orthodox education and limited understanding of contemporary political affairs in the 20th century. Ghazali strongly believes that Jinnah was a determined disciple of Islam and democracy and was confident that Pakistan would work on the way to democratic order because Islam is inherently democratic in its substance, theme and strength. He argues that the so-called Ulema and Mullahs misunderstood his vision and according to Jinnah's own vision;

⁶⁹ Jinnah's Speech delivered on 13 August 1947 was published in The Pakistan Times.

democracy is not incompatible with the orders or principles of Islam (Ghazali, 1996). In February 1948, Mr. Jinnah said in his speech,

I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be of a democratic type, embodying the essential principle of Islam. Today, they are as applicable in actual life as they were 1,300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice and fair play to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as framers of the future constitution of Pakistan. In any case, Pakistan is not going to be a theocratic State to be ruled by priests with a divine mission. We have many non - Muslims –Hindus, Christians, and Parsis –but they are all Pakistanis. They will enjoy the same rights and privileges as any other citizens and will play their rightful part in the affairs of Pakistan (Tyler, 2008).

Unfortunately, Jinnah died almost 13 months after the birth of Pakistan, which caused delay in the drafting of the Constitution of Pakistan. The Ulema under the leadership of Maulana Maudoodi and Maulana Shabbir Ahmad Usmani took the opportunity to push for the adoption of ‘Shariah’. Finally, Mr Liaquat Ali Khan, the first Prime Minister of Pakistan prepared the ‘Objective Resolution’ encumbered with religious connotations but also included the principles of rule of law, good governance, social justice and independence of the Judiciary. This was presented to the Constitutional Assembly on 7 March 1949 (Maluka, 1995: 125). It is also “known as Magna Carta of Pakistan’s constitutional history” and was passed by the parliament on March 12, 1949 providing the basis for the drafting of the Constitution of Pakistan. It was decided that the Constitution would contain principles of democracy and Islamic Ideology as enunciated in the Objective

Resolution (Wynbrandt, 2009: 171). The Objective Resolution provides that the Constitution should reflect a basic structure and a fundamental characteristic that:

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority, which He has delegated to, the State of Pakistan through its people for being exercised within the limits prescribed by Him, is a sacred trust;

This Constituent Assembly representing the people of Pakistan, resolves to frame a Constitution for the sovereign independent State of Pakistan;

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and the Sunnah;

Wherein adequate provision shall be made for the minorities to profess and practice their religion and develop their cultures;

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries, and limitations on their powers and authority as may be prescribed;

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity before law, social, economic and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interest of minorities and backward and depressed classes;

Wherein the independence of the judiciary shall be fully secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and made their full contribution towards international peace and progress and happiness of humanity.⁷⁰

The Basic Principles Committee (BPC) was set up on the same day of passing the Objective Resolution to progress the basic doctrines of the upcoming Constitution. The Committee (BPC) submitted its first report to the constituent assembly on 28 September 1950. Three years subsequent to the death of the founding father, Liaquat Ali Khan was assassinated at a political gathering in Rawalpindi on October 17, 1951. From then onwards, political power shifted constantly between politicians and the military. The shift began in 1953 when Governor General Ghulam Muhammad dismissed the sitting prime minister Khawaja Nazimuddin and his cabinet unceremoniously (Maluka, 1995: 132). Keith Callard (1957: 137) notes that the dismissal constituted an affront on key principles of parliamentary government such as impartiality and due process.

On 17 April 1953, the Governor General Ghulam Muhammad appointed Muhammad Ali Bogra as the Prime Minister of Pakistan. On October 24, 1954, he dismissed the constituent assembly that had agreed a constitutional arrangement, but was

⁷⁰ The 'Objectives Resolution' was the preamble of the Constitutions of Pakistan 1956, 1962 and 1973 but was later on adopted as an operative part by inserting a new Article 2A in the Constitution of Pakistan 1973 through the Eighth Amendment in 1985.

disapproved by the Governor General. He issued a declaration proclaiming an emergency and said that the current constituent assembly had failed to win consent of the public and therefore was not authorised to perform its duties. Maulvi Tamizuddin Khan who was the President of the assembly brought a case against the Governor General in the Sind High Court. In Maulvi Tamizuddin Khan's case,⁷¹ the court unanimously condemned what it perceived as an unconstitutional act by the Governor General under section 223-A of the Government of India Act 1935, which provided grounds for its jurisdiction and pronounced judgment in favour of the Assembly which was appealed in the federal court of Pakistan. The dissolution was upheld by a majority of the federal court in a judgment delivered by Muhammad Munir,⁷²

Subject to the condition of absoluteness, extremeness, and imminence, an act which would otherwise be illegal becomes legal if it is done bona fide under stress of necessity, the necessity being referable to an intention to preserve the Constitution, the state, or the society, and to prevent it from dissolution, and affirms...that necessity knows no law...necessity makes lawful which otherwise is not lawful (PLD, 1955: 240).

However, the only dissenting came from Justice A.R Cornelius. Cornelius asserted that the Governor General enforced his authority in an unexpected and inappropriate way, which restrained the sovereignty of the legislative body. He said that "his action, when purporting to be taken in exercise of this power and duty, would be above the law, and, consequently, not justiciable" (PLD, 1955). Therefore, the court

⁷¹ Maulvi Tamizuddin Khan V the Federation of Pakistan [1955] PLD Sind High Court 96

⁷² He used Bracton's maxim "that which is otherwise not lawful is made lawful by necessity" and the Roman law maxim advocated by Jennings, "the well-being of the people is the supreme law".

declared the case in favour of the Governor General.⁷³ It was the first case in which the Superior Court provided an opportunity to legalize the unconstitutional act of the executive who interfered in the legislative affairs of the parliament and in a way provide a way forward for such incidences in the guise of the ‘Doctrine of Necessity’⁷⁴(Newberg, 1995:42-45, 48-49). This outcome of this case made it difficult for the possibility of an independent judiciary and parliamentary supremacy in Pakistan. The Governor General disrupted the pathway for democratic governance, aggravated by the court’s declaration as null and void, the acts of the Governor General.

Disputes and tension subsequently erupted between the East and Western parts of the Pakistani federation. One of the major obstacles was the geographical division of the country into East and West provinces, divided by 1000 miles of Indian Territory. The West wing was geographically much larger, economically stronger and the centre of army and bureaucracy whereas the East province had a majority of the population, but was less endowed with resources. Politics in the West wing was based on the power of large landowners, thus making for differences of attitude and diversion of aims. The issue of disparity was resolved based on parity of representation and the constitution of 1956 adopted by the second constituent assembly on 29 February 1956, which remained operative for a period of only two years (Maluka, 1995: 131).

⁷³ Federation of Pakistan V Maulvi Tamizuddin Khan [1955] PLD Federal Court 240

⁷⁴ The law of ‘state necessity’ is a common law principle that granted an excuse for otherwise unlawful government during the period of emergency. However, it is the responsibility of the courts to strictly confine this common law justification because a freely imposed principle of necessity creates a probable cause to justify considerable breaches of legitimate liberties and changes in the configuration of government. This principle is unfortunate for any judicial contemplation of the authenticity of a *coup d’état*, revolt or other severe disturbance of the government. The principle can only be justified where aggrieved group has substantial evidence to build a case to demonstrate that the government is in severe infringement of law. In 1663, the British Court in Manby and Richards against Scott (1 Sid 109) held that “the law for necessity dispenses with things which otherwise are not lawful to be done” (Stavsky, 1983: 342-343).

The 1956 Constitution was a combination of religious and secular provisions based on the government of India Act 1935 and the 'Objective Resolution' 1949.

However, it is surprising that in an Islamic republic where no law could be enacted that is inconsistent with Quran and Sunnah, Islam was not declared the official religion of the state (Johns and Lahoud, 2005). The Constitution provided for parliamentary system of government with a legislature of 310 members equally divided between the two wings. It has given a concept of unicameral legislature that fully authorised the parliament to legislate. On 5 March 1956, Governor General Iskander Mirza was elected as the first President of Pakistan. On 8 October 1958, he suspended the Constitution and proclaimed Martial Law by Presidential order on grounds of inefficiency (Newberg, 1995: 71).

5.2.2 The Emergence of Martial Law (1958-1971)

As Ian Stephens notes, for the most part of the 1960s and 70s power and authority were in the hands of military generals. General Ayub initiated an idea of four-tier system of local government called "the Basic Democracies (BD) system".⁷⁵ He introduced four tiers; the three tiers were purely based on selection procedure whereas the lowest tier was by general elections. He put the first three tiers under the command of the bureaucracy while the fourth one was authorised to work independently but under certain limitations. He restricted the freedom of press, freedom of speech and public meetings whereas the political activities were completely prohibited (Stephens, 1964).

⁷⁵ The main objective of the BD system was to shift the traditional politics into modern management by devolution of power to lower levels. General Ayub introduced a major shift in politics and mobilized the local masses for countryside development. He motivated the young and educated leadership in solving their problems at local level and involved the civil servants to provide bureaucratic supervision to the elected members (Maluka, 1995: 180).

In 1958, once again, the military *coup d'état* of General Mohammad Ayub Khan which was based on the principle of 'doctrine of necessity' was justified in Dosso's case⁷⁶ by almost the same Judges of the Supreme Court including the Chief Justice Muhammad Munir. Therefore, these incidents, which happened in the constitutional history of Pakistan, laid the foundation for dictatorship for several years, which had long-lasting implications on constitutional growth (Newberg, 1995: 3).

General Ayub Khan promulgated the Constitution of Pakistan in 1962 prescribing a presidential form of government based on indirect elections with powers heavily weighted in favour of the President. The concentration of authority in the hands of the President led to feelings of alienation in both the wings. The system provided by Ayub failed to satisfy the growing hopes of the people. Ayub's popularity rapidly declined because of rising political uncertainty which intensified with new social and economic factors. He held extensive meetings with politicians and finally decided that a parliamentary form of government and direct elections based on adult franchise would be the better solution. However, in the midst of growing political agitation in both parts of Pakistan, Ayub Khan contrary to the Constitution⁷⁷ handed over authority to the Commander in Chief, General Yahya Khan who assumed the office of President on 31 March 1969. On 4 April 1969, he suspended the provisions relating to fundamental rights in the 1962 Constitution and replaced it with a Provisional Constitutional Order (PCO). He also restricted the jurisdiction of courts to question the authority of the military courts under Martial Law Regulations. During the general elections of 1970, the government lost confidence after some disagreement between East and West Pakistan. The Pakistan people's Party (PPP)

⁷⁶ The State V Dosso and Others [1958] PLD SC 533

⁷⁷ As per the Constitution, there is a proper way to transfer power but, in this case, it was a transfer of power from one dictator to another.

won the elections in the west wing. General Ayub's regime fell from power after the war with India in 1971, which resulted in the unfortunate dismemberment of East Pakistan. The political chaos in the country provided an opportunity for the PPP to rule under the charismatic leadership of Zulfikar Ali Bhutto who had majority seats in the West Pakistan (Newberg, 1995: 112-3, 118-9; Maluka, 1995).

5.2.3 Reinforcement of Constitutional democracy (1971-1977)

The Bhutto administration initially enacted the interim Constitution on 21 April 1972 which designated Pakistan as an Islamic Republic. The fundamental problem of the constitutional history of Pakistan has been the dominance of dictatorial regimes that assaulted constitutional structures whilst also disrupting the process of democracy. The doctrine of 'State Necessity' was often used as a tool to grab authority with the existing constitutional actions (Maluka, 1995: 234). However, the judiciary tried to establish its independent character during Bhutto's regime. The Supreme Court while mindful of the decision in the Dosso case and in Miss Asma Jilani's case⁷⁸ held that Yahya Khan was the usurper. In addition, the court said that "his action was not justified by the revolutionary legality doctrine"⁷⁹ and consequently that his martial law regime was illegal". After a period of fourteen years, the judiciary realized its independent role and invalidated the decision of the two previous cases. In addition, during Bhutto's government, the Courts showed favourable attitude towards his regime and worked more independently and freely. Justice Yaqub Ali opined that the decisions of Maulvi Tamizuddin and Dosso cases had turned "a perfectly good country...into a laughing stock and converted the country into autocracy and eventually...into military dictatorship" (Newberg, 1995: 120).

⁷⁸ Miss Asma Jilani V the Government of the Punjab and Another and Mst. Zarina Gauher V the Province of Sind and two others [1972] PLD SC 139

⁷⁹ The Doctrine of State Necessity.

The main achievement of Mr Bhutto's government was the adoption of the Constitution of Pakistan of 1973. The new Constitution, endorsed by all political parties, was promulgated on August 14, 1973 and provided for a parliamentary system of government. The issue of provincial autonomy was better resolved in this constitution. Under the 1973 constitution, the Prime Minister became the executive head of the government and virtually irremovable whereas the President as head of the state held little or no power. Under General Ayub's system, the party system had no opportunity to grow but sufficient opportunities provided in 1973 constitution to establish a multi-party political system. The Pakistan People's Party had emerged in the period of dictatorship but its leader through his populist slogans and better organization of the party provided a strong basis for democracy. In 1977, the PPP prevailed in elections against an alliance of nine opposition parties under the umbrella of the Pakistan National Alliance (PNA). The PNA accused Bhutto of rigging the general elections. The smouldering discontent found a powerful outburst and turned into an extraordinary mass movement of street protests precipitating the imposition of the third martial law (Rehman, 2003: 15; Akbar, 1997: 8).

5.2.4 Invalidating Constitutionalism and silencing the judiciary (1977-1988)

In a state of political chaos, Bhutto called in the army to tackle the situation and attempted to consult with the PNA for fresh elections. But the Chief of Army staff General Muhammad Zia ul Haq took over the control of Government by imposition of martial law on 5 July 1977. Zulfikar Ali Bhutto along with several colleagues was sent to jail. His wife filed a petition in the Supreme Court challenging the authority of the Army Chief and the legality of Martial Law. Mr. Anwar ul Haq, the newly appointed Chief Justice of the Supreme Court in Begum Nusrat Bhutto's case⁸⁰ not

⁸⁰ Begum Nusrat Bhutto V Chief of Army Staff and Federation of Pakistan [1977] PLD SC 657

only validated General Zia's *coup d'état*, but also legalised the wide powers arrogated by the military dictator. By this decision, the Supreme Court once again opened the way for more than a decade-long military rule in Pakistan (Maluka, 1995: 258-9). Mr. Bhutto was found guilty and executed on charge of "conspiracy to murder" on April 4, 1979.

During the Zia martial law, the 1973 Constitution of Pakistan was held in abeyance while early elections were promised. General Zia restricted the authority of the courts and issued a 'Provisional Constitutional Order' (PCO) on March 25, 1981. He dismissed nineteen judges of the Supreme Court and High Courts including the Chief Justice of Supreme Court Anwarul Haq⁸¹ when they refused to approve his PCO. After the removal of judges, he said;

We want the judiciary to mind their own business and not to meddle in anything else. Power is an intoxicant. Please do not get me wrong. I personally have not been intoxicated with this. I want to share power, but I refuse to share power with those who do not entitle themselves (Ghazali, 1996; The Economist, 1981).

He appointed army officials as governors of the provinces and introduced the selective structure of the government. After eight years of his 'Martial Law' regime, he decided to conduct elections. In 1985, General Zia adopted the Objective Resolution 1949 as the substantive part by inserting a new Art.2A in the Constitution of 1973⁸² which was a non-operative part in the previous Constitutions of 1956 and

⁸¹ He presided over the Supreme Court bench that held Bhutto guilty of murder and announced his death sentence (Ghazali, 1996).

⁸² General Zia started Islamization of laws in Pakistan as an objective. In the election of 1977, the enforcement of 'Nizam-i-Mustafa' (Islamic Sharia) was a popular slogan of the Pakistan National Alliance (PNA). A year after taking over, General Zia announced that laws enacted by the legislature would be according to Islamic law and that the preceding laws that are repugnant to the Islamic law would be invalidated (Blood, 1996: 65). Maluka said that General Zia intended to remain the ultimate foundation of ruling and the basis of key power in the state. To fulfil these desires, he promised to lift 'Martial Law' as prerequisite to some major amendments in the Constitution of 1973. He issued 'the

1962. The elections were held after some modification in the constitution in his favour. Opposition parties agitated against the so-called National Assembly, which came into existence in the wake of the modified Constitution. The politicians did not appreciate this act on the basis that the parliament was a rubber- stamp of General Zia-ul-Haq. However, when the Prime Minister Muhammad Khan Junejo began to assert his authority, General Zia did not like it and dismissed the National Assembly on 29 May 1988. On 17 August 1988, General Zia died in an air crash ending his 11 years dictatorial rule.

5.2.5 1988 and Beyond

After General Zia's regimes, the four successive democratic regimes of Benazir Bhutto and Muhammad Nawaz Sharif were characterised by continuous power struggles and allegations of corruption. This had an effect on the prospects of constitutionalism and a functional judiciary. On 12 October 1999, General Pervez Musharraf replaced Prime Minister Nawaz Sharif through a *coup d'état* and declared himself as 'Chief Executive of Pakistan' (Tonchev, 2002: 9-10). He dissolved parliament and indicted the Prime Minister in an 'aeroplane hi-jacking case'. The superior courts were forced to take a fresh oath of allegiance under the Provisional Constitutional Order (PCO) whereby the Constitution was held in abeyance (DAWN, 2007).

Revival of Constitution Order 1985' (RCO) which curtailed the powers of Prime Minister, which were granted by the Constitution of 1973 as the constitutional Head of State. The National Assembly granted General Zia shelter from all the previous and upcoming acts in defiance of the Constitution, and the right to dissolve the national as well as provincial assemblies in case of emergencies under article 582(b), which was the prerogative of Prime Minister. The eighth amendment enormously empowered the President and destroyed the system of checks and balances. Moreover, Zia introduced the Political Parties (Amendment) Act, which replaced the Political Parties Act 1962, and as a result squeezed their functions in political affairs of the country (Maluka, 1995: 271; Mohiuddin, 2007: 316). Maluka suggests that Zia inserted a new article 2A that incorporated 'the Objectives Resolution' as an operative part of the Constitution of 1973 whereas it was previously inserted as the preamble of the Constitutions of 1956 and 1962. He believes that General Zia took advantage of the extreme fundamentalist emotions of different groups and used them against the religious minorities for increasing his grip on them (1995: 276).

Syed Zafar Ali Shah challenged the *coup d'état* of General Pervez Musharaf in the Supreme Court. The court in Syed Zafar Ali Shah's case⁸³ held that on 12 October 1999, an unprecedented situation arose for which there was no alternate way in the Constitution except interference by the Armed Forces in the political affairs of Pakistan. Therefore, an extra-Constitutional measure became unavoidable, and the Act based on 'the Doctrine of State Necessity' was declared legal. The judiciary validated military rule, the fourth time in its post-independent history.

Finally, his eight years authoritarian rule ended after the defeat of the pro-Musharaf party in the fresh elections of 2008 and he was forced to resign from the presidency. The former Justice of Lahore High Court K.M.A Samdani after a careful analysis of the previous constitutional cases said that:

Most of the confusion that has arisen in the country as a result of which the institution of democracy has suffered almost irreparably, stemmed from the fact that by and large the judiciary in Pakistan tried, in times of crises, to avoid confrontation with the executive and went out of its way to take the path of least resistance. It upheld the *de facto* situation rather than declare the *de jure* position (Newberg, 1995: 7).

The present Constitution of 1973 provides for judicial independence under article 175 but judicial independence in Pakistan has always been under threat from the very first day. In the above-mentioned cases, not only was there interference by the military in judicial matters but also a violation of the Constitution was constant. However, the judges of the superior or higher courts are partly responsible for such an attitude towards the judiciary, as they did not show resistance to safeguard its independence. The concern of referring important constitutional cases is to provide

⁸³ Syed Zafar Ali Shah V General Pervez Musharaf, Chief Executive of Pakistan [2000] PLD SC 869

an overview of some controversial judgments delivered by the higher and superior courts, which had negative effect on political life in Pakistan. Although the two previous constitutions provided the rights and the concept of rule of law, the regimes not only disrupted the democratic set up for their own interests but also frustrated the way forward for the establishment of just and strong institutions in Pakistan. The first democratically elected Prime Minister Zulfikar Ali Bhutto promulgated the Constitution of 1973 with better protection of the rights of the people of Pakistan. The Military regimes on several occasions disregarded the Constitution by inserting new provisions to justify their actions.

Husain (2009: 1) points out that generally a strong democratic set up is considered a basic condition for economic development but Pakistan is an exception to this perception. He noted that the dictators ruled the country more than half of its sixty-three years period after independence whereas India established a strong democratic culture. The various democratic and military regimes from 1947 to 2009 are shown below in Table. 5.1.

Table 5.1 Democratic and Military Regimes from 1947 to 2009

Sr. No	Period	Democratic Governments	Military Dictators
1	1947 to 1958	7 Prime Ministers were removed or resigned	
2	1958 to 1969		First Martial Law imposed by General Muhammad Ayub Khan
3	1969 to 1971		Second Martial Law was imposed by General Yahya Khan
4	1971 to 1977	Z.A Bhutto took the control of Government as a Prime Minister	
5	1977 to 1988		Third Martial Law was Imposed by General Muhammad Zia ul Haq
6	1988 to 1999	Benazir Bhutto and Nawaz Sharif elected for two consecutive periods as Prime Ministers of Pakistan	
7	1999 to 2008	Mir Zafarullah Khan Jamali was appointed as a Prime minister and later on replaced by Mr. Shaukat Aziz	General Pervez Musharaf as Chief Executive of Pakistan and later on as a President ruled till 2007
8	2008 onwards	Syed Yousaf Raza Gilani was appointed as Prime Minister of Pakistan	
	Total Period= 62 Y	Total Democratic Governments=14 Total Period of rule = 28 Y	Total Military Governments= 4 Total Period of rule = 33Y

Source: "the Role of Politics in Pakistan's Economy", Journal of International Affairs, 2009: 2-9 (editorial inputs have been added).

From the above, it is clear that Pakistan experienced fourteen democratic governments, five interim governments and four military dictatorships. The main thrust of Husain's (2009: 9) argument is that because of the very short periods of the democratic governments in Pakistan, it was impossible to strengthen the institutions, economy and governance whereas India established its democracy as a result of successive democratic regimes. He concludes that one of the major causes of these problems in Pakistan is disruption in continuation of political government's tenure, corruption and lack of effective enforcement of accountability mechanisms (2009: 16).

Judicial independence is considered as indispensable to the delivery of social justice which has been difficult to realise in Pakistan due to various reasons as shown in this chapter. Recently, the “Lawyers Movement” has provided a new trend to this thinking and could be a milestone to stop the ways of interference in the independent status of the judiciary.

5.2.6 Revival of the Independence of Judiciary: the Lawyers Movement

The ‘Lawyers Movement’, which started in March 2007 is supposed to be a solid step and a milestone in the revival of independence of the judiciary and the rule of law in Pakistan. The Harvard law school awarded the “Medal of Freedom” and the American Bar Association an honorary life membership to the CJP in reward for his persistent struggles to safeguard the independence of the judiciary and rule of law in Pakistan (DAWN, 2007).

In 2007, Chief Justice Iftikhar Muhammad Chaudhry tried to stop political involvement in the affairs of the judiciary by the executive. On Friday March 9, 2007, President General Pervez Musharraf summoned CJP and forced him to resign because of some frivolous allegations.⁸⁴ The Chief Justice refused and was subsequently detained in the Army House for five hours. He was soon after removed as the Chief Justice of Pakistan. The CJP was put under house arrest in his official residence until March 13, 2007, where he was denied visitors (Hassan, 2008: 2). The recent decisions by the Supreme Court stood in the way of General Musharraf’s ‘Neo-liberal Post 9/11 Agenda’. Moreover, few of the well-known cases such as Privatization of Pakistan Steel Mills (which is considered as the major asset of

⁸⁴ The Chief Justice of Pakistan was blamed for “misconduct and misuse of authority” by General Pervez Musharraf, though the particular allegations were not disclosed publicly (Masood, 2007).

Pakistan's economy), missing person's case⁸⁵ after 9/11 and accountability of Intelligence Agencies were considerable issues for General Musharaf as he required the Court to decide according to his own wishes (Hassan 2008:2).

The Chief Justice was reinstated on July 20, 2007, following intense pressure from the movement started by the majority of lawyers and civil society groups.⁸⁶ After resuming office, the Chief Justice ordered intelligence agencies to present the missing persons in the court (Hassan, 2008:3). The most critical question arose when the question of President's eligibility⁸⁷ in the next elections came before the Supreme Court. The problem was that he was contesting the election of President of Pakistan for the second term while holding the seat of Army Chief. However, General Musharaf was allowed to contest the Presidential election but he got an impression that the Supreme Court was not prepared to give him support on the basis of holding two positions⁸⁸ (Kiesow et al 2008: 14).

While Musharaf's eligibility case was pending before the Supreme Court, he went on to suspend the Constitution and subsequently detained all the judges of the Supreme Court in their official residences except four who took oath under the 'new order' on the same day. The judges were forced to take fresh oath under the PCO but the

⁸⁵ There was a presumption that the political prisoners who were under the custody of Pakistani intelligence agencies were handed over to the U.S. forces without any trial in Pakistan and Dr. Afia Siddiqi's case was one of them. (Hassan 2008:2).

⁸⁶ When the news of detention and restraining of the Chief Justice was telecasted by some private TV channels, the lawyers and the people of Pakistan were shocked. Everyone considered General Musharaf's act as unconstitutional and against the very spirit of law. Therefore, the leadership of the Bar Council decided to start a movement for the reinstatement of the CJP and his fellow judges which was warmly welcomed by the majority of lawyers. They started their peaceful protests through strikes and demonstrations by carrying placards outside court rooms and on the streets and the protests gradually increased in strength when other civil society and political parties joined in. The main demand of the lawyers was to reinstate the judges and to let the CJP decide all the cases pending before the SC (Hassan, 2008:3).

⁸⁷ In view of the Supreme Court, this act was unlawful under the Constitution of Pakistan 1973 (See footnote 26 for further details).

⁸⁸ See footnote 26 for details.

majority rejected this on the basis that it was unconstitutional. The judges were once again detained at their various residences⁸⁹ (Tariq, 2008).

In the aftermath of the general elections of 2008, the newly elected Prime Minister Mr. Yousaf Raza Gilani ordered the release of the detained judges. On 18 August 2008, General Musharaf resigned and Asif Ali Zardari (the husband of deceased Benazir Bhutto) of PPP was elected as the President of Pakistan on 6 September 2008. Upon assuming office, Mr Zardari adopted the same policy of Musharaf and reinstated some of the judges of the Supreme Court except the Chief Justice. Zardari was not willing to reinstate Chaudhry as his cases of corruption were pending before the Supreme Court. However, in the wake of the ‘Long March’,⁹⁰ Chaudhry was reinstated as Chief Justice on March 16, 2009 (Tariq, 2008). The ‘Lawyers Movement’ had started a way forward for the reinforcement of constitutional governance and judicial independence in Pakistan. As in the words of U.S. President, Andrew Jackson (quoted by Ellis, 1989); “all the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them (the people) by an independent and virtuous Judiciary?” (P: 32).

5.3 PROVISIONS AND CASES RELATING TO THE RULE OF LAW AND GOOD GOVERNANCE IN THE CONSTITUTION OF 1973

As stated above, the terms ‘rule of law’ and ‘good governance’ are not specifically articulated in the Constitution apart from some provisions that are closely associated with the fundamental principles of these concepts. These principles of rule of law

⁸⁹ Many lawyers had been arrested during peaceful demonstrations held in support of the CJP and his fellow judges who made history by rejecting an unconstitutional act of a usurper (Tariq, 2008).

⁹⁰ The ‘Long March’ by lawyers reached its full strength with the participation of political parties in the second week of March, 2009. It was a historic moment for Pakistan when the government ultimately announced the reinstatement of Iftikhar Muhammad Chaudhry as Chief Justice of Pakistan on March 16, 2009. Finally, by the untiring efforts of lawyers, politicians and civil society, the movement ended successfully and a heavy responsibility shifted on the shoulders of CJP to tackle the legal issues transparently and expeditiously (See Tariq, 2008).

and good governance have largely resulted from judicial interpretation of the superior and higher courts of Pakistan.

The 1973 Constitution of Pakistan provides for the rule of law in Article 4 and Article 5(2), which states:

4. Right of individuals to be dealt with in accordance with law, etc. - (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- (c) no person shall be compelled to do that which the law does not require him to do.

5. Loyalty to state and obedience to Constitution and law.

(2) Obedience to the Constitution and law is the basic obligation of every citizen wherever he may be and of every other person for the time being within Pakistan.

In written constitutions, the element of rigidity provides immense powers to the courts to interpret and to declare null and void the laws made by the legislature if they are in violation of the constitution as noted by James Madison that “a law violating a constitution established by the people themselves, would be considered

by the Judges as null and void” (Bilder, 2008: 3). The procedural laws are available in the administrative machinery of Pakistan and public officials use wide discretionary powers but there is little accountability over these actions at the departmental level. In addition, the administrative tribunals are there to hear irregularities in the functioning of public departments but even then they had been unable to provide speedy remedies. The writ jurisdiction or judicial review of administrative action of higher and superior courts not only provides an immediate relief but also helps to formulate a uniform policy. Therefore, judicial decisions grant judicial backing to the constitutional provisions.

In Rizwan Manzoor’s case,⁹¹ the petitioner was a highly qualified person with a master’s degree in English and an LL.B. The candidate passed the required test for the position of inspector of excise and taxation administered by the Federal Public Service Commission. He was however rejected in the interview. One of the members of the interviewing committee said that because of his higher qualification, the candidate is not suitable for this job. This created a cause of action for judicial review on disregard of law by the statutory body. The High Court upheld the concept of rule of law by declaring the decision of the Federal Public Service Commission without lawful authority and having no effect. Justice Tariq Nasim declared that under Art.4 of the Constitution, all the public functionaries are obliged to deal with the rights of individuals in accordance with law. Moreover, the Court held that the equality principle which is one of the important fundamentals of the rule of law requires that the concerned department should conduct the fresh interview of the candidate in a just and fair way without taking into consideration the results of the previous interview. Therefore, the decision of this case put some restraint on

⁹¹ Rizwan Manzoor V Provincial Government Lahore, through Secretary Excise and Taxation [2008] PLC Lahore 1320

government officials and opens a way forward for the improvement and appropriate use of discretionary powers by the public authorities.

The Pakistani courts have occasionally shown a desire to enforce the principles of the rule of law. In *Haji Yaqoob Khan's Case*,⁹² the appellants filed an appeal in a civil suit in the Supreme Court against the judgment of the Lahore High Court whereas the respondents filed a suit for declaration along with permanent injunction regarding the allotment of land. A two-member bench of the Supreme Court decided that under Article 4 of the Constitution of Pakistan 1973, all public officials are obliged to act and pass orders according to law. Therefore, the court did not find any irregularities in the decisions of the lower court and High Court and the appeals of appellants were dismissed. The decision in this case shows that the courts in Pakistan are vigilant and competent enough to check irregularities of public functionaries.

In *Abdul Majeed Zafar's case*,⁹³ the matter of the seniority list⁹⁴ was under dispute in the agriculture department. The department prepared two seniority lists 'the combined' and 'the separate one' but the second seniority list was subsequently withdrawn by an order of the concerned secretary. Neither party was able to produce the required record of the seniority list. Therefore, the two-member bench of the Supreme Court delivered its judgment against the decision of the Punjab Service Tribunal Lahore that under Art.4, and 5(2) of the Constitution. The Court declared that public functionaries are required to work in accordance with law without any fear or favour and ordered the agriculture department to prepare a fresh seniority list

⁹² Province of Punjab through collector Khushab, Jauharabad and others V Haji Yaqoob Khan and others [2007] SCMR SC 554

⁹³ Abdul Majeed Zafar V Governor of the Punjab through Chief Secretary [2007] SCMR SC 330

⁹⁴ The 'Seniority List' is prepared for promotion in every department, and is generally based on the length of service, performance and efficiency of the employee during the service.

keeping in view the basic facts as per law within 60 days and then report to the registrar of the said court. The court invalidated the unlawful act of the public official regarding the seniority of public servants as it affected their performance and efficiency, which can diminish the concept of good governance in public institutions.

In Sufi Ghulam Rasool's case,⁹⁵ the petitioner retired after the normal retiring age and filed pension papers to the concerned authorities but the respondents did not finalize the case and being aggrieved person he ultimately filed a writ petition in the Lahore High Court. Mr. Justice Ch. Ijaz Ahmed of Lahore High Court said that because of the irregularities of the public functionaries, the poor people are suffering and unable to get their pension in normal duration of time. The Court under Art.4, 5(2) and 199 directed the respondents to look into the matter immediately and take necessary action for its compliance. The decision of this case helps the public functionaries to formulate a proper policy for a speedy process in preparing documents for pensioner's benefits and as a result, most of the government departments take less time in documentation process these days.

The protection of fundamental rights, which is guaranteed in part-II, Chapter-I of the 1973 Constitution, is of prime importance to the courts. Article 15 of the Constitution grants the citizens a right to freedom of movement to go outside or to come back and reside in any part of the country.

15. Freedom of movement, etc.

Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and

⁹⁵ Sufi Ghulam Rasool V Chief Secretary to Government of the Punjab, Civil Secretariat, Lahore [2004] PSC Lahore High Court 101

move freely throughout Pakistan and to reside and settle in any part thereof.

In Mian Muhammad Shahbaz Sharif's case,⁹⁶ the petitioner, Shahbaz Sharif, a former Chief Minister of Punjab with his family including his brother Mian Nawaz Sharif who was the Prime Minister of Pakistan in December 2000 were forcefully deported to Saudi Arabia after a *coup d'état* by the Army Chief. Later on, he travelled to the U.S. for some treatment and then temporarily settled in UK with his family. He prayed in his petition to the court for an order to come back to the country. The government claimed that there was a deal between the government and Sharif brothers under whom they agreed to live in political exile for the period of ten years rather than to face a trial in the so-called 'Plane Hijacking' case.⁹⁷ The three member bench of Supreme Court decided that the petitioner may come back from abroad subject to the law of the country under articles 4, 15 and 184 (3) of the Constitution. Moreover, it held that the fundamental right of the petitioner could not be restricted as it is totally against the Constitution and the basic principles of rule of law.

Social injustice, income inequalities and unfair privileges undermine the elements of rule of law, which ultimately interrupt the whole process of development in a country (Shivute, 214). Social justice is one of the key elements whose rootings are weak in the political order of Pakistan although there is a clear provision in the Constitution to control this. Article 14 of the Constitution of 1973 provides that the state is duty bound to protect the dignity of man, which was interpreted by the Supreme Court in

⁹⁶ Mian Muhammad Shahbaz Sharif V Federation of Pakistan [2004] PLD SC 583

⁹⁷ On October 12 1999, General Pervez Musharraf replaced Prime Minister Nawaz Sharif through a coup and declared himself as Chief Executive of Pakistan. He implicated Mr Nawaz Sharif in so-called 'Plane Hijacking' case and intended to try him before the court.

Eli Lily's case.⁹⁸ The case was about the procedural illegalities in the income tax laws and violation of the Constitution. The respondents run an auto spare parts business who received a notice from the office of commissioner income tax to revise their income tax assessment with retrospective effect according to the new tax law.

The Supreme Court decided in favour of the respondents and declared the references of the income tax department null and void. Mr Justice Ch. Ijaz Ahmed agreed with the Chief Justice stating that article 4 requires every citizen to proceed in accordance with law while article 5(2) requires obedience to the Constitution. He said that every person has the right to security of life and liberty, to secure his dignity and to enjoy equality and equal protection of law under Articles 9, 14 and 25 respectively. In addition, the court declared that the concept of constitutional supremacy requires that no one should be above the law including the head of state. The court declared for drafting a new structure of tax laws in order to encourage the people to pay the tax willingly and sincerely by repealing the old laws. It is very much necessary to increase the number of taxpayers by introducing just and fair income tax laws and procedures, which would be helpful in order to get rid of the World Bank and IMF loans in future. Moreover, the honourable court declared that the legislature should fully observe the provisions of Article 2-A while drafting the new tax laws.

In Pakistan, a small number of people pay tax including the salaried class and few of the industrialists. The government has been helpless to improve the tax-GDP proportion, which freezes at 11.5% to 12.0% of GDP. The two major sectors such as the agriculture and business community are still not in the tax net which has created an unfortunate situation for the economy. Although, the government legislated new tax laws from time to time but implemented on the existing taxpayers rather than to

⁹⁸ Commissioner of Income Tax V Eli Lily Pakistan (Pvt.) Ltd [2009] SCMR SC 1279

increase its circle to other sectors, which not only reduced their paying capacity but also created tax avoidance (Eur, 2002: 1197). Therefore, the decision of this case showed a way forward in the governance of tax in order to increase the tax net and to draft fair and equitable tax laws without any discrimination.

Social justice and equal opportunities to earn livelihood in a dignified way is another important feature of the Objective Resolution incorporated in the Constitution of Pakistan. In Muhammad Yamin Khan's case,⁹⁹ the petitioner was involved in an accident in which he lost his two hands and sustained injuries to his leg. He was later treated in hospital. The railway administration supported him and issued a vending licence for a shop to sell foodstuff at the railway station. The shop subsequently auctioned issued him a new place upon expiration of his first license. The new place was however further away from the train stop. As a result, his sales decreased and his license again expired. He requested the court to issue an order so as that he could be allocated a shop out of the disabled quota at the right place so that he will be able to sell his food items. A bench of the Sind High Court comprising two judges decided the case while considering the fundamental principles of Objective Resolution. The court under Art.2, 2A, 14 and 199 held that while most of the departments have formulated a policy for disabled quota in jobs, there must be a uniform policy for special people in all other departments. The court in order to fulfil the requirement of social and economic justice unanimously decided the case in favour of the petitioner so that he will be able to earn his livelihood in a dignified way.

⁹⁹ Muhammad Yamin Khan V Government of Pakistan through Chairman Ministry of Railway, Islamabad [1996] PLD Sind High Court 93

However, the government reserved a quota for PWDs¹⁰⁰ in jobs but there is a serious problem with implementation and the decision of this case provided an opportunity to address this issue and uniformity in the application of this policy in all public and private departments.

Equality before law and equal protection of laws are fundamental principles of the rule of law. This is given particular importance in Article 25 of the Constitution that states:

25. Equality of citizens.- (1) all citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

The government of Pakistan imposed a quota in educational institutions for the disadvantaged people or less developed areas in order to provide an opportunity to benefit their local areas after completing their education. In Miss Shazia Batool's case,¹⁰¹ the petitioner passed F.Sc (pre medical) examination and applied for admission to the Bolan Medical College but was unable to secure admission under the quota reserved for the Quetta district. The appellant submitted that almost 75 students who secured lesser marks than her got admission in the Medical College against the district quota. She requested the court to provide her an opportunity to secure admission in the medical college as the authorities violated the district quota

¹⁰⁰ For People with Disabilities (PWDs) a share of almost 1% in jobs was reserved under Disabled Persons (Employment and Rehabilitation) Ordinance 1981 which later increased to 2% in 1999 vide Notification No.SORI (S&GAD) 4-1/80/Vol.III. Although the government announced that a case of not employing special persons as per the requirement leads to a fine, there is still a problem with its proper implementation (Ahmed and Khan, 2010: 132).

¹⁰¹ Miss Shazia Batool V Government of Baluchistan [2007] SCMR SC 410

system. A three-member bench of the Supreme Court delivered the judgment in favour of the petitioner under Articles 2-A, 22, 25 and 37-C of the Constitution and granted the appellant admission in the following session independently of the quota.

This policy was always experiencing problems in its application but the decision in the case confirms two things that firstly, the principles of quota system for less developed areas fully justified under the Constitution and secondly, it needed to be administered in an impartial way. The government started paying some special allowances to individuals holding degrees of high qualification in order to promote a research culture in the country. In Dr. Munir Ahmad's case,¹⁰² the appellants who were professors/lecturers in different colleges submitted that a special allowance of Science and Technology @ 5000 per month was being paid to them because of holding a PhD degree, but the Accountant General withdrew the said allowance. They filed a petition for the reinstatement of the said allowance as it was continuously paid in government departments and in Research & Development Institutes. Mr Justice Zahid Hussain of the Lahore High Court after hearing the learned counsels concluded that there should be no disparity in award of any right for doing so would fall foul of the equality principle as enshrined Article 25 of the Constitution. The Court held that the withdrawal of the said allowance by the Accountant General was without lawful authority and had no legal effect. The decision of this case provided an opportunity to formulate a uniform policy to encourage highly qualified persons and in a way try to minimize brain drain.

¹⁰² Dr. Munir Ahmad and 37 others V Government of Pakistan, Finance Division, Islamabad [2007] PSC Lahore High Court 285

The concept of political and economic governance outlined in Articles 29 to 40 of the Constitution, which are known as the Principles of Policy.¹⁰³ In Ikram Bari's case,¹⁰⁴ the petitioners were appointed in the National Bank of Pakistan at various positions in lower grades. They served there as temporary workers for several years with some short breaks in the service. Some of them were subsequently appointed as permanent employees of the bank whereas the others were sacked. The petitioners filed an appeal to restore them at their jobs because the employer severely violated the labour laws. The three-member bench of Supreme Court delivered the judgment in favour of the petitioners and reinstated all of them on their service with all previous benefits. The Supreme Court decided under Articles, 2-A, 3 and 38 and held that the principles of good governance are significant to the Constitution and the state is liable to ensure hospitable working environment between employees and employers. In addition, social and economic welfare of citizens and equality should be regarded as fundamental rights. The court also said that the state is liable to provide equal chances of service, essential facilities of life, reduction in unequal distribution of riches, and elimination of all types of exploitation.

Although, there is no specific provision in the Constitution of Pakistan, sometimes the individuals in public interest file writ petitions in the high court for remedies. The courts are also vigilant and take *suo moto* actions to save society from social evils. In

¹⁰³ The Principles of Policy are not similar to fundamental rights. The fundamental rights are enforceable by the courts as a matter of right, but the Principles of Policy are not enforceable by the courts and totally depend on the availability of assets of the government. It provides guidelines to the governmental authorities in their business and requires the government to adopt Islamic way of life (Article 31), the promotion of local government institutions (Article 32), parochial and other similar prejudices to be discouraged (Article 33), ensure full participation of women in national life (Article 34), protection of family etc. (Article 35), protection of minorities (Article 36), promotion of social justice and eradication of social evils (Article 37), promotion of social and economic well-being of the people (Article 38), participation of people in armed forces (Article 39) and strengthening the bond with Muslim World and promoting international peace (Article 40) (Ali, 2008: 114, 125). In the Principles of Policy, most of the provisions are taken from 'the Objectives Resolution'.

¹⁰⁴ Ikram Bari V National Bank of Pakistan [2005] PSC SC 915

Khuram Khan's case,¹⁰⁵ the petitioner who was a lawyer filed a petition in Public Interest Litigation (PIL).¹⁰⁶ He submitted that the use of polythene bags are causing destruction on marine life, agriculture, sewerage system as well as spreading many dangerous diseases like cancer, lungs problems etc. Moreover, it is almost impossible to dispose-off the polythene bags, as there is no recycling process as well. Therefore, the respondents have failed to implement the laws concerned to the polythene bags and requested the court to ban the sale of polythene bags totally.

The respondents argued that to ban the polythene bags is impossible as many of the individuals are involved in this business and earned their livelihood. Mr. Justice Shabbar Raza Rizvi of Lahore High Court accepted the pleas of right to life under Article 9 and the state responsibility for welfare of the people to increase their standard of living under Article 38 of the Constitution. The court held that the respondents are directed to take immediate steps to create public awareness on the use of polythene bags and to ensure the implementation of existing laws as well as to draft effective laws for the regulation of polythene bags within the period of six months. The decision of this case upheld the environmental sustainability in Pakistan, which is one of the significant objectives of the UN Millennium Development Goals.

The right to vote is a fundamental Human Right of every citizen protected by the Constitution. In 1999, in the case of Al-Jehad Trust¹⁰⁷ the petitioners requested the

¹⁰⁵ Khuram Khan V Government of Punjab through Chief Secretary and six others [2009] PLD Lahore High Court 22

¹⁰⁶ In 1994, the SC in Shehla Zia's case established the right to a healthy environment under right to life, Article 9 of the Constitution. Therefore, the court held that the authorities should adopt maximum possible precautionary measures to ensure health and safety and to minimize the hazardous effects to human beings. It was the first case which is known as a foundation for Public Interest Litigation (PIL) in Pakistan but unfortunately, the concept has not developed in Pakistan as yet (Shehla Zia v. WAPDA [1994] PLD SC 693).

¹⁰⁷ Al-Jehad Trust V Federation of Pakistan [1999] SCMR SC 1379

Supreme Court for the enforcement of the fundamental right to vote under Article 184(3) in the Northern Areas. A five-member bench of the Supreme Court first highlighted the geostrategic significance of this area and then unanimously held that the “people of Northern Areas are citizens of Pakistan, for all intents and purposes and like other citizens have the right to invoke any of the fundamental rights”. The Supreme Court reaffirmed their right to contribute to the governance of this area and directed the government to enact within six months provisions on access to justice to the people of Northern Areas.

Almost a decade ago, the Supreme Court established the right of the petitioners who alleged that while being citizens of Pakistan they do not have any access to the fundamental rights guaranteed under Articles 9-25 enshrined in Chapter-I, Part II of the Constitution. Finally, after 62 years of Pakistan’s independence, the peoples of the Northern Areas¹⁰⁸ were granted the right to vote with the establishment of Northern Areas as ‘Gilgit-Baltistan’ a fifth province of Pakistan. On 29th August 2009, the Prime Minister of Pakistan declared the ‘Gilgit-Baltistan Empowerment and Self Governance Order 2009’ that replaced the previous ‘Northern Areas Legal Framework Order 1994’ (APP, 2009).

5.4 MECHANISM FOR THE ENFORCEMENT OF RULE OF LAW AND GOOD GOVERNANCE

Pakistan is faced by weak governance structures and the absence of rule of law. Currently the Judiciary is under severe burden of work especially after the recent ‘Lawyers Movement’ that ended successfully. Gishkori (2010) reported that in the

¹⁰⁸ The newly emerged Gilgit Baltistan as fifth province is strategically significant for defence, trade and cultural exchange of Pakistan. It holds a central location in South, Central and East Asia. It connects various civilizations and provides an entrance to China and India in Central Asia. The ‘old Silk Route’ also acts as a bridge between Asia and Europe (APP, 2009; Mohiuddin, 2007: 3-4).

opinion of CJP, the issues of good governance are being ignored continuously. He said that although the Judiciary is working hard to improve the conditions of good governance but for its proper functioning, all organs of the state should work together for the administration of justice. In addition, he explains that the three organs of the state i.e. the legislature, the executive and the judiciary must realize their own roles and it might result in poor governance if any organ of the state fails in its functions. He suggests that it is impossible to achieve good governance without ensuring a speedy, inexpensive, fair and easy justice to the public. A strong judicial structure and good governance are significant to sustainable economic development and strength of a state.

There are various reasons for poor governance in Pakistan. Mahmood argues that the deficient federal structure and excess of state control over the provinces are the main reasons for poor governance in Pakistan. He notes that the World Bank President James Wolfensohn and others during their visit to Pakistan in 1997 openly lamented the growing corruption and weak institutions in the country. He identified the problems of corruption, lack of effective accountability and absence of rule of law as the major challenges of governance (Mahmood, 2007: 9, 129; See also Dawn, 1997).

Haq and Zia (2009: 16) analysed a correlation between the elements of Governance and poverty in Pakistan. They suggest that strong accountability mechanisms and a stable political system can play a substantial role in poverty reduction. On the one hand, the poverty related plans have weak institutional structures while on the other hand, the menace of corruption and the absence of rule of law exacerbates impoverishment. Haq and Zia concluded that disregard to the elements of good governance will result in low economic development in the country. In addition, they

suggested that Pakistan should address the issues of primary importance as early as possible in order to fulfil the requirements of MDGs and to increase investment for the long time.

Pakistan is a developing country and its governance structure comprises four organs namely: the legislature, the executive, the judiciary and the media. There is a growing consensus among the experts, political scientists and the international institutions that rule of law and good governance are indispensable elements for development that requires the participation of civil society in administrative procedure (Faundez, 2009a: 6; UNDP, 1997; Abdellatif, 2003; 4; Sachiko and Durwood, 2007: 16).

Generally, the Legislature, Executive and Judiciary constitute the three organs of the state but the fourth one i.e. the print and electronic media are impliedly considered as integral parts of the modern state system. These organs can play a central role in the governance of a country.

5.4.1 The Legislature

The Constitution of the United States of America is a classic example of a rigid constitution. The U.S. Constitution is structured around the separation of powers between the legislature, the executive and the judiciary. Most modern written constitutions are framed on this pattern. A number of provisions in the 1973 Constitution of Pakistan originated from the American Constitution. The Constitution provides for a bicameral legislature¹⁰⁹ comprising the Senate as an upper house and the National Assembly as the lower house. The lower house is a powerful house in comparison with the upper house that has little powers with no

¹⁰⁹ The Constitution of Pakistan 1962 was unicameral.

budgetary responsibilities. Chapter 2 Part III of the Constitution deals with composition, duration and meetings of the parliament. The Constitution considers, in detail, the qualification and disqualification of the members of the parliament under Articles 62 and 63. The original Article 62 was completely replaced by the present article by Presidential order no.14 of 1985. The substituted article has introduced certain amendments in the criteria required for the membership of parliament.

Justice Muhammad Munir has elaborated on these two important articles:

Under this article, it is now the basic requirement that a person shall not be qualified or be elected or chosen as Member of Parliament unless he is a man of good character and is not commonly known as one who violates Islamic injunctions. He has adequate knowledge of Islamic teachings; practices obligatory duties prescribed by Islam and abstain from major sins. He is also righteous, sagacious, honest, and non-profligate and ameen nor who he should be a previous convict for a crime involving moral turpitude or for giving false evidence; and lastly he should not have worked against the integrity of the country or after the establishment of Pakistan, oppose the ideology of Pakistan. Besides that a candidate is required to possess such other qualification as may be prescribed by the act of parliament. The qualification relating to Islamic way of life and Islamic teachings and practices are not applicable to non-Muslim candidates, though they are required to have good moral reputation. It is pertinent to point out here that the qualifications prescribed by the substituted Art.62 are unsparingly strict and relentlessly stringent. Therefore, very few candidates will be able to test on the touchstone of the requirements of this article. Qualifications of a candidate as contained in art.62 and article 63 are interlinked and have to be read conjunctively and not in isolation (Munir, 1996: 528,535).

The terms and conditions in articles prohibit members of parliament to be involved in corrupt practices, moral turpitude and misuse of power or authority under existing

laws of Pakistan. But the proper application of these articles still questionable. Moreover, if anyone disregards the conditions stated in Article 62 and 63, he will be ineligible to become/remain a member of the Parliament. With reference to Article 62 and 63 of the Constitution, the weaker role assigned to the Election Commission of Pakistan and this aspect is tarnishing its image in the international world.¹¹⁰ The free, fair and impartial elections are only possible through an empowered Election Commission. There are two problems. The first is that the electoral process is not fair and does not operate properly whereas on the other hand, the legislature being subservient to the government had never been an effective instrument for democracy and the rule of law during the dictatorial as well as democratic regimes and that was the reason for not challenging the authority of the government and cabinet.

The judiciary has capability to uphold the rule of law and good governance but growing interference in its affairs by the other organs of state has become major a problem. The IFIs and other world organizations are well aware that improper execution of laws is a major hindrance in the way of smooth functioning of various institutions in the developing world and as a result, they introduced judicial and institutional reforms in these countries. For the last two decades, the IFIs brought change in their policies by imposing certain conditionalities regarding the rule of law and good governance with their lending. Presently, it is almost impossible for borrower countries to get further loans without introducing reforms in their own countries (Singh, 2003: 2; Wouters and Ryngaert, 2004: 15; see Chapter-III Sec.2.2 for further details).

¹¹⁰ The Election Commission of Pakistan is not an independent institution, as its role is to conduct elections but it has not been fully authorised to implement Articles 62 and 63 of the Constitution.

5.4.2 The Executive

The bureaucratic machinery is indispensable in the modern day state system because it enforces laws passed by the legislature. Although, their functions depend upon the culture, socioeconomic growth and political structure of the country, the bureaucratic machinery is supposed to promote constant and predictable policies, good governance, healthy economic growth and the rule of law.

In early 1990s, the World Bank effected a shift in its policies by considering governance as an institutional reform process in the civil service, legislature and judiciary. The IFIs began a discourse on bureaucratic reforms in developing countries and showed a profound interest in building an efficient bureaucratic structure, which could uphold good governance as it is one of the important indicators of it (Kaufmann et al, 1999: 2-3; Shafqat, 1999: 996). The academic community has similarly recognised the constructive role of bureaucracy for development and progress of a country (Burki and Laporte, 1986).

Political power is dominated by the President and the Prime Minister under the Constitution. Although, there is a federal character under the Constitution both governments have run very strong centralised system. (UNESAP, 2003: 4). In the provinces, the power is transferred through a Chief Minister who runs the affairs with a Cabinet of Ministers. The ministers are the heads of their ministries but the major power lies in the hands of the Prime Minister and Chief Ministers of the concerned provinces. In the third phase, power is transferred to the bureaucrats who carry out all the affairs in the federal as well as provincial departments. At independence, Pakistan inherited an undersized bureaucracy from their British colonial masters. In the last six decades, it has commendably improved its size and

undergone enormous structural changes during different regimes. Since independence, the political as well as military regimes introduced certain reforms in the bureaucratic set up for purposes of control. Through purges and structural reforms, they endeavoured to have power and their own political control over the bureaucracy.

During the first military regime of General Ayub Khan, the public service had opportunities to constitute the policy-making process and administration at the local level in Pakistan. The public service played a vital role in controlling the political parties as General Ayub banned political activities in the country at that time. (Cheema and Sayeed, 2006: 9). However, General Ayub Khan took initiatives on the recommendation of Cornelius¹¹¹ Pay, Services and Reform Commission 1962. He held the bureaucracy responsible for political chaos in the country during his regime and co-opted 272 officers from the army into the public services. In addition, he charged 13 bureaucrats on the allegations of corruption, inefficiency and misconduct, which were compulsorily retired. He also offered the bureaucracy different training programs and fellowships in foreign countries in collaboration with FORD Foundation and USAID programmes. The aim was to establish efficient and effective institutions to help in the quest for economic organization, social progress and good governance (Burki, 1969; Shafqat, 1999:1003).

In March 1969, the regime of General Ayub ended because of ‘student’s protests’,¹¹² which took the shape of mass movement against him. Ayub handed over the control of government to General Yahya Khan who also targeted the bureaucracy by

¹¹¹ Shafqat is of the opinion that Justice A.R Cornelius, Chief Justice of the Supreme Court, had anti-bureaucratic views which resulted in demoralizing impact on bureaucracy (1999: 1004).

¹¹² In 1962, when General Ayub enforced the presidential form of Constitution, the students in East Pakistan started protests against his dictatorial regime. The students burned a number of copies of the Constitution during their agitations, and insisted on an invalidation of the constitution and reinstatement of democratic system in the country (Singh, 2003: 23).

removing 303 bureaucrats on allegations of corruption and misuse of powers. The media saw Yahya Khan as someone determined to combat corruption in government (Ahmed, 1974; Shafqat, 1999: 1005; International Crisis Group, 2010: 10).

In 1970, the general elections held under the military government of General Yahya Khan who presumed that no party could achieve the majority seats. The Awami League (with Bengali majority) had won the elections with majority seats but the authorities were not willing to transfer power and started military operation in the East wing which resulted in dismemberment of that part from Pakistan. In West Pakistan, the PPP got the majority and forced General Yahya Khan to resign (International Crisis Group, 2010: 4-5).

Following the successful secession of Bangladesh, most of the senior bureaucrats who were from East Pakistan moved to Bangladesh, creating a vacuum in the civil service in Pakistan. In 1973, after the introduction of administrative reforms by Zulfikar Ali Bhutto the first democratically elected Prime Minister removed almost 1300 civil servants¹¹³ on corruption charges. In the 1962 Constitution of Pakistan, the bureaucracy was protected by a constitutional guarantee in reference to the terms and conditions of their employment. However, Bhutto removed these constitutional protections first and then held the civil servants under the authority of political executives who were empowered to dismiss even the senior officers by a simple order. Moreover, he directly inducted almost 5000 civil servants of different ranks and grades in the bureaucracy through “Lateral Entry” scheme (International Crisis Group, 2010: 5-6; Shafqat, 1999:1005).

¹¹³ When Bhutto’s PPP came into power, he decided to restructure the bureaucracy and introduced administrative reforms.

After the imposition of third Martial Law under General Zia ul Haq instead of following the practice of previous military regimes, he made certain guarantees in the light of Justice Anwar ul Haq Commission. He also introduced some minor changes such as prayer break, dress code and code of conduct at work. But, he subsequently began regular induction of armed forces personnel. This was followed by the imposition of a 20 percent quota¹¹⁴ for the ranks of captain and major. The biggest shock for the bureaucracy was the appointment of army officers to senior posts in the civil service, which not only discriminated, but also had demoralising effect on them (Shafqat, 1999: 1003-9).

A former federal secretary describes the situation of bureaucracy during the two successive democratic governments of Benazir Bhutto and Mr. Nawaz Sharif as; “Bhutto and Sharif both had their own ‘team’ of civil servants who were patronised and promoted not on merit but on their perceived loyalty to their respective political masters”.¹¹⁵ Both prime ministers carried out all the appointments based on political affiliation rather than on merit, which opens a gateway for corrupt practices (International Crisis Group, 2010: 7).

In 1999, the fourth Martial Law regime of General Musharaf brought a major change in the bureaucratic structure by introducing ‘Devolution of Power Plan 2000’. According to that order, the concept of city district government evolved in which the bureaucracy assumed to be under the authority of district ‘Nazims’¹¹⁶ (Cheema and Sayeed, 2006: 22). Some retired bureaucrats believe that the Devolution Plan introduced by General Musharaf destabilized as well as demoralized the

¹¹⁴ He fixed 20% quota of army officers to be inducted in the civil bureaucracy.

¹¹⁵ A retired federal secretary during his interview with the International Crisis Group shared this information in Islamabad on 6 November 2009. (mentioned in International Crisis Group, 2010: 7)

¹¹⁶ The ‘Nazim’ was elected through local level election in each district and was responsible for the affairs of the city district government like a mayor.

effectiveness and impartiality of the civil service in Pakistan. A number of bureaucrats insisted that at least law and order and revenue powers should be in the hands of civil service rather than the district 'Nazims' (2010: 8-9). Nadvi and Robinson suggest that almost 1200 high-level positions in the civil service as well as public sector were allocated to military officers (2004: 8). DFID (2005-07: 6) in one of its reports noted that "...obstacles are reflected in a set of institutions and power relations, which entrench the political and economic power of elites, including the military and its growing corporate interests, and hamper the effectiveness of the bureaucracy and the judiciary".

The illegal purges, structural reforms and political misuse enticed the public service towards corruption and abused of power, which tarnished the image of the system. The major objective of bureaucracy is to sustain consistency in the formation and application of policies irrespective of kind of regimes and leaders. Husain points out the increasing political involvement in the bureaucracy like political appointments on key posts, ignoring seniority in the promotion of officers, induction of army officials in the bureaucracy, illegal purges, growing corruption in the institutions, weak accountability over the acts of the bureaucracy are the major reasons for its poor performance. For the last two decades, the bureaucracy has not modernized according to the changing political and social requirement of the country in order to meet the good governance indicators set by the International Financial Institutions (1999: 523).

5.4.3 The Judiciary

Lord Denning (1949: 126) asserts that remedies must be provided to rectify excesses of executive decision so as to facilitate rule of law. The characteristic of judicial

review is the enforcement of private rights as well as to keep the administrative and quasi-administrative functionaries within their specified limits. These days, the role of government administration has increased due to the challenging structure of government. Reliance on the rule of law is fundamental to the development of a community into a civilized society. Unfortunately, this conviction has weakened in Pakistan because of various factors. For effective role of the judiciary, there is urgent need to update the system of litigation in order to avoid procedural errors and delays in the process of civil and criminal cases.

Judicial review is a check over the unconstitutional and illegal acts of the administrative and quasi-administrative functionaries. However, there are some factors responsible for delay in the decision of cases in the legal system of Pakistan but the judicial option is a reasonable element against wide discretionary powers of the administrative machineries. Moreover, the judiciary keeps an eye on unconstitutional and capricious acts of the executive and legislature as happened in the famous case of Pakistan Steel Mills.¹¹⁷ The primary object of judicial review is to watch the malfunctioning of the administrative powers and to ensure accountability or check over the unlawful acts of public functionaries. The High Courts and Supreme Court exercise their writ jurisdiction under article 199 and 184 (3) of the Constitution of Pakistan 1973. The Constitution provides two kinds of remedies: a) Public Law Remedies and b) Private Law Remedies.

¹¹⁷ In this case, General Musharraf in the guise of privatization ordered a privatization of Pakistan Steel Mills is a national asset which is considered as the backbone of Pakistan's economy at very cheap rates. The Chief Justice intervened in a timely manner, by passing an order to set aside the process of privatization (Iqbal, 2006; PLD 2006 SC 697).

a) Public Law Remedies

In Pakistan, the superior and higher judiciary have used the power judicial review to declare unconstitutional, acts of public functionaries deemed to be inconsistent with the Constitution. The judiciary has applied its power through five *prerogative writs* namely *Mandamus*, *Certiorari*, *Prohibition*, *Quo Warranto* and *Habeas Corpus* in order to provide speedy and inexpensive justice.

b) Private Law Remedies

Private law remedies are available by the lower judiciary through the ordinary law of the land. In Pakistan, the lower judiciary provides these private law remedies under three kinds of suits like *Suit for Injunction*, *Suit for Declarations* and *Suit for Damages* depending on the nature of the remedy the person is looking for.

Independence of the judiciary is considered key to healthy economic development and the protection of human rights. Recently, the judiciary has experienced a long movement for the revival of its independence as discussed above, which is a unique example in the history of Pakistan. It successfully ended after the persistent collective struggle of lawyers, civil society and political parties, which lasted up to two years.¹¹⁸

5.4.4 The Media

The media exposes the corrupt practices and inappropriate conduct of officials. In modern times, no one can deny the fact that the fourth pillar is emerging as the most powerful organ of the state. According to Wolfensohn, the President of World Bank, “A free Press is not a luxury. A free Press is at the absolute core of equitable development because if you cannot enfranchise poor people, if they do not have a

¹¹⁸ See section 5.2.6 for further details.

right to expression, if there is no searchlight on corruption and inequitable practices, you cannot build the public consensus needed to bring about change”.¹¹⁹

The media plays a decisive role in the achievement of good governance and control of corruption. A robust media requires access to information (Stapenhurst, 2000: 1). The state is always in a position to build a positive relationship with its citizens, which depends on the ways of communication between them. The media plays an important role in enlightening the public and holding government accountable. The use of the latest technology by the electronic and print makes it possible to have access to information on government policies and welfare plans for them but it depends on the availability of information and transparency (DFID, 2008: 2-3).

Article 19 of the Universal Declaration of Human Rights¹²⁰ provides that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers”. The International Covenant on Civil and Political Rights¹²¹ provide that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, either in writing or in print, in the form of art, or through any other the media of his choice”.¹²²

During the last decade, the Pakistani media has undergone enormous changes especially in the advent of the electronic and print media. As a result, almost all state functionaries have started paying special attention to the issues of rule of law and

¹¹⁹ Wolfensohn, James D. A speech to the World Press Freedom Committee, 1999, Washington D.C. (see also, Stapenhurst, 2000: 3)

¹²⁰ The General Assembly of the United Nations approved and declared the Universal Declaration of Human Rights on December 10, 1948.

¹²¹ The International Covenant on Civil and Political Rights ratified by the United Nations General Assembly December 16, 1966.

¹²² The International Covenant on Civil and Political Rights, Article 19 paragraph 2.

good governance. A few years ago, the media was largely under the control of the state, but reforms in the regulation of private media outlets have opened ownership. There are currently over 70 TV channels and a number of foreign media houses in Pakistan. The growth has also brought about increased exposure of corruption and social injustice (Deutsche Welle, 2009).

There are large numbers of radio stations entertaining and informing the public especially in rural areas. The Military as well as civilian governments always tried to curtail the freedom of the media in Pakistan, but the growth of private has created powerful civil society. For instance the media has been instrumental in the formation of the 'Lawyers Movement'. It also accelerated the downfall of General Musharaf. A political and military analyst Christine Fair¹²³ notes "The only hope for Pakistanis is that the media will continue to mobilise people. The media have done a great job, even if they are at times very unprofessional, and have to come to term with the limits between journalism and political engagement" (International Media Support, 2009: 16).

Article 19 of the 1973 Constitution of Pakistan provides protection for freedom of speech, expression and the press. The government incorporated the Pakistan Electronic Media Regulatory Authority (PEMRA) in order to frame the regulatory policy of the media and to secure an atmosphere of competition. The electronic and print media, which are indicators of good governance framework of the World Bank, are expanding, while also promoting free speech in Pakistan (Wassan, 2008: 47).

¹²³ Christine Fair is a senior political analyst and specialist in South Asian Political and Military Affairs at the Rand Corporation, 2009.

5.5 CONCLUSION

An independent, efficient and strong legal and judicial system safeguards the economic, political and trade activities of a country. However, in Pakistan, the civil as well as military regimes have attempted to control the judiciary in order to make it subservient to the executive. The decisions of important constitutional cases discussed in this chapter shows a clear influence of the executive which impact on constitutional governance and future trends of politics in Pakistan. Thus political involvement in the institutions not only undermines the rule of law and good governance, but also establishes the culture of corruption that badly affected the efficiency of public servants.

The Constitution provides a democratic form of government but four Martial Law regimes exacerbate the situation of the rule of law and good governance in the country. It is a fact that the democratic governments find a very short time to grow and establish strong foundation for the smooth functioning of the country, which is also a reason for weak public institutions. The other problem is that the Constitution has never been implemented in its true letter and spirit due to the frequency of Martial Law in Pakistan. There are various mechanisms available for the enforcement of rule of law and good governance but weak enforcement and ineffective system of accountability results in poor outcomes. Moreover, the ‘war on terror’, unemployment, poverty, social injustice, illiteracy and growing corruption are other impediments to sustainable economic development in Pakistan.

The organs of a state are indispensable elements for the promotion of rule of law and good governance but unfortunately, a lack of coordination among these pillars has been a constant throughout the history of Pakistan. Most of the times, the judiciary

and bureaucracy have been undermined either by political involvement or by curtailing their powers. An independent judiciary and a free bureaucracy are also crucial for the achievement of MDGs, which requires a careful attention of the authorities.

CHAPTER SIX

AUTHORITY AND CORRUPTION IN PAKISTAN

6.1 INTRODUCTION

The previous chapter examined the conditions of rule of law and good governance in Pakistan. In this chapter, the focus is on the internal factors that undermine the rule of law and good governance and their consequences. A significant part of these internal problems relate to corruption. In order to identify these, the chapter has been organized in five parts. Part II of the chapter explores the definition of corruption, its forms, causes and consequences. Part III considers measures undertaken at the global level and the shift in the policies of the IFIs to eliminate corruption especially in the context of Pakistan. Part IV observes the effective role of the media to curb corruption. Part V examines the issue of corruption in Pakistan coupled with Anti-corruption frameworks and legal mechanisms, which is the main concern of this chapter. Finally, Part VI of this chapter concludes and summarizes the key arguments.

6.2 THE CONCEPT OF CORRUPTION

6.2.1 Defining “Corruption”

The word ‘corruption’ is defined by the Oxford Advanced Learner’s Dictionary as “dishonest or illegal behavior, especially of people in authority or the act or effect of making some body change from moral to immoral standards of behavior”.

According to James D. Wolfensohn;

Corruption is a problem that all countries have to confront. Solutions, however, can only be homegrown. National leaders need to take a stand. Civil society plays a key role as well. Working with our partners, the Bank Group will help any of our

member countries to implement national programs that discourage corrupt practices. And we will support international efforts to fight corruption and to establish voluntary standards of behavior for corporations and investors in the industrialized world. The Bank Group cannot intervene in the political affairs of our member countries. But we can give advice, encouragement, and support to governments that wish to fight corruption—and it is these governments that will, over time, attract the larger volume of investment. Let me emphasize that the Bank Group will not tolerate corruption in the programs that we support; and we are taking steps to ensure that our own activities continue to meet the highest standards of probity¹²⁴ (Kindra, and Stapenhurst, 1998: 3).

The United Nations Convention against Transnational Organized Crime describes corruption as, “the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”¹²⁵ (UN, 2004: 10).

Previously, the issue of corruption was ignored in trade with developing nations, and has not always been treated as a criminal act. In some cases, it is considered as business expenditure and in others, it is portrayed as taxable act. The colonies, which were once directly under the administrative control of developed countries, became independent and sources of raw material and safer markets for their final products were not freely accessible. Therefore, corruption and manipulation of the market through such other means increased gradually which made trading or business much more costly. In the late 1970s, the U.S. administration promulgated laws¹²⁶ to disallow corruption of foreign officials in trade. In the 1980s, there emerged

¹²⁴ James D. Wolfensohn, President of the World Bank 1996 Bank-Fund Annual Meetings Speech.

¹²⁵ Article 8 (1) (b) of the United Nations Convention against Transnational Organized Crime.

¹²⁶ The Foreign Corrupt Practices Act 1977.

increasing focus on dishonest rulers such as Suharto of Indonesia, Mobutu of Zaire, Marcos of Philippines and successive military regimes in Nigeria. Allegations of corruption and abuse of power were frequently reported in the media. In several cases, the looted wealth was more than the actual debts or liabilities of the countries. Consequently, international bodies began engaging corruption and its impact, which was a major departure considering that in decades earlier corruption was not so much a matter of urgent concern in international institutions, aid agencies and global organizations like the World Bank and IMF. This was partly because there was an assumption that talking about corruption amounted to interference in the domestic affairs of other countries (Matsheza, 2007: 2).

In the 1990's, this approach was transformed into an international movement for anticorruption. The International Financial Institutions, donor agencies and anticorruption NGO's took it seriously and highlighted openly through discussions, and debate the alarming effect of corruption in national development. The effects of corruption on economic growth were many and varied. President Wolfensohn in the 1996 World Bank annual meeting revealed that corruption was one of the sole obstacles to growth. Therefore, combatting corruption as an element of rule of law has brought considerable change to the expansion of the Bank's policies in relation to legal and judicial reform projects (Asis, 2006: 4).

Tanzi suggests that there are many reasons for the projection of corruption into the agenda of developed countries. Firstly, the end of the cold war resulted in the end of double standards, which had equipped the big powers in a number of industrialized states to disregard political corruption in some countries. Secondly, there has been a possibility that because of insufficient evidence or hesitation to discuss this issue by

those individuals who have some friendly relations with these states. Thirdly, an increased number of democratic regimes in various states and open media made it possible for the creation of a favorable atmosphere to talk about corruption, which was previously a challenge. Fourthly, globalization has provided a platform for dialogue between least corrupt and most corrupt states. Fifthly, significant attention has been paid by the NGOs, particularly Transparency International, which publishes a corruption index and annual reports to highlight the predicament of corruption in various states.

In recent times, The World Bank, the IMF and the International institutions are taking up leading roles in the efforts to tackle corruption. Finally, the role of the U.S. in formulating anti-corruption laws cannot be ignored. Tanzi argues that American enterprises lose contracts as a result of kickbacks paid to overseas officeholders. The payment of kickbacks is also outlawed under the Foreign Corrupt Practices Act of 1977. This had impact on the minds of people. The impact of the anti-corruption campaigns has led to the indictment of political figures and high profile personalities on charges of corruption.¹²⁷ History reveals that the issue of corruption is not new and is frequently cited in different civilizations. For example, Kautilya,¹²⁸ a well-reputed Prime Minister of an Indian state, almost two thousand years ago, described this issue in his noted work “Arthashastra”. Dante in his “Divine Comedy” has categorized bribery in the lowest section of Hell, which reflects disliking of people of Middle-Ages. Shakespeare also discussed the issue of corruption in his plays. The

¹²⁷ For example, in Pakistan two successive regimes of Mian Nawaz Sharif and Benazir Bhutto were dismissed on the charges of Corruption in 1990 and 1993 respectively by President Ghulam Ishaq Khan under article 58 2 (b) of the Constitution. Again in 1997, Benazir government was dismissed on the same charges by the President Farooq Leghari (Wilson, 2009: 83).

¹²⁸ In the fourth century B.C, an Indian political expert Kautilya after thorough observation differentiated forty diverse behaviours that can allure the civil servants towards monetary dishonesty and identified various methods of accountability followed by punishments and incentives to avoid such actions (Sen, 1999: 275).

framers of the U.S. constitution were also very concerned about the issue, so they clearly added that even American President could be impeached on grounds of corruption and treason (1998: 559-560).

Sen notes that rampant corruption in Asian and African states is a key obstacle to development. He concedes that to eradicate corruption altogether from the societies is not an easy assignment but effective accountability laws can produce better results to control this dilemma. He cited the work of a Chinese author almost around 122 B.C., Huai-nan Tzu place corruption of rulers that:

The power to achieve success or failure lies with the ruler. If the measuring line is true, then the wood will be straight, not because one makes a special effort, but because that which it is “ruled” by makes it so. In the same way if the ruler is sincere and upright, then honest officials will serve in his government and scoundrels will go into hiding, but if the ruler is not upright, then evil men will have their way and loyal men will retire to seclusion (Sen, 1999: 278).

Dreher (2004: 5) suggests that corruption reflects the shortcomings or weaknesses prevalent in a political setup. Moreover, he believes that fostering political contest can encourage transparency and accountability. Mauro (1995) asserts that corruption is responsible for low economic development that eventually decreases private investment, a perception shared by Burki and Perry (1998). McGovern differentiates corruption with other ordinary crimes and points out that:

Corruption’s Advent in any community is marked by the commission of bribery, extortion and criminal conspiracies to defraud the public, without a corresponding increase in other unrelated crimes. It’s going, likewise, is accompanied by no abatement in the usual grist of larcenies, burglaries and murder. It is, indeed, a

unique and highly complex thing; an institution, if you please, rather than a condition of society or a temper or tendency of any class of individuals (1907: 266).

6.2.2 Forms of Corruption

A range of different types of corruption has been assumed in the USAID Handbook for Fighting Corruption (1999):

It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling and fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or disorganized (Chetwynd et al 2003: 6).

Corruption is generally viewed as “the abuse of (public) power by state functionaries for private benefits”. It covers all kinds of acts such as bribery, misappropriation of money, theft and misuse of public resources, fraud, and extortion money laundering among others. The problem of enacting or implementing these laws is that there is often lack of proactive structures and sometimes cooperation from public officials (UDODE, 2001: 75).

The issue of corruption has reached an alarming state and it has become difficult to differentiate especially the political dimension of corruption. This is because there has been a trend of corporate financing of political activities which often results in favours owed and returned. Tanzi asserts that Privatization of non-natural interest groups is a basic pre-requisite, which ultimately will reduce this type of corruption. The process of privatization is always looked at with suspicion because political elites play leading roles in decision making, where their vested interests could lead to non-transparent processes. The shift of public enterprises to personal possession

through privatization is linked with misuse of power. A number of people in the developing world have become rich due to maltreatment in the process of privatization (Tanzi 1998: 563-564).

Myint suggests that the incidence of corruption differs from society to society as in some cultures it could hardly be found whereas in others it is well rooted. In those societies where incidents of corruption are exceptional, it can be identified and tackled with relative ease. To control and deal with pervasive corruption is a difficult undertaking. It is believed that when systemic corruption strengthens its position in a society, the institutions, rules and people's conduct and approach tilt from fair to corrupt practices and gradually becoming an integral part of life (2000:41, 45).

6.2.3 Causes of Corruption

The existing literature exposes many causes of corruption. Quah (1988:92) notes that corruption is a pervasive in countries where disproportionate allocation of wealth is widespread and public servants are poorly paid. The World Bank in its 1997 report also emphasized that the causes of corruption are progenies of a country's policies, bureaucratic culture, political growth and social norms. It notes that corruption thrives in the presence of weak institutions and government policies provide holes and enough space for economic breaches. During the transitional and developing phase, it becomes harder to manage, curb or point out corruption. There are many factors, which subvert and weaken the performance of government servants or output including meager and inadequate emoluments and promotion without evaluating the competence. Inappropriate public budgets, insufficient goods and apparatus, lingering or impending in the release of allocated funds (including pay) and a loss of managerial role has proved to be substantial.

The persuasion to remain honest further deteriorates when high-ranking public officials and politicians fulfill their immoral plans by using “public office for private gain” and those who oppose or confront, feel themselves unprotected. Moreover, the guardian-client affair or association may have long controlled the state service, which induced distribution of corruption money and preferential treatment. In various states, the public servants intentionally paid less with some unofficial consideration that they will search new avenues of income generation in addition to their salary.

Mauro is another who identifies the small salaries drawn by public servants in comparison with private sector payment or GDP per capita as an inherent cause of corruption. He believes that it happens when public servants are remunerated less and they feel uncomfortable in getting the basic needs of life, which compel them to create an environment of corrupt practices. In addition, the situation worsened when officials expect that in case of arrest or official enquiry, they will not be spared official reprimand as soon as they provide money in exchange of their release (1997: 85-86).

Khan (2006:3) asserts that corruption occurs when government officials disregard the law to pursue their personal gains. Bribery and extortion are the most unpleasant forms of corruption but distribution of certain public funds on preferential treatment or for gaining political incentives also come into its purview. It is evident that developing countries are paying a heavy price in shape of corruption. International donor agencies have been increasingly concerned about corruption and through various analytical studies concluded that the conditions of development in under-developed countries could be improved through good governance.

Lederman et al perceive weak accountability mechanisms or poor system of checks and balances as responsible for political corruption. They note that the consequences of political organizations on corruption operate in two different ways. The principal feature deals with political accountability; any procedure that enhances political accountability could greatly reduce corruption. The second aspect deals with the organization of public goods and services for which a free, fair and competitive atmosphere in the same public service provision could minimize incidences of corruption. He further notes that a fair competition amongst service providers offer people freedom of choice, which could help reduce corruption. It also creates a competitive environment of businesses which ultimately results in reasonable prices of commodities (2001:6, 9).

Rose Ackerman reveals how the loopholes in governmental policies provide sufficient space for corruption and corrupt practices. For example, if a state enterprise is a purchaser or a service provider, there is a strong possibility that private organizations may offer bribes to public office holders. An unscrupulous enterprise may extend different incentives to include its name in the list of qualified bidders and to have closer liaison with officials who set the rules or bidding qualification. Corruption takes place when costs on subsidies and benefits are too high leading to hardship. People provide bribes to the officials to be successfully evaluated for public benefits or to access public services. For example, corruption in the U.S. has diminished gradually in public housing programs whereas in countries like India where corruption is prevalent, the poorest are bound to pay even for availing their right to old age support (1996: 1-2).

6.2.4 Consequences of Corruption

Shah (2003) provides his analysis of corruption in Asia:

Corruption in the Asia-Pacific region can cost up to one sixth of a country's gross domestic product, robbing its citizens of precious resources that could provide opportunities for the poor to better their lives. The incalculable costs of bribery and unethical behavior include erosion of the rule of law: trust in government institutions, and political instability.

The UN Manual on Anti-Corruption Policy acknowledges that in under-developed countries, corruption has badly tarnished national, social, economic and political development. National resources are wasted, competent and un-impeccable citizens have feelings of despondency, overseas donors run-away, schemes are left unfinished, productive capacity is poor, executive proficiency is downgraded and a legitimate political leadership is vanished. This undermines economic growth and destabilizes political order which affects infrastructure, literacy, medical and other amenities (2001: 8).

Gupta et al while analyzing the impact of corruption on income inequality said that it enhances income disparity and poverty through lesser financial development, unfair tax policies supporting the wealthy and the politically connected. In addition, social schemes are poorly marked, the resources are employed by the wealthy to lobby government for sympathetic rules, which enable disparity in asset possession, lessen public spend, inconsistent education strategies and low expenses on the deprived (1998:4). Corruption aggravates poverty because it deprives people valuable resources that could have been used to improve their social conditions. In the communities where corruption and favoritism are widespread, competition is discouraged and disregarded which in the ultimate analysis impinges on the process

of circulation of financial resources, which disrupts economic development. Therefore, the phenomenon of corruption is also capable of damage to the efforts of donor organizations in their struggle against poverty and illiteracy (Isopi and Mattesini, 2009:2).

The Mahbub ul Haq Human Development Centre asserts that poor governance is one of the root causes of corruption. It subverts the course of investment and financial growth, reduces the accessible capital reserved for human progress plans, widens the level of poverty, overturn the judicial scheme, and weaken the legal status of nations. It is a reality that deeply rooted corruption erodes a country's economic, political and social values. The centre suggested that there is an urgent need to formulate a 'zero tolerance policy' towards corruption, which was not only adopted by the global legal order but also in national level strategies and lower tiers (1999: 96).

Mauro notes that corruption may result in the reduction of national tax incomes when it appears in the form of tax evasion. Mauro further observes that corruption easily flourishes when political instability and weak legal structures exist in a country. Could corruption be responsible for under-development? It is generally understood that corruption can and does affect development. However, it remains a challenge to prove that corruption is the primary cause of under-development rather than the institutional deficiencies. In fact, all these deficiencies are deeply inter-connected (for instance delaying tactics in official work provides chances of corrupt practices to flourish and in most of the cases bureaucrats intentionally adopt these to be able to get extra graft). Moreover, corruption can be eliminated or decreased by the control of institutional deficiencies as low-level institutional efficiency provides sufficient space for corrupt practices (1998:12).

Quah (1988:92), World Bank (1997: 12), Mauro (1997: 85-86) and Rose Ackerman (1996: 1-2) in relation to the issue referred above in section 5.2 identify low wages as one of the key reasons for growing corruption. However, Myint (2000:41) and World Bank (1998: 38) observes the impacts of poor wages on the behavior and efficiency of public servants noting that leaving aside different aspects of corruption, the sole factor of meager salaries has pernicious influence on the behavior and conduct of public servants.

Quah (1988:90) suggests that the consequences of corruption could be reduced if the administration of a country has a strong and persuasive anti-corruption policy and determination to apply it effectively. Thus an effective anti-corruption structure will have valuable impact on the public in terms of attenuating the damaging consequences and degree of corruption. The efficiency of anti-corruption procedures is based on two things: 1) The appropriate steps taken in terms of the broadness of its range and authority; and 2) The intensity of dedication of the political elites to the object of eliminating corruption in the state. He concludes that for successful anti-corruption efforts, these should not only be appropriately planned to alleviate the roots of corruption in society but also should be fully supported and advocated by honest and sincere political leadership.

All key anti-corruption mechanisms pointed out that corruption undermines and demoralizes the institutions of democracy and the rule of law, which create doubt regarding the legitimacy and sincerity of the establishment. In the states where regulatory bodies are feeble and infirm, where political backing is generally prevalent, where the freedom and professionalism of state based agencies have been diminished, where respect to prescribed rules and the rule of law are not strictly

followed. Corruption also affects civil rights including right to vote as vote purchasing and partial support to political elites has incredibly damage the process of free election. Corruption weakens the impact of rule of law, which means the people in a state should be dealt with by the same law in a free, fair and impartial manner and in case of breach of law there will be a recognized process of accountability (Matsheza, 2007: 8).

6.3 A PARADIGM SHIFT

Since the 1990's, the lending agencies have been giving considerable attention to uphold good governance and the greater thrust is on the 'efficiency, transparency, liberalization and control of corruption'.¹²⁹ The previous policy has experienced a notable change in dealing with the issue of transparency because most of the aid related matters were kept secret on the excuse of its politically oversensitive nature. In the past few years, aid agencies have taken considerable interest in the fight against corruption, accountability, transparency and integrity in Pakistan. The interest of aid agencies could be linked to the rise in money laundering, organized crime and the increase in foreign direct investment¹³⁰ (Ali, 2007a: 2).

It is important to note that until recently, the lending agencies were not inclined to build up, maintain and put into effect programs and plans, which are aimed at tackling corruption. History reveals that there was a time when 'corruption' was used with caution because of its politically insensitive nature. As an alternative, expressions like "leakages, inefficiencies or transaction costs" were employed. In recent times, some donors have attempted to expand plans intended to support

¹²⁹ The chapter IV of the thesis has discussed the concept of good governance succeeded by the IFIs.

¹³⁰ In March 2002, the International Conference on Financing for Development was organised in Monterrey. The representatives of developed and under developed states approved the rule of "mutual responsibility and accountability", which ensured the cooperation of the aid providers (Ali, 2007a: 2).

transparency and accountability, in order to identify corruption on a wider scale which “seeks community empowerment, democratization, and better service delivery”. Ali suggests that there are a number of perspectives on this. One is that the new focus on transparency is having an effect; the other that insufficient effort is being made. In the circumstances, it is difficult to say which one is correct (Ali, 2007a: 6-7).

The IFIs and some other International Institutions have initiated shift in their policies for the promotion of anti-corruption movement. It is pertinent to point out that the U.S. has played a key role through its influence on various international organizations. American policy makers claim that U.S. foreign transactions have declined because the country’s laws prohibit bribery or kickbacks to overseas officials (Tanzi, 1998: 561).

A new era of global bribery prevention started when the U.S. took a pioneering initiative and declared bribery of foreign officials under the Foreign Corrupt Practices Act of 1977 illegal. The Act also imposed certain obligations on American companies and their foreign subsidiaries. The U.S. administration continued its efforts and eventually in 1997 it convinced a considerable number of world community to sign OECD, an international anti-bribery treaty,¹³¹ which is considered as the most important global agreement on overseas bribery. The signatory members decided that this treaty should be applied to penalize the inducement of an overseas public official and for that, dissuasive, potent and impartial criminal penalties were recommended. It further defined an overseas public official that persons appointed or elected representatives to work as a legislator, administrator or judicial functionary

¹³¹ On December 17, 1997, all the members of the OECD including five non-member states approved “Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions”.

working abroad.¹³² In spite of powerful efforts of the U.S., no consensus has developed on the issue that financial support to political parties or their officials should also be declared a penal offence (Martin, 1999: 6-8).

International organizations have contributed to the strengthening of governance and institution building in developing countries. There is sufficient proof that the correlation between governance and institutions can speed up the process of development, which helps in the reduction of poverty. However, the study reveals that not all successful developing states have adopted the same kind of institutional approach. The further disturbing aspect is that the models of governance and institutions followed by the majority of successful underdeveloped states are in conflict with the forms of good governance framed by international organizations (Khan, 2006:1).

The World Bank introduced a strategy in 1996 that empowered the bank to probe into issues of corruption. After having conclusive proofs, the World Bank was empowered to stop financing in that member state and in case of a company; it was debarred from participating in World Bank funded projects. In early 1997, the United Nations General Assembly adopted a resolution on “Action against Corruption” and in May 1997, the council of European Union on the same lines approved the Framework Convention against corruption. The U.S. joined in closer collaboration with different NGOs such as International Chamber of Commerce (ICC) and Transparency International (TI). The corruption strategy was further expedited by the President Clinton and extended to multilateral institutions, which regulate world

¹³² Article 1 4(a) of the Convention said: ““foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation”.

trade and allocate development lendings, especially, the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) (Martin, 1999: 9-10; World Bank, 1997: 61).

On October 2003, the United Nations Convention against Corruption (UNCAC) was formulated as a global anti-corruption framework by the UN General Assembly. The convention has been signed by 145 member states. It provides a comprehensive regulation in global criminal law which shows a unanimous commitment of the international community to promote collaboration to fight against corruption, penalize the culprits and recover possessions not only within their own states but also focuses on intra-state corruption as well. As Article 1 of the UNCAC explains its purposes are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property (UN, 2004a: 9).

The UNCAC requires states to build legal frameworks for a responsible, effective and organized anti-corruption strategy with the involvement of civil society to ensure the doctrines of rule of law and maintainable progress¹³³ (UN, 2004a: 9; Hechler, 2010: 1). In the context of Pakistan, a number of organizations are engaged in the fight against corruption. The World Bank has initiated plans aimed at combatting corruption. These plans were designed to improve the system of monetary reporting

¹³³ See Articles 4 and 5 of the UNCAC.

and auditing, the Central Board of Revenue (CBR) and banking division. For example, the Project for the Improvement to Financial Reporting and Auditing (PIFRA) aims to build a foundation for public sector accountability, to maintain better structural ability for financial policy-making and organization and to strengthen public sector accounting and monetary structure.

The Asian Development Bank has been providing support to Pakistan since the 1950s. For example, its access to justice project has many dimensions including “access to information, accountability, police reforms and judicial reforms, which retain the potential of reducing corruption and abuse of authority in the country”. The Department for International Development (DFID) of the UK helps Pakistan in various projects so as to reduce its level of corruption. In 2002, it helped to develop the National Ant-Corruption Strategy (NACS). The United Nations Development Programme (UNDP) has provided information about control of corruption through guidance and various training programs for the staff (Ali, 2007a: 4-6).

From the perspective of global standards, Pakistan has approved the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.¹³⁴ In 2007, Pakistan signed the UN Convention against Corruption (UNCAC). However, Pakistan has not accepted the UN Convention against Transnational Organized Crime (UNTOC) (Chene, 2008: 7-8).

6.4 THE ROLE OF MEDIA IN COMBATING CORRUPTION

The UN International Covenant on Civil and Political Rights provides the rights of freedom of press and free access to information. Article 19 (2) of ICCPR states that:

¹³⁴ In 2001, almost 28 states jointly decided to fight against corruption in the Asia and Pacific region. A large number of international bodies and aid providing agencies including ADB and OECD also supported their objective. It was concluded that a fight against corruption is a vital element for better governance of human, natural and financial resources (Fabie, 2009).

“everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

The local media is playing a vital role in facilitating good governance and by so doing, exposing corruption. The media also helps in sensitizing the public on corruption and its effects. Although, a well-trained cadre of investigative journalists is crucial for the effective functioning of the media, access to information and freedom of expression are paramount (Stapenhurst, 2000: 1). Consensus exist that an independent judiciary and functioning parliament with a free media are prerequisite for good governance. The role of the media in this regard is twofold. The first is to develop public understanding about corruption and the second is to expose corruption with the view to combatting it in the long run. In order to ensure a free and efficient media, journalists should be able to investigate and report without any restrictions or impunity (Stapenhurst, 2000: 15).

Wolfensohn in his speech to the World press freedom Committee said:

A free press is not a luxury. A free press is at the absolute core of equitable development because if you cannot enfranchise poor people, if they do not have a right to expression, if there is no searchlight on corruption and inequitable practices, you cannot build the public consensus needed to bring about change (Norris, 2006).

Amartya Sen formulated this in another way by stating that political liberties are associated with enhanced economic growth results and good governance in poor states by encouraging openness to public concerns. Sen believes that a free press

improves the influence of poor people and produces further new options about economic requirements (Norris, 2006: 2; Sen, 1999).

Similarly Johnston notes that a responsible political system coupled with a competitive economy could provide accountability mechanisms to tackle. He believes that reduction in corruption will promote economic development, which will open up new economic opportunities. A weak political system on the other hand, is a recipe for instability (1997: 19). However, governments have shown an inclination to limit the freedom of the media through legislation and other means. Media organizations such as the International Federation of Journalists have initiated processes and codes of conduct through which the media is able to function with integrity and professionalism (Stapenhurst, 2000: 18; Serosa, 2005: 1).

In 2002, Pakistan Development Forum¹³⁵ in its meeting in Paris noted that a robust freedom of information law must be enacted. It further suggested that government actions be publicized in the initial phase in order to encourage public participation. Proposed drafts of rules and regulations must be debated openly and in case of key investment plans, all stakeholders should be involved from the very first day by conducting public hearings. Transparency International Corruption Perception Index concludes that a sound freedom of information legislation is a guarantee for reduced intensity of corruption in a state (TIP, 2002: 2).

Transparency International in its report strongly emphasizes the need for an independent and free media that:

¹³⁵ In 2002, Pakistan Development Forum held its meeting at Paris from 29-30 April and the government engaged with its development partners in order to gain an overview of its development challenges (PDF, 2002).

Alongside an independent judiciary, the existence of free and independent media is one of the twin powers essential for good governance, and neither should be accountable to government or politicians. The Government should scrupulously refrain from any temptation to manipulate the media, either through direct influence over companies or individual journalists, or by using economic powers such as the placement of advertising (2002: 3).

It is clear from the above that corruption is problematic in both its nature and implications. However, there is little consensus as to acceptable methods of combating it. Issues raised by the scholars examined above bear resonance with the notion of social justice as theorized in this thesis. This is particularly so given that social justice in its broad conception advocates for and confronts most of the practices inherent in a corrupt environment. In order to understand the nature and problems of corruption and the utility of social justice in providing realistic alternatives it is imperative to first examine the outlook of corruption in Pakistan and a second, assess its deeper impact.

6.5 THE ISSUE OF CORRUPTION IN PAKISTAN

Quaid-E-Azam Muhammad Ali Jinnah, the founder of Pakistan said in an address to the 1st Constituent Assembly after independence on 11th August 1947 that:

One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but I think, our condition is much worse - is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this assembly to do so.¹³⁶

¹³⁶ (Home page, National Assembly of Pakistan, 2010)

Awan notes that the culture of bribery and corruption was rampant during colonial rule in India. He further reveals that during the British invasion in Indian Sub-continent, they tempted the local leaders by rewarding 'jagirs' (lands) and titles in return for their loyalties to the 'British Rule'(Awan, 2004: 19). National Anti-Corruption Strategy (NACS) on the other hand identified two historical catastrophes responsible for the origin of bribery in Pakistan; the World War-II and mass migration because of partition of Indian sub-continent. The incredible rise in bribery linked with procurement forced the British to create the 'Special Police Establishment'. Secondly, separation of East Pakistan resulted in migration that led to shortage of skilled civil servants in various institutions culminating in poor performance.

At the time of independence, Pakistan inherited a poor economy, dysfunctional political system and a highly trained civil service. The civil service played a decisive role in the governance of the country. It is important to note that the government remained structured with the inherited institutional tradition of the British system. On the partition of the Indian sub-continent, corruption was exacerbated by the allocation of land (GOP, 2002: 11).

Haq (1996) points out that although corruption is everywhere in the world, it mutates in different form in South Asia. Firstly, corruption in South Asia starts from the upper stratum to the lower one, which hampers the development process. Secondly, In South Asia monies accrued from corruption are deposited in overseas foreign currency accounts. Thirdly, in South Asia the people involved in corruption are often not penalized because of their relationship with government officials. In South Asia, corrupt persons are so influential that they hardly feature on the accountability radar.

Fourthly, in South Asia corruption is one of the major causes of growing poverty. In South Asian countries, there is an immediate need to draw the attention of authorities to fight corruption and to take practical steps not only to punish corrupt elites but also to end poverty (Mahbub ul Haq Human Development Centre, 1999: 99). The World Bank identified political intervention as one of the root causes of the problems faced by Pakistan, echoing calls for reforms of the civil service (World Bank, 1998: 25).

Ali analyzed the level of transparency in Pakistan and noted lack of access to information and the concealment of public documents are so widespread that it has fundamentally affected free access to the governmental archives. Generally, there is a perception that the official reports and press releases are usually unreliable and deliver misleading information. The publication of yearly reports is a rare phenomenon and when it does happen, they are usually littered with inaccuracies. Parliamentary enquiries proved to be helpful in accessing information, but this has also been fraught with problems of delay or refusal on the basis of national security. In general, the courts provide through public trials sufficient official information especially on those cases involving governmental departments. But it is also a noted fact that information from such sources is mostly limited and could not reach the people regularly, the same could happen in those cases where a case obtains considerable media attention (2007: 6-7).

The International Crisis Group in its Report on Asia states that the eight years regime of General Pervez Musharaf led to an incompetent civil service that was subservient to the military government. A systematic policy was adopted that led to the recruitment of army Generals as civil servants. This included the chairperson of

Federal Public Service Commission (FPSC) and the principal authority for the recruitment and promotion of the civil service. The military government's ill-conceived devolution plan aggravated an already dysfunctional system. However, civil service tribunals already existed there before the military regime. Out of date rules and regulations and an inflexible ranking procedure in civil and military bureaucracy have weakened the supervision of public (ICS, 2010: I; Hart, 2006: 7).

Sayeed asserts that both the politicians and military personnel are complicit in boosting corruption. He notes that the politicians should be more responsible as compared to the high army officers for three reasons. In the first place, the process of election enables the electorate to give their verdict on the conduct of politicians. However, it might not be true in the case of Pakistan because the politicians find an opportunity to be elected again and again from the same class because of corruption which means the electoral democratic process is not based on fair play. It is very difficult to assess the performance of government on the basis of voter's rating as no elected government has completed its tenure in Pakistan. Secondly, the audit and accountability regulations are only applied on the politicians who formulate them and are more answerable as compared to the military officials.¹³⁷ Thirdly, due to greater interaction with the public and media, the activities of politicians are always quite visible but the military, a disciplined force did not have any check and balance system over their budgets. The comprehensive budget of Pakistan army was never presented or debated before the house. In addition, the civilian inspection establishments are not allowed to check the army accounts and even the military officials are not liable to be investigated by the civilian anti-corruption establishment as per law. It is a fact that there exists considerable disparity between "civilian-

¹³⁷ The military budget cannot be discussed in parliament and they have their own system of accountability.

military situation in Pakistan”. However, it is quite risky for the media to demand accountability from army officials (2010: 36).

According to Gilani,¹³⁸ the National Reconciliation Ordinance (NRO)¹³⁹ issued by President Musharaf in October 2007 provided a new way in tackling corruption in Pakistan. The politicians, bureaucrats and army officials accused of corruption were amongst the beneficiaries under the NRO, which also facilitated former Prime Minister Benazir Bhutto to return from exile. The chairperson of Transparency International Pakistan (TIP) identifies the army as the most corrupt institution in Pakistan. He however notes applauds the efforts of the current Army Chief General Ashfaq Pervez Kayani for taking bold initiatives in tackling corruption especially in the management of the Defence Housing Authority (DHA). He asserts that corruption is widespread due to non-availability of real democracy in Pakistan and as a result, countries such as China, Saudi Arabia and the United Arab Emirates (UAE) are not willing to invest in Pakistan.

Moreover, employment of army generals after their retirement should be discouraged as it imparts a bad image. He also calls for an effective law to strengthen accountability of army generals and the judiciary. He accused the judiciary of validating martial law regimes from 1951 to 2007. He further added that the government of Pakistan has weak governance structures which ultimately resulted in economic crisis, growing poverty, increasing inflation, serious food shortage, energy crisis and mounting unemployment in the country (TIP, 2009).

¹³⁸ The Chairman Transparency International of Pakistan (TIP).

¹³⁹ On October 5, 2007, President General Musharaf promulgated the National Reconciliation Ordinance (NRO), which provided immunity to politicians, political workers and bureaucrats who were indicted of corruption, misappropriation, money laundering, murder and terrorism between January 1, 1986 and October 12, 1999, the period between two martial law regimes in Pakistan. On December 16, 2009, the Supreme Court of Pakistan took an important step by declaring this act of the President unconstitutional and without lawful authority (TIP, 2009).

Transparency International Pakistan conducted a survey to determine the causes of corruption in government departments and came up with the following results in its 2009 report.

Table 6.1 Causes of Corruption in Government Departments

Causes of Corruption	No.	Percent
Lack of accountability	2449	47.096
Lack of transparency	673	12.942
Discretionary power	594	11.423
Monopoly of power	458	8.8077
Low salaries	527	10.135
Shortages-Demand & Supply	113	2.1731
Power of influential people	229	4.4038
Red-tape	100	1.9231
Other	57	1.0962
Total	5200	100

Source: “National Corruption Perception Survey TI Pakistan 2009”. *NCPS 2009*, <http://www.transparency.org.pk/documents/NCPS%202009/NCPS%202009%20%20Report.pdf>

As per TIP report in the 1996, Pakistan was declared as the second most corrupt nation out of 54 countries and in 2009, scoring 42nd position out of 180 most corrupt countries. Transparency International in the 2009 Corruption Perception Index (CPI) positioned Pakistan at 139 out of 180 states. Its ranking in 2008 was 134, implying that corruption increased within a year. In 2009, India was positioned at 84, a better ranking compared to Pakistan. There is another kind of corruption, which involves government officials trying to satisfy the whims of their superiors for advance their personal aggrandizement (TIP, 2009).

Husain argues that our system of government tends to move towards a “legalized corruption” which provides the pretext to members of national and provincial assemblies, secretaries, ministers and their associates. For example, corruption is encouraged in the shape of allocation of government housing to these elites at rates below the market value. This also includes distribution of permits and licenses without merit to their own families and friends causing a huge loss to the public

treasury. He added that due to this problem, our political system is a “plutocracy”¹⁴⁰, and not a democracy (Husain, 2010).

Table 6.2 Transparency International; Corruption Perception Index Pakistan Score and Ranking

Year	Pakistan Rank/Score	Pak Most Corrupt Rank	No. of Countries Ranked	Military and Democratic Regimes
2009	139/2.4	42	180	President: Asif Ali Zardari, PM: Yousaf Raza Gilani (25 March 2008 to onwards)
2008	134/2.5	47	180	
2007	138/2.4	42	179	President: General Pervez Musharraf (12 October 1999 to 18 August 2008)
2006	142/2.2	20	163	
2005	144/2.1	16	159	
2004	129/2.1	19	147	
2003	92/2.5	42	133	
2002	77/2.6	26	102	
2001	79/2.3	13	91	
2000	N/A	N/A	90	
1999	87/2.2	13	99	
1998	71/2.7	15	85	Nawaz Sharif (17 February 1997 to 12 October 1999)
1997	48/2.53	5	52	
1996	53/1	2	54	Benazir Bhutto (19 October 1993 to 5 November 1996)

Source: “Corruption and its Deep Impact on good governance in Pakistan”. *Pakistan Economic and Social Review*, 48(1): 123-134.
<http://www.pu.edu.pk/economics/pesr/PDF-FILES/7%20JAVID%20Corruption%20and%20its%20Deep%20Impact%20on%20Good%20Governance%2085.pdf>

Transparency International in its report identified the factors that have made it almost impossible to prosecute the political leadership for corruption. General Musharraf promulgated the NRO that provided immunity to political leaders, army officials and civil servants from all charges of corruption which performed as a channel to establish corruption at institutional level. In addition, the anarchy and uncertainty deeply engulfed the affairs of the country, besides growing inflation, joblessness and rapid decline in development have aggravated the situation (TIP, 2009).

¹⁴⁰ The term “Plutocracy” or “Qabza Group” is commonly used for land mafia which is backed by some parliamentarians, who occupy the government as well as private lands and pay a minute price as compared to the market price. In addition, the parliamentarians are awarded land in shape of free of cost lands in housing societies.

Khawaja and Mian have pointed out that political meddling and corruption enhanced government-controlled banks have been used by top-level officials to swindle large sums of money. Generally, incentives are provided in the shape of promotions, which required the completion of several dishonest tasks whereas penal actions are usually taken in the form of disciplinary proceedings or removal from an influential position. The role, which has been assigned to the politicians in the state controlled banking system, facilitates them to gain access to huge loans from these banks and after that to escape with higher defaults (2004: 7).

Ishrat Husain¹⁴¹ reveals that political involvement is pervasive in the banking system of Pakistan. He notes that:

The nationalized commercial banks and development financial institutions have made a few thousand families fabulously rich but made the rest of the population pay the price for their malfeasance. The cost of capital has become exorbitantly high and the access to credit has been so severely curtailed that legitimate businesses and enterprises are unable to carry out their productive activities or expand. No wonder, employment opportunities are shrinking and the ranks of the unemployed youth are swelling. The recruitment, postings and transfers in all government ministries, departments and corporations are largely made either in exchange for outright pecuniary favours or on purely political considerations. The result is that the government offices are saddled, barring some honourable exceptions, with incompetent and dishonest functionaries who are always trying to please their bosses or political masters while being completely oblivious to the grievances of the common man whom they are supposed to serve (Husain, 1998).

¹⁴¹ Dr. Ishrat Husain a renowned Pakistani banker and economist previously served as an economist in the World Bank in 1979. He also served as governor of the State Bank of Pakistan for almost six years (02/12/1999 to 01/12/2005). He worked for 'National Commission on Government Reforms' for the period of two years (2006-2008).

The Additional Auditor General of Pakistan while delivering his speech at ACCA in Lahore admitted that corruption is widespread in Pakistan due to some flaws in the economic, social, political, and legal frameworks. In fact, it is leading towards a loss of Rs. 500-600 billion to the treasury and mistreatment of 20-30% growth spending amount of Rs. 120 billion per annum. He said, “we have developed a culture of tolerating corruption” whereas good governance and transparency are indispensable elements for sustainable and evenhanded economic development. He laments Pakistan’s constant appearance on the list of most corrupt states in the world by the international organizations (Ahmed, 2009).

6.5.1 Historical Overview of Anti-Corruption Frameworks

In Pakistan, corruption not only engulfs the public servants but also other organs of state. Twelve different legal instruments have been enacted to deal with this problem. In recent years, public demands have been increased to deal with the issue of corruption which resulted in assurances by the political leaders to tackle and punish those involved. In spite of the promises, not much has fundamentally changed. The new institutional structure for the elimination of corruption is quite deficient in its performance due to the absence of a robust tribunal. There is consensus that Anti-Corruption Commissions failed to achieve their goals because the proper environment has never been provided (i.e. strong judicial set up, a clear consistent process and adoption of stringent measures to progress government servants’ accountability to the public) (World Bank 1998:25).

In Pakistan, various anti-corruption laws have been enforced by different regimes but an effective execution was always a key problem for the authorities. The Prevention of Corruption Act 1947 passed by the British government was reinforced by the

Public Representatives (Disqualification) Act of 1949 and the Elected Bodies (Disqualification) Ordinance of 1959. The two regulations were meant to purge dishonesty from the public service. But they were abused and ultimately used to victimize political opponents (Schultz, 2007: 153).

The Federal Investigation Agency (FIA) was established to tackle corruption. It was later replaced by Pakistan Special Police Establishment (PSPE) in 1975. The West Pakistan Anti-Corruption Establishment was set-up in 1961, which was subsequently split into provincial ACE's after the dissolution of One Unit in 1970. The highly intricate procedural aspects and excessive political intervention transformed these bodies into unproductive organs as they were plagued with corruption and inefficiency. The Anti-Corruption Agencies (ACAs) not only failed to control this problem but they also became entangled in corruption. The pervasive corrupt practices in the anti-corruption agencies forced the government to establish the Inspection Commission. In 1997, 'the Ehtesab Bureau' was established to support the actions taken by the 'Ehtesab Commission'.¹⁴² The Bureau was charged with investigation whereas the Commission was assigned the role of prosecution. In spite of having a very strong statute, the Bureau produced disappointing results because it was relentlessly used for political persecution. Therefore, the Ehtesab Act 1997 lost public confidence. In fact, the Ehtesab Bureau missed an opportunity to build a consistent and impartial system to eradicate immense corruption (NACS 2002: 12). The table below shows the anti-corruption agencies established so far in Pakistan.

¹⁴² In November 1996, a prospective key establishment, the 'Ehtesab Commission' was founded after some disappointments with the efficiency of current establishment charged with ensuring accountability of civil servants for their unlawful activities. This institution performed efficiently for the first six months and referred almost 64 cases to the High Court for alleged corruption. The formation of 'Ehtesab Bureau', which was directly liable to the Prime Minister and the elimination of the probing power of the Ehtesab Commission considerably, curtailed its effectiveness (World Bank, 1998: 27).

Table 6.3 Anti-Corruption Agencies in Pakistan

Name	Year Established	Jurisdiction	Functions
Anti-Corruption Bureaus	1970	Provincial	Check on corruption in Provincial Governments
Federal Investigation Agency (FIA)	1975	Federal	Immigration, Financial & Cyber-Crime, Anti-Terrorism
National Accountability Bureau (NAB)	2000	Federal	Public and Private Sector , White-Collar Crimes

Source: “the Nature of Corruption and Anti- Corruption Strategies in Pakistan”. *Article 2 of the International Covenant on Civil and Political Rights*, 9(1): 33-40. <http://www.article2.org/mainfile.php/0901/369/>

6.5.2 Legal Framework and Accountability Establishments relating to Anti-Corruption

The legal structure to deal with corruption comprises the Pakistan Penal Code, 1860 (PPC), the Prevention of Corruption Act, 1947 (PCA) and the National Accountability Ordinance, 1999 (NAO). The PCA covers various aspects of corruption and bribery whereas the NAO summarizes the power of the NAB. In September 2002, the NAO was again amended and it will remain applicable subsequent to the election of a fresh legislature. The main criticism leveled on the NAO is that in this document the considerable factions of public servants including the serving military officials and the Judiciary are ousted from its operation. Notwithstanding, President General Musharraf issued NRO on October 5, 2007 that not only restricted the authority of the NAO but also shattered the process of anti-corruption in Pakistan.

Under the leadership of Zulfiqar Ali Bhutto, founder of the PPP, the legislature of Pakistan passed a statute, the Representation of Peoples Act, 1976 on January 4, 1977. Article 42A of the act clearly mentions that “every member shall...submit a statement of assets and liabilities of his own, his spouse and dependents annually to

the (Election) Commission (of Pakistan)” and for that a specific form has been provided to disclose this information beforehand. Article 42A (2) of the act supports the right of access to information and authorizes the Election Commission of Pakistan to publish these particulars and a copy of these documents can be acquired by paying some charge. Article 42A (3) speaks about its procedure and said that the Chief Election Commissioner “shall...notify the names of the members who fail to file statements of assets and liabilities within the period specified...and by an order direct that such member shall cease to function till such statement is submitted”.

However, it is surprising that no parliamentarian has ever been served such kind of warning ordering to “cease to function”. Article 42A (4) states “where a member submits the statement of assets and liabilities...which is found to be false in material particulars, he may be proceeded against under Section 82 for committing the offence of corrupt practice.” Section 82 provides that “Any person guilty of corrupt practice shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.” It is also a distinct feature of Pakistani politics that since its promulgation no parliamentarian has ever been penalized or charged for submitting a false statement of assets and liabilities under Article 42A (4) (CRSS, 2009: 2).

The federation of Pakistan has various procurement rules that apply nationally and within each of the four provinces and two territories. The national procurement pattern of Pakistan has recently been restructured. The development resulted in passing the Public Procurement Regulatory Authority Ordinance 2002 and the Public Procurement Rules 2004 (PPR 2004) while the latter has been produced on the lines of the UNCITRAL model law. The application of PPR 2004 extends to all procuring

organizations of the national and regional governments. On the other hand, the Public Procurement Regulatory Authority (PPRA) is permitted to excuse the procurement of some item or group of items from the application of the regulations or some further law regulating public procurement. This regulatory structure allows individual procuring bodies to determine key regulations and strategies themselves as well as carry out public procurement. The PPRA generally offers an overview to improve administration, governance, accountability, transparency as well as the quality of public procurement of merchandise, works, and services. In addition, the PPRA has an authority to examine the application of rules and regulations, strategies, and measures; suggest to the national government policy amendments and alteration to current rules and regulations; and recommend policies and organize moral principles and measures for public procurement. In order to observe transparency, the PPRA establishes its own Web site, which registers all requests for tender. The individual procuring organizations enjoy comprehensive authority to determine regulations and procedures comprising regulations on blacklisting and evaluation measures (ADB, 2006: 86).

The PPR 2004 further initiates means of tackling corruption. The law provides effective complaint mechanism essential in identifying and preventing bribery in the public procurement in government and the judicial. Judicial review should be preceded by an administrative review. The administrative review merely involves pronouncement made in the course of a tender and is unable to question, for example, the selection of the procurement process or pronouncement completed in arbitration measures except tendering. In addition, the procurement regulations have not provided any administrative review system. However, every procurement organization lays down its own measures. The PPR 2004 authorizes public access to

information concerning awarded agreements in order to enhance public check but on the other hand, measures of prequalification and ineligibility are still openly inaccessible (ADB, 2006: 88).

Pakistan has legislated very good accountability laws but their proper implementation has always been problematic. In 2006, there was a rapid rise in the cost of sugar, which was deemed to have been manipulated by manufacturers. The NAB immediately took initiative and announced to expose the actions of cartel and tax evasion but afterwards the whole process subsided completely. In reality, most of the ruling and opposition party ministers are the owners of sugar mills and there is a common perception that they politically influenced the NAB. Pakistan is a major producer of sugar but due to widespread corruption, people are forced to buy sugar at very high prices. Pakistan Steel Mills¹⁴³ is another corruption case which involved incidence of corruption in the process of privatization.

The government was going to sell it to Russian, Saudi and Pakistani investors at the cheapest rates. The decision of the government was challenged in the Supreme Court who accepted the petition and cancelled the deal because the sitting government elites were through stealthy means earning enormous money. After this event, General Musharaf suspended the Chief Justice Iftikhar Muhammad Chaudhry which further eroded public confidence in the battle against corruption. Since 2006, the people of Pakistan are skeptical about the initiatives taken by the government to resolve this issue. The Global Corruption Barometer of TI reveals some incredible facts about the level of corruption in Pakistan that 23 percent of people believe that the anti-corruption attempts of government are “not effective” whereas 27 percent believe that the government is not willing to eliminate this problem and a 10 percent

¹⁴³ Constitution Petition No. 9 of 2006 & Civil Petition NOs. 345 & 394 of 2006.

declared the government to support corrupt practices intentionally. (TI, 2006; Schultz, 2007: 152).

Generally, the public accountability Institutions are the Auditor General's (AG's) Division, the Public Accounts Committee (PAC) and the office of Ombudsman. These public bodies are supposed to play a decisive role in upholding an atmosphere of governmental accountability as per the apprehensions of the public. The notable aspect of such types of accountability institutions in Pakistan is that in most of the cases they failed to show potential in containing corruption. (NACS, 2002: 45).

The office of the Auditor General has significantly enhanced its procedural capabilities, but its reliance on the Ministry of Finance to allocate its budget implies that its independence may be compromised. The accusations of covert understanding between individual auditors and civil servants are also prevalent. The sluggish effects of the reports it analyses and its failure to inflict sanctions when the administrators overlook commands frustrate the Public Accounts Committee (PAC). The office of the Ombudsman entertains and investigates complaints of administrative failure and in certain cases, may facilitate compensation. Generally, the primary function of this institution is to deal with the issues of lower level corruption and up to a certain extent play a significant role in reducing corrupt practices of civil servants. The office of Ombudsman is a respectable institution that needs the cooperation of the authorities to execute its decisions (Schultz, 2007: 154).

6.5.3 The Present Structure

Previously, a number of attempts were made to develop an organizational framework to deal with this issue but in recent times, the growing trend of corruption forced the authorities to draft new laws. In 2002, a National Anti-Corruption plan was prepared

and the National Accountability Bureau (NAB) as the implementation agency was provided with powers of investigation and prosecution to confront corruption. The NAB is the key anti-corruption institution of Pakistan and its foremost responsibility is to eradicate corruption through a holistic approach of responsiveness, deterrence and enforcement. It retrieves stolen national assets through corruption, abuse of authority and dishonest practices. It uses power under the National Accountability Ordinance 1999. It operates in Islamabad and has four regional branches in the provincial capitals and one at Rawalpindi.¹⁴⁴ The major aim of this institution was to curb corruption in order to improve accountability which worked well for almost six months but unfortunately was used for victimization of political opponents during the tenure of General Musharaf. (Home Page of NAB; Husain, 2007: 7).

Pakistan's unstable political situation coupled with a weak judiciary and dysfunctional anti-corruption agencies have been major obstacles in the battle against corruption. A notable point is that the anti-corruption trials have long been assumed to be unfair. It is a common practice that most of these trials are initiated against political opponents and junior grade public servants whereas the actions of army officers have never been examined. Besides this, the National Reconciliation Ordinance 2007 has provided exemption from the previous corrupt practices and provided a safeguard to many civil servants and political leaders from trial. Since the NAB is under the administrative control of the army and the president who appoints its head, the occupants have mostly been ranked army officers. However, the notable aspect is that army officers and judges are exempt from. The consensus is that NAB was created for the persecution of rival political leaders and subordinate civil servants. The judiciary, army officials and coalition partners of the government have

¹⁴⁴ The Preamble of National Accountability Ordinance No XVIII of 1999 of Pakistan

granted ‘blanket immunity’ from some inquiry or any sort of accountability for their conducts (Chene et al 2008: 1, 8). The table below shows the anti-corruption legislations conducted to date in Pakistan.

Table 6.4 Anti-Corruption Legislations in Pakistan

Year Enacted	Title	Present Status
1947	Prevention of Corruption Act	In force
1949	Public Representatives Disqualification Act	Repealed
1958	Elected Bodies Disqualification Ordinance	Repealed
1997	Ehtesab Act	Repealed
2000	National Accountability Bureau Ordinance	In force

Source: “The Nature of Corruption and Anti- Corruption Strategies in Pakistan”. *Article 2 of the International Covenant on Civil and Political Rights*, 9(1): 33-40.
<http://www.article2.org/mainfile.php/0901/369/>

The powers of NAB to deal with the matters relating to corruption, misappropriation, abuse of authority, fraud and unlawful enrichment originated from the National Accountability Ordinance. The NAO has come under heavy criticism partly because its mandate is very narrow as it excludes key officials from the army and the judiciary. The head of the NAB is fully authorized to discharge an accused because of “voluntary return” of assets acquired in the course of corruption, which is criticized on the basis that it is almost an exemption from punishment. The law of plea bargain granted to NAB has also been criticized as it is matter for the courts. The said ordinance granted power to detain the suspects without charges for 90 days. The law was overtly misused in its early days and many of the suspects were detained or confined for more than two year continuously, in spite of having no conclusive evidence against them (Schultz, 2007: 154-55).

6.6 CONCLUSION

In Pakistan, the internal and external political factors have played an important role in relation to corruption. These political factors have been influenced by international developments in various periods and a less emphasis on dealing with corruption has

been observed. The chapter shows the shift in the perception of corruption and the way the IFIs are responding to dealing with corruption in Pakistan. Currently, the IFIs have been key actors in developing anti-corruption strategies worldwide including Pakistan.

The United Nations Convention against Corruption (UNCAC), adopted by the United Nations General Assembly on October 2003. It shows a unanimous commitment of the international community to promote the fight against corruption, penalize the culprits and recover possessions nationally as well as globally. In 2007, Pakistan signed the UN Convention against Corruption (UNCAC). It has also approved the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. However, Pakistan has not accepted the UN Convention against Transnational Organized Crime (UNTOC). In case of Pakistan, the UNCAC can provide a strong basis to formulate a policy to deal with the issue of corruption in foreign banks.

There are various facets of corruption including extensive economic and political corruption in Pakistan. The two categories such as petty and grand corruption are rampant in the country and the people are forced to pay bribes in order to get access to basic necessities of life. Transparency International Pakistan has contributed a lot in exposing corruption. The most unsettling aspect of corruption in Pakistan is that it has not only institutionalized but also given some ‘blanket immunity’ to influential people in society. It breeds underdevelopment by denying basic facilities to the people and create social injustice, disparity and disappointment. Another important issue of low wages for public servants was identified as contributing factor for corrupt practices. It was suggested that there is an urgent need to transform the civil service including the revision of pay structure so that an average family may survive.

It has been identified that the access to information should be given prime importance in order to have transparent procedures in the institutions. The current Freedom of Information Ordinance (FOIO) 2002 does not provide sufficient access to information practices as it has been applied on the federal government sectors whereas the provincial and local divisions along with private institutions are not in its jurisdiction. It also falls short of providing a broad definition of the term 'information' or 'records'. Moreover, it places less responsibility on the public offices in widening access to information to all.

Finally, the problem of corruption cannot be resolved unless there is a strong political will to do so and in Pakistan this has never been present. What has happened is that regimes including military as well as civil have come in promising to end corruption and even introduced new machinery to deal with it. However, their attempts have been unsuccessful. This is either because they never intended to deal with corruption in the first place and have used the new machinery cynically to punish their opponents or they have not been able to cope with the forces which promote corruption and have been corrupted in the process. Thus while the legal machinery as well as the institutions to deal with corruption are important, real reforms will not take place in the absence of strong political will.

CHAPTER SEVEN

THE IMPACT OF STRUCTURAL REFORM STRATEGIES OF IFIs ON THE RULE OF LAW, GOOD GOVERNANCE AND DEVELOPMENT IN PAKISTAN

7.1 INTRODUCTION

The previous chapter explored the extent to which corruption undermines the rule of law and good governance in Pakistan. In this chapter, the aim is to interrogate the impact of Structural Reform Strategies of IFIs on rule of law, good governance and development in Pakistan. The key contention of the chapter is that the absence of social justice in Pakistan results from the interaction between IFIs policies and weak structures of governance, the rule of law and development introduced by the government of Pakistan. While IFI policies have recently attempted to emphasise human rights, good governance, the rule of law and development these have been ineffective partly because IFI's submissiveness to geo-strategic interests of the U.S. and Western powers and partly because of internal factors.

This chapter is organized in three parts. Part II examines the impact of Structural Reform Strategies (SRSs) of the IFIs on the rule of law and good governance in Pakistan. Part III highlights the impacts of SRSs of the IFIs on development in Pakistan while focussing the three key sectors such as, poverty, education and health. Part IV concludes the chapter and summarises key arguments.

7.2 THE IMPACT OF SRSs OF IFIs ON THE RULE OF LAW AND GOOD GOVERNANCE

Since the early 1980s, the notion of law and development had been used to help the acceleration of development in developing countries. The core of the movement was hinged on formulating and incorporating "good governance programmes to rule of

law and development” resulting in the injection of huge amounts of money to development related projects. The law and development projects involve improving legal scholarship, judicial reform, and legal aid, combatting corruption as well as providing training and teaching programmes. A number of institutions were involved in the law and development movement. These include the Ford Foundation, the United Nations Development Programme (UNDP), the World Bank, the USAID, the European Bank for Reconstruction and Development (EBRD), the American Bar Association (ABA), the Inter-American Development Bank (IDB), the Asian Development Bank (ADB), the United Kingdom’s Department for International Development (DFID) and among others (Tamanaha, 2009: 1-2).

Nader notes that to examine the capacity of any law and development plan, it is important that the initial concepts of development strategies be outlined regardless of their consequences to established authorities. The underlining rationale of legal reform is to promote social justice, human rights and improvement in the structures and functionality of the state. The concept introduced the idea of law as a tool of social change and progress (Nader, 2007: 1-2).

Tamanaha notes the following eight experiences as a result of law and development movement:

- 1- Modern law is necessary, though not sufficient, for economic development.
- 2- The appearance of the rule of law is helpful though not sufficient, for political development.
- 3- Beyond these minimums, the law is not of primary importance.
- 4- Dependency theory was partially right and partially wrong; modernization theory was partially wrong, and it is too early to tell whether it was also partially right; nevertheless, the rule of law is compatible with both.

- 5- Developing countries will benefit- that is, the quality of life of their citizens will improve- if they develop their own variants of the minimum content of the rule of law.
- 6- The minimum content of the rule of law can best be established through efforts oriented to legal development- to the building of legal institutions and the body of legal doctrine.
- 7- The work of law-and –development theorists has always been substantially a reflex of western issues and concerns.
- 8- Law-and-development theory in particular and law-and–development studies in general, can be seen as largely a Western academic conversation, at least for the present (Tamanaha, 1995:483-485).

In the law and development movement, similar things were co-opted in the World Development Report 2006. The World Bank identifies various principles,¹⁴⁵ however, a lack of clear vision and lack of familiarity with the previous exercise has been observed in the application of law and development. Nader concluded that the rule of law programmes will remain deficient if law serves to uphold issues of power and control (Nader, 2007: 20-21). Yet despite this, Tamanaha suggests that there have been little lessons learned from the fault lines of law and development experiences. He notes:

One implication of this thought experiment is that the failures of law and development projects in the past five decades does not entail that legal development is failing. Rather, it means that that law and development projects—mostly related to the establishment of capitalist, democratic, and liberal legal institutions—are not showing much success. Legal development still takes place, although not according to or in compliance with this formula (Tamanaha, 2009 cited in Paliwala, 2011: 4).

¹⁴⁵ (World Bank, 2006)

Tamanaha contends that a number of factors are central to legal transformation such as political strength, social approaches to law, sufficient human capitals, social balance and adequate financial assets. He further asserts that by constructing indigenous capabilities, the probabilities for effective legal growth can be improved as it grows its form and appeal inside a specified culture which is primarily an indigenous problem. Previously, the lendings were misused by spending on buying armaments for the armed forces or establishing foreign accounts by the elites which was basically provided for financial growth. He asserts that Sen has provided a broad and influential approach which includes justifiable growth, political and democratic freedoms, safety from violence and uncertainty, sufficient social services, an open print and broadcast media, and rights of women in relation to improve the capabilities and liberty of individuals (Tamanaha, 2009: 12-15, 23).

He concludes that it is the requirement of each culture to adopt an efficient legal scheme in order to succeed and look after the affairs of government and contemporary financial administration. Moreover, dynamic legal structure is also necessary to assert legal control on the erroneous acts of the government and this can be shaped and sustained with the help of indigenous individuals (Tamanaha, 2009: 39). Tamanaha identifies several problems responsible for such a failure. In the context of Pakistan, he points to the dominance of the military in the internal matters of government. He notes that there is a well-functioning legal occupation and courts in the settled areas but that remote parts of the country lack such facilities as they are faced with a dysfunctional system with incompetent lawyers (Ibid: 7).

It has been acknowledged that legal reforms have been neglected in Pakistan in the last three decades. Previously, executive interference in judiciary matters not only

affected its independence, but also disrupted its structure and reliability of the courts.¹⁴⁶ Armytage identified a number of other serious problems such as prolonged adjournments,¹⁴⁷ insufficient services, lack of judges and courtrooms and miserable condition of reimbursement which results in corrupt practices. The ADB was the first International Financial Institution (IFI) to provide financial support as well as fund reforms in the judicial institution of Pakistan. An amount of US\$ 350 million was disbursed for the Access to Justice Program (AJP) from 1998 to 2002 and onwards in three stages (Armytage, 2003: 5-6).

The AJP focusses on the following five indicators of governance:

- 1- Providing a legal basis for judicial, policy, and administrative reforms;
- 2- Improving efficiency and effectiveness in judicial and police services;
- 3- Supporting greater equity and accessibility in justice services for the vulnerable;
- 4- improving predictability and consistency between fiscal and human resource allocation and mandates of reformed judicial and police institutions at the federal, provincial and local government levels; and
- 5- Ensuring greater transparency and accountability in the performance of the judiciary, the police and administrative justice institutions (Kahut, 1999: 3).

A number of successes have been achieved in AJP such as training of judges, judicial budget, structural reforms, speedy trial, legal education reforms, initiation of arbitration procedures for commercial cases, enactment of new laws such as laws relating to “contempt, defamation, freedom of information, the Law Commission Ordinance and Rules, Law Reports Act and formalisation of the Access to Justice Development Fund” (Armytage, 2003: 5-6).

¹⁴⁶ See chapter-V of the thesis for further details.

¹⁴⁷ He identified that an outrageous excess of cases in the courts was observed, which normally take five to twenty plus years to be decided and that in some of the cases related to land dispute, the case had been passed on to the third generation of the contesting party (Armytage, 2003: 2).

Although, the AJP was not fully successful to attain its objectives immediately, it contributed largely to transform the future trends for the judicial and legal system of Pakistan. For example, in 2009, the National Judicial Policy¹⁴⁸ was announced which mainly focuses on speedy trial of cases, abolition of corruption, misuse of power and judicial independence. After the reinstatement of the Chief Justice of Pakistan (CJP),¹⁴⁹ the judiciary entered into a new era of reforms including the lower judiciary and legal institutions (NJCP, 2009).

The World Bank provided funding mostly for projects related to poverty, education, health, energy sector, disasters, irrigation, urban and rural management, human development services, transport, infrastructure in provinces, barrages and highways, population welfare and telecommunications. However, a little attention was paid to the projects linked with the rule of law and good governance. In 1995, the Project to Improve Financial Reporting and Auditing (PIFRA-I) was introduced in Pakistan. The main aim of the project was;

A cross sectoral project that envisages introducing reforms in the financial and accounting discipline and fiscal governance in the country. The primary objective of PIFRA is to modernize and bring the budgeting, auditing and accounting systems in the country in consonance with international practices by plugging the procedural loopholes (World Bank, 2010a: viii).

After learning lessons from PIFRA-I to control financial reporting and auditing, PIFRA-II was introduced on November 8, 2005 to implement recommendations of PIFRA-I on broader scale. The Bank disbursed US\$ 84 million whereas the government of Pakistan contributed US\$ 9 million and the project was due to be

¹⁴⁸ The National Judicial (Policy Making) Committee (NJPMC) was instituted under the chairmanship of the CJP which formulated important recommendations.

¹⁴⁹ See section 5.2.6 of Chapter-V for further details.

wound up on December 31, 2010. This was extended to June 30, 2011. The PIFRA-II was also supported by the IMF, ADB and DFID. The PIFRA-II has engaged four key sectors such as “i) financial accounting and budgeting system (FABS); ii) capacity building and upgrading of the Office of the Auditor General of Pakistan (OAGP); iii) capacity building and upgrading of the Office of the Controller General of Accounts (OCGA); and, iv) Project Management” (World Bank, 2005: 2) .

On May 20, 2004, the World Bank provided US\$ 55 million to Pakistan to fund the Public Sector Capacity Building Project which was expected to be completed by November 2009. The project focuses on three sectors for reform such as professional development of civil service, reforming important federal as well as provincial ministries as well as enhances the capacity building enterprise of the controlling organizations such as Oil and Gas Regulatory Authority (OGRA), Pakistan Telecommunication Authority (PTA) and National Electric Power Regulatory Authority (NEPRA) (World Bank, 2004a).

The IMF has provided loans to Pakistan in the shape of Poverty Reduction Strategy Papers (PRSPs), stand-by arrangements for budgetary support, emergency assistance for disasters such as earthquake and floods.

As seen above, there has been considerable involvement of IFIs in Pakistan domestic affairs. Although the engagement has been widespread, a number of their funded projects have had implications for rule of law and governance. As regards rule of law, the ADB has been particularly active investing substantially in projects such as the Access to Justice Program (AJP). The AJP helped in curtailing the backlog of cases and delays in civil cases such as divorce with a 90 days limit on the length of proceedings. Improvements have also been registered in the determination of the

progress of the courts. For instance, as Armytage (2003:7) notes the AJP has facilitated the publication of the progress and performance of the courts through annual reports. Moreover, there has also been a positive interaction between the civil society and the judiciary which is evident in the activist dimension of the Lawyer's Movement in Pakistan. What all these show is that although it is difficult to identify an immediate impact of the AJP, their long term effects are evident. In the case of the World Bank and IMF, their investments have been largely confined to the reformation of governance structures in Pakistan. The projects have variously helped in improving good governance, which has also impacted on the general functionality of state institutions. It is important to note however, that despite their seemingly distinct focus, rule of law and governance have a number of interfaces implying that a disruption in one may profoundly affect the other as will be seen in the subsequent chapters.

7.3 THE IMPACTS OF SRSs OF IFIs ON DEVELOPMENT

There are two underlying issues: 1) - whether the policies on rule of law and governance are effective in promoting development. 2) - the impact of IFIs general policies on development. The rule of law and good governance are important but unfortunately not succeeding because on the one hand, the internal factors in Pakistan i.e. the govt. of Pakistan have prevented effective reforms such as those relating to tackling corruption. Secondly, there seem to be doubts as to whether the approach taken by the World Bank, IMF and IDB is likely to succeed. The idea of injecting money into rule of law projects developing the western type of rule of law will not necessarily be sufficient.

Sen's capability approach suggests that improvement of capabilities in poverty, education and health is essential to development. Three areas are relevant. The first is poverty, the second education and the third relates to health. Finally, as the problems are caused by a combination of inadequacies of IFI and Pakistan policies, this section will explore how these issues are realised in practice.

It is a common perception that aid to Pakistan was conditional to the geo-strategic interests of the U.S. but the liability of the government of Pakistan cannot be ignored as it is the significant role player to formulate policies for development. Therefore, few questions may arise from this:

- 1- To what extent are the policies of IFIs responsible for the problems in Pakistan?
- 2- In what ways the government of Pakistan is liable to give effect to the policies of IFIs?
- 3- Or are both equally responsible for the aggravation of the problems in the country?

The international institutions started paying attention to the problems of poverty and famine in terms of financing in the second half of the 20th century. Initially the financing was mainly project based with emphasis on infrastructure projects. But from the 1980's onwards, there was a shift to structural adjustment lending. These programmes were predominantly ineffective in dealing with the main concerns of poverty and famine. At the end of the 20th century, international organizations, IFIs, development banks and powerful nations realized the crucial role they could play in alleviating poverty and famine. In 1999, the Bretton wood Institutions replaced their SAPs to Poverty Reduction Strategy Papers (PRSP) and Poverty Reduction and Growth Facility (PRGF) based lending. These programmes are being used by the donors and the United Nations as parameters for the progress of a country in the

developing loan receiving states (APCSF, 2003: 3). The Millennium Development Goals 2000 are the key targets for developing countries which have to be achieved by 2015.¹⁵⁰

Woods (2005: 3) argues that the disagreements within the states not only worsened the lives of deprived people but also devastated the prospects for human growth. Further, the end of the Cold War distorted foreign lendings by entwining it to geopolitical interests. The Asia Pacific Civil Society Forum (APCSF) in its discussion paper notes that the geo-political circumstances in this region are responsible for the prevalence of famine and poverty. The authorities of various countries are on the one hand, disbursing massive amount of funds to purchase armaments to guarantee their state defence but on the other hand, make very little spending on public welfare. In these days, the notion of “war on terror” has received extensive priority over the fight against famine and poverty but at the same time it provided justification for the rulers of states that are victims of extremism for diversion of state assets towards terrorism rather than for the elimination of these deprivations (2003: 3).

Mussa argues that “it is important to recognize that when geopolitical considerations weigh heavily; the IMF tends to be diverted from the principles that normally govern its provision of financial support” (Mussa, 2002: 13). There is plenty of evidence that IMF lendings to Pakistan in the post 9/11 era were attached with conditionality for submitting as a frontline ally of the U.S. war on terror. General Musharaf accepted this and said that it was necessary for Pakistan to facilitate the United States in order to protect our nuclear plan and in case of not upholding the U.S.; Pakistan might face lots of difficulties not only for its endurance but for Islam. He further explained that

¹⁵⁰ See section 4.2.2 of Chapter IV for further details.

he saw it an obligation to defend state security. He was initially reluctant to cooperate with the U.S. but the survival of Pakistan forced him to do so.¹⁵¹ Pakistan provided supplies and strategic help including the use of military and air bases to help America to defeat the Taliban. It also promised to protect the Pak-Afghan border for purposes of infiltrating radicals, sharing of intelligence and many more tasks assigned by the U.S. In return, Washington legitimized Musharraf's dictatorial regime and warmly welcome him by removing all economic sanctions which were previously imposed on Pakistan because of nuclear test explosions and increased aid as well (UPI, 2001).

Momani asserts that these submissions created various domestic and regional conflicts such as Anti-American sentiments because military interference in the region increased insurgency in the country as well as threatened Pakistan's national interests. During this period, the IMF loans were conditional to the support for the American-led war on terror (Momani, 2004: 43-44). The chart below shows the cost of the 'war on terror' which not only devastated the economy of Pakistan but also diverted resources which were meant for poverty and other social services. The estimated loss to the economy can be seen in the table 7.1 below.

Table 7.1 Estimated Losses to Economy of Pakistan 2005-2009

Rs. Billion	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	Cumulative 2005-10
Direct Costs	67	78	83	109	114	262	712
Indirect Costs	192	223	278	376	564	707	2340
Total	259	301	361	484	678	969	3052
In US \$ Billion	4.4	5.0	6.0	7.7	8.6	11.5	43.2

Source: "Finance Division, Government of Pakistan".

http://www.finance.gov.pk/survey/chapter_10/01_Growth_and_Investment.pdf

¹⁵¹ General Musharraf's views were shared with Ajmal Khan Khattak (President National Alliance Party (NAP)) during a meeting later revealed to United Press International (UPI, 2001).

There is strong evidence for political use of IFIs aid to developing countries which has been admitted by the World Bank: “It is true that during the Cold War year’s aid was politically motivated. Now, however, aid is being delivered to countries most in need and to those who show they are determined to use it well” (World Bank, 2010). Pakistan has been a major beneficiary of IFIs lendings for a very long time. At this stage it is not clear whether the structural reforms introduced in Pakistan by the IFIs have been successful or not. In order to determine this, we have to look at various indicators as discussed above and the situation of the economy of Pakistan. The charts and graphs below show the economic situation from 2000-2009, HDI of Pakistan, South Asia and the World and Government Spending on Poverty, Education and Health (2000-01 to 2008-09).

Table 7.2 Macroeconomic Situation of Pakistan

Indicators	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Real GDP Growth (fc) (%)	2.0	3.2	4.7	7.5	9.0	5.8	6.8	3.7	1.2
Exports (As % of GDP)	12.9	12.8	13.5	12.5	13.0	13.0	11.8	11.6	10.9
Imports (As % of GDP)	15.1	14.4	14.8	15.9	18.5	22.5	21.2	24.4	21.5
Foreign Direct Investment (US \$ billions)	0.3	0.5	0.8	0.9	1.5	3.5	5.1	5.2	3.7

Source: “Economic Survey of Pakistan 2008-09”, Ministry of Finance, Government of Pakistan. (See also State Bank of Pakistan; Federal Bureau of Statistics), http://www.finance.gov.pk/survey_0809.html

The balance of payment situation of Pakistan has been disrupted by the increasing gap between exports and imports. A couple of years ago, the Pakistani government indicated that due to importation of mechanical items and raw material, the imports were increasing which ultimately would promote industry in the country and create new jobs to decrease unemployment and level of poverty. Financial experts have

contested this view and have instead argued that non availability of excess manufacture as a result of severe shortage of energy is one of the key aspects for the drop in exports. The critics hold the government of Pakistan and exporters responsible for decrease in export and have urged for concrete steps to be taken to check the quality of products (Chandran, 2008). A similar situation confronts the real GDP growth and foreign direct investment.

Human Development Index (HDI) focuses on three elements such as literacy (Education), living a long and healthy life (Life Expectancy or Health) and standard of living (Purchasing Power or Income) (UNDP, 1990: 10). It is basically an assessment of human capabilities whose, “foundational importance” according to Amartya Sen, “provides a firm basis for evaluating living standards and quality of life” (Sen, 1990: 54). The introduction of assessment tools for measuring human attainment was essential to bring in human growth as an unconventional idea as well as to attract the concentration of policy architects. Mahbub ul Haq, the chief architect of the Human Development Reports formulated the three core indicators of development as education, health and income as one, Human Development Index (HDI). Sen acknowledged his initial disagreement with Haq as he was apprehensive by the complications of confining the complete intricacy of human capabilities in a particular indicator but was subsequently convinced by Haq that it was “a measure that is not as blind to social aspects of human lives as GNP is”. In addition, Haq holds the view that the lone index would be able to attract the concentration of planners from pure economic based approaches to human development as a concrete measure of development (UNDP, 1999: 23; Fukuda-Parr, 2002: 1-2). Anand and Sen argue that “longevity and education are clearly valuable as aspects of a good life, and also valued as constituents of the capability to do other things... the income

component of the HDI has been used – as an indirect indicator of some capabilities not well reflected, directly or indirectly in the measures of longevity and education” (Anand and Sen, 2000: 86).

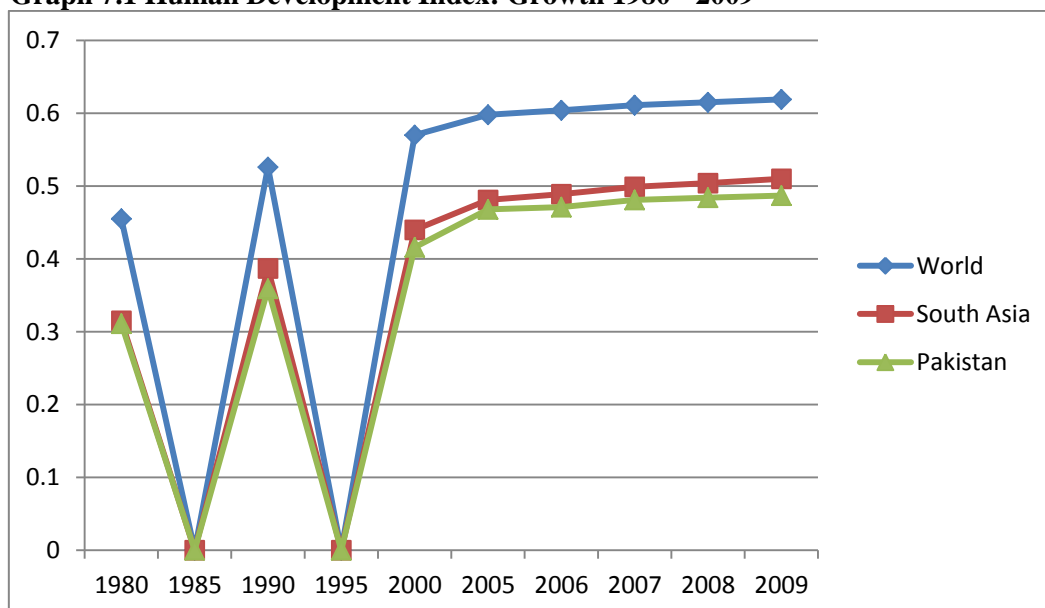
Alkire suggests that human growth should include education and health in growth evaluation as it is a broader criterion. However, the elimination of deprivations in education and health are fundamental to growth through “participatory...capability and income approaches along with others” (Alkire, 2010: 4). In addition, it is evident that education and health are key elements of the Human Development Index (HDI) and Human Poverty Index (HPI). The indicators of education and health do not enervate the types of capabilities which are significant to growth evaluation (Ibid). The HDI comparison of Pakistan with South Asia and the World together with government spending on poverty, education and health can be seen in table 7.3 and graph 7.1 below.

Table 7.3 Comparison of Human Development Index (HDI) of Pakistan, South Asia and the World

HDI	1980	1985	1990	1995	2000	2005	2006	2007	2008	2009
World	0.455	.....	0.526	.....	0.570	0.598	0.604	0.611	0.615	0.619
South Asia	0.315	.....	0.387	.....	0.440	0.481	0.489	0.499	0.504	0.510
Pakistan	0.311	.....	0.359	.....	0.416	0.468	0.471	0.481	0.484	0.487

Source: Pakistan: Country Profile of Human Development Indicators.
<http://hdrstats.undp.org/en/countries/profiles/PAK.html>

Graph 7.1 Human Development Index: Growth 1980 - 2009



Source: Pakistan: Country Profile of Human Development Indicators.

<http://hdrstats.undp.org/en/countries/profiles/PAK.html>

Table 7.4 Government Spending on Poverty, Education and Health (2000-01 to 2008-09)

	Annual	2000 -01	2001 -02	2002 -03	2003 -04	2004 -05	2005 -06	2006 -07	2007 -08	2008 -09
Poverty	Social Sector & Poverty Related Expenditu re (As % of GDP)		3.8	4.32	4.63	4.81	4.93	4.89	5.46	5.86
	% of GDP	1.82	1.79	1.86	2.20	2.15	2.24	2.50	2.47	2.10
Education	% of Budget	10.6	9.5	10.0	13.0	12.5	12.2	12.0	9.8	11.5
	% of GDP	0.72	0.59	0.58	0.57	0.57	0.51	0.57	0.57	0.56
Health	% of GDP	0.72	0.59	0.58	0.57	0.57	0.51	0.57	0.57	0.56

Source: "Economic Survey of Pakistan 2009-10", Ministry of Finance, Government of Pakistan. (See also State Bank of Pakistan; Federal Bureau of Statistics), http://www.finance.gov.pk/survey_0910.html

The government of Pakistan spending on poverty, education and health is very low compared to South Asia and the World whereas the country receiving massive lendings to make better the structure of social services, health services, poverty reduction and to raise the literacy rate. Table 6.4 shows government spending on Poverty, Education and Health care from 2000 to 2009.

7.3.1 POVERTY

The International Financial Institutions have shown interest in the fight against poverty as highlighted by the World Bank in its 2000/01 report that “the primary focus of the World Bank is on helping the poorest people and the poorest countries. It uses its financial resources, staff and extensive experience to help developing countries reduce poverty, increase economic growth, and improve their quality of life” (World Bank, 2000: 1).

The issues of poverty, education and health care are interrelated. The World Bank in its papers “Voices of the Poor (2000, 2001 and 2002)” identified some factors affect the social conditions of people. These include:

- Livelihood and assets are precarious, seasonal and inadequate;
- Places of the poor are isolated, risky, un-serviced and stigmatized;
- The body is hungry, exhausted, sick and poor in appearance;
- Gender relations are troubled and unequal;
- Social relations are discriminating and isolating;
- Security is lacking in the sense of both protection and ease of mind;
- Behaviours of those more powerful are marked by disregard and abuse;
- Institutions are disempowering and excluding;
- Organizations of the poor are weak and disconnected;
- Capabilities are weak because of the lack of information, education, skills and confidence (World Bank, 2000;2001;2002).

People living in poverty is just similar to a life exclusive of individual respect (Ritzen, 2005: 13-15). At present almost half of the world’s poor as per Multidimensional Poverty Index (MPI) of deprived individuals are living in South Asia that are approximately 51% or 844 million. The OPHI in its analysis of 104

countries comprising the population of 5.2 billion (78% of the world population) identified that 1.7 billion individuals are living in multidimensional poverty which is one third of the said population. According to OPHI assesment, the ratio of individuals in multidimensional poverty is high as compared to the World Bank evaluation of ‘extreme’ income poverty in those states. It is U.S. dollar 1.25 a day or a smaller amount (i.e 1.3 billion) but less in number of individuals who spends 2 dollars a day (Alkire and Santos, 2010). The poverty level in different regions of the world can be observed in the graph 7.2 below.

Graph 7.2 Level of Poverty in Different Regions of the World

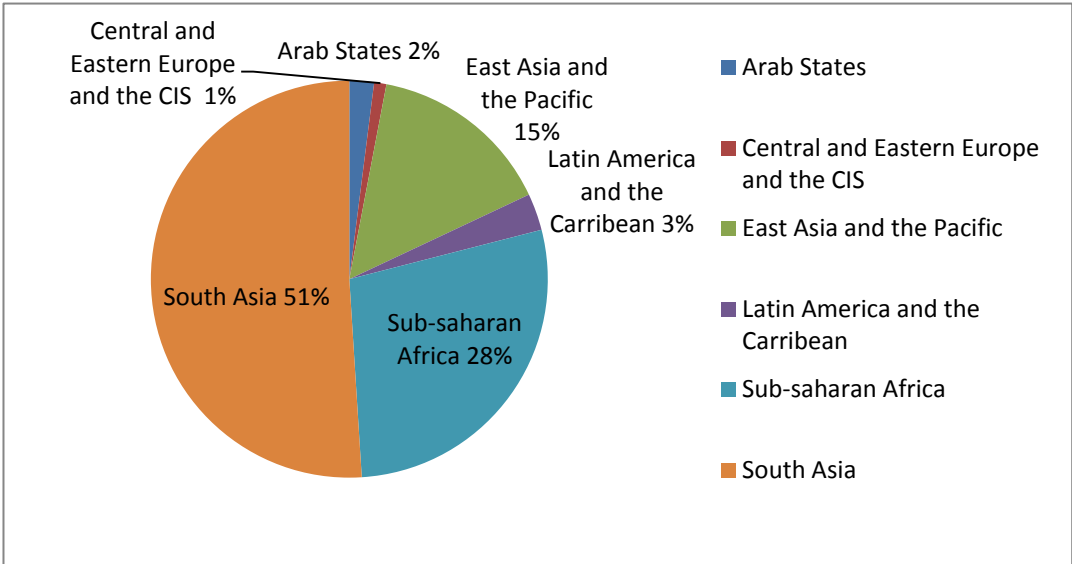
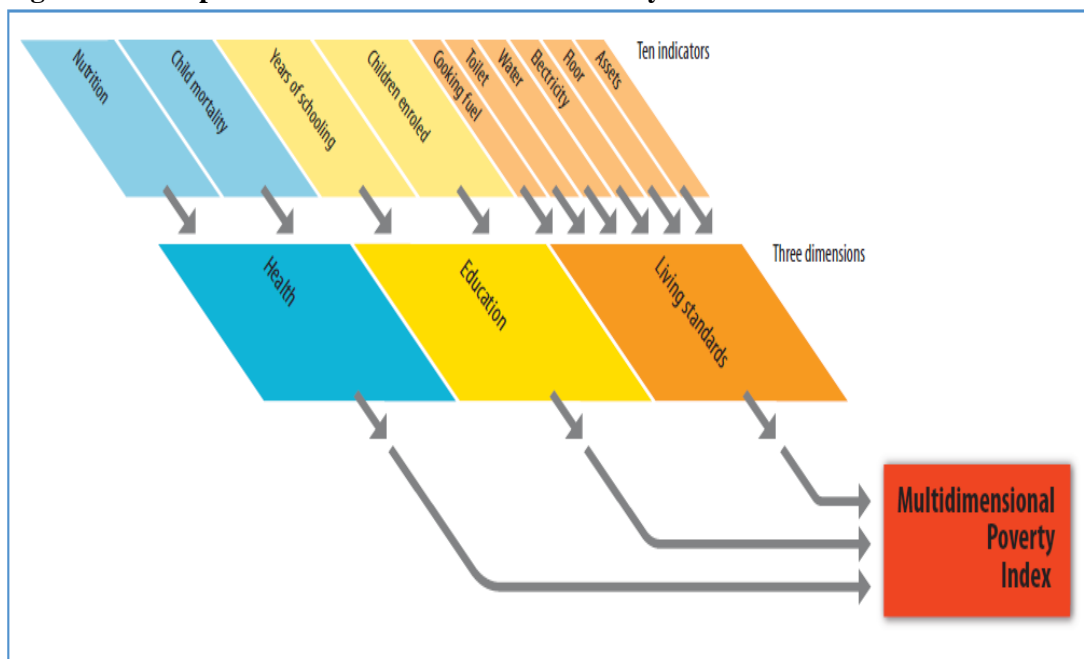


Figure 6.2 “Regional Distributions of People Living in Poverty”, (Alkire and Santos, 2010; UNDP (2010: 98)). <http://www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf>

The UNDP has explored three measurements and ten indicators of multidimensional poverty index as shown in the figure 7.1 below.

Figure 7.1 Components of Multidimensional Poverty Index



Source: “The Real Wealth of Nations: Pathways to Human Development. Human Development Report 2010”, (UNDP, 2010: 13). http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf

In relation to Pakistan, the World Bank in its evaluation report of 1999 categorized one third of the population as poor especially in rural areas (World Bank, 2002b: 10).

The Planning Commission of Pakistan adopts the following method to assess the poverty line:

Calorific requirement approach wherein all those households (or individuals) are classified as poor who do not have income sufficient to allow a consumption pattern consistent with minimum calorie requirements. It is also assumed that the households earning incomes equivalent to poverty line not only have sufficient food to meet the minimum nutrition requirements but also the non-food requirements (as quoted in IMF, 2010: 50).

There are two opinions on the problem of poverty experienced by Pakistan. The first group which includes the World Bank identifies the issue in terms of obstacles in the way to access social services in rural areas of the country.

The deepest and most pervasive poverty in the country is rural and it is worst in areas that have traditionally been considered “feudal”... Rural elites have exceptional influence in Pakistan - whether by marriage or other family ties to state officials in either military or civilian governments... In general, elites have had relatively little interest in enhancing their constituents’ access to education or in ensuring that the poor could obtain the protection of the law without elite intervention (World Bank, 2002a: 10).

For example, the World Bank, IMF and the government of Pakistan designed the Social Action Program Project (SAPP), Pakistan Poverty Alleviation Fund (PPAF), Poverty Reduction Strategy Paper (PRSP), Poverty Reduction and Growth Facility (PRGF) respectively to regulate the problems of social services access to the poor and to reduce the poverty under the label of structural reforms. These programmes failed to achieve their goals due to reasons such as reduction in allocation of funds by the government, lack of accountability, heavy spending on defence, feudalism, unequal distribution of wealth, mismanagement of funds, absence of the rule of law culture, corruption and poor governance (Ali, 2008: 25; see for further details Chap-II pages.25-33).

Ahmed (2009) and Miankhail (2010) consider some core reasons for poverty in Pakistan. Firstly, the agrarian industry is out-dated and the small scale farmers are deprived off modern facilities resulting in low production. Secondly, due to unequal distribution of wealth, the gap between the well-off and the poor has increased. Thirdly, the population of Pakistan is growing at the rate of 1.8% which is the highest in South Asia. It is the sixth most populous country in the World, yet its GDP has plummeted. Fourthly, there is unequal balance of payment as imports increased as opposed to falling exports which expended huge amount of foreign exchange on

imports of industrial machinery linked in a direct or indirect way to poverty. Fifthly, industry is contributing less to the country's revenues. Sixthly, poor standards of education coupled with shortage of skilled labour result in low output and poverty in the country. Seventhly, bad governance is a key reason for poverty whereas good governance considered as a significant feature for development and progress seems to be missing in Pakistan. As result, corruption is on the rise, civil society is weak, and the legal system dysfunctional. Finally, the weak tax structure also contributes to poverty which needs to be restructured. The system of tax should be pro-poor and favourable for investment, but presently it favours only the rich classes of society not the deprived. Gazdar (2009: 13) notes that the relationship between tax and GDP proportion is very low and has been static for the last decade as shown below in table 7.5. The tax policy has been unable to include larger segments and higher income groups of the society. There is some flaw in the taxation policy of Pakistan which is one of the major reasons for poor revenue collection through taxation.

Table 7.5 Trends in Taxation

Financial Year	Tax to GDP (%)	Share of Direct Tax in Total Tax (%)
2001-2002	9.75	35.29
2002-2003	10.12	31.60
2003-2004	9.71	31.67
2004-2005	9.64	30.97
2005-2006	10.04	32.80
2006-2007	10.17	38.19
2007-2008	10.40	39.61

Source: PRSP (various), Economic Surveys (various), Ministry of Finance, Government of Pakistan; Gazdar (2009: 13).

The government and IFIs emphasize that the level of poverty has declined following the initiation of the SAPs and the neoliberal groups endorsed the same thing but the reality is quite different as the pragmatic outcomes, independent evaluations and studies do not support this statement. Kemal (2001), Malik (1996) and Sherize (1995) identified a rise in the level of poverty from 1987-88 to 1990-91. In 2005, the

government claimed to reduce the level of poverty from 34.9% to 23.4 during 2001 to 2005 which started a debate that concluded without any result (Ramay, 2007: 7).

Haq and Zia have studied the relationship among the elements of governance and poverty in Pakistan. They advocated that the concrete accountability instruments and an established political structure which is directly linked with steadiness of strategies can perform a substantial role to diminish poverty. Generally, the weakening institutional structures of governance incapacitate noticeably the state machinery to transfer the public and financial services to reduce poverty and impoverishment in the country. The participation of governmental machinery to provide public security nets by poverty relief programmes is inadequate, and so poverty increases. In addition, corruption and the lack of rule of law pose challenges to nominal democratic systems and therefore are unable to grab poverty openly (Haq and Zia, 2009: 16-18).

The absence of rule of law is another dilemma that impedes the financial development, burdens the poor and weakens the effectiveness of aid and investment. They conclude that an operational governance policy have to reassure tax reforms, deregulation and financial liberalization, microeconomic stability, executive and public service reformation, candid efforts by the politicians to combat corruption and to ensure effective accountability. They suggest that the government should address the issues of primary importance as early as possible in order to fulfil the requirements of Millennium Development Goals in reducing poverty by 2015 (Ibid).

However, in the last decade, due to natural catastrophes like earthquakes, floods and persistent drought in some areas of Pakistan, there has been considerable strain on the economy which has overstretched capability of the government of Pakistan. The government has initiated a social safety net by restructuring the institution of zakat

and Pakistan Bait-ul-Mal (PBM) that provides monetary support to state level health bodies, leprosy patients as well as for educational purposes, well-being, Eid donations, and wedding support to the most deprived in society. In addition, the Benazir Income Support Programme (BISP) started by the central government and Food Support Programme (FSP) by the Punjab provincial government spent 56 billion rupees to reduce poverty (IMF, 2010: 67-69). Butt however suggests that both programmes were initiated without a clear vision of poverty as the central and provincial governments had been wasteful in their resource distribution. The governments were unable to invest the money on long term projects such as the creation of technical colleges in order to provide people with skills necessary to help them earn their livelihood. The government has not provided reasonable social services, housing and equitable opportunities to the poor to get employment in a dignified way in order to reduce the level of poverty (Butt, 2011).

On the one hand, the first group of critics which I discussed above have suggested that the government of Pakistan is for a number of reasons, responsible for pervasive poverty in the country whereas on the other hand, the second group of critics shift the responsibility on the IFIs for their wrong policy prescriptions to poverty reduction to countries like Pakistan. For example, Woods (2006: 54-55) suggests that both the Bretton wood institutions implement their policies without knowing the local conditions of loan receiving countries. They never depute their experts to observe the public bodies and principles that support operational activities, marketplace and political survival in the member states. They provide advice for their trained economists who are totally unaware of the local situations, try to solve financial difficulties, eliminating indicators and apply prescriptions ultimately turning the states into chaos. These institutions get several benefits under the disguise that they

take care of all their member states in the same way which maintains the politics away from its functions. They send subordinates frequently to far-away regions to monitor the economic situations that do not have any idea about the local culture and problems (2006: 54-55). Abouharb and Cingranelli argue that the concept of free market followed by the structural adjustment reforms restrict the idea of human liberties vital for swift development.

The IFIs are limiting their own initiatives by denying these human freedoms indispensable for financial growth. The various countries who seek assistance of IFIs are required at first to liberalize their economies by reducing the government role in the market. Subsequently, they prescribe privatization of fundamental facilities, cuts on government expenditures, elimination of subsidies and price limitations for necessary commodities and facilities as they think that the liberated market can provide these services in a better way. Thirdly, they suggest a consistency in annual budgets together with progress to accept debt commitments. In that condition, the authorities of the countries are left with very few alternatives are ultimately forced to cut in government jobs and decrease the shape of various amenities like education, health care and wellbeing facilities. (2007: 182; 235). The Structural Adjustment Participatory Review International Network (SAPRIN) after extensive analysis concludes the following results:

- (a) The privatization of public utilities and services has usually resulted in significant price increases for the general public.
- (b) The elimination of universal subsidies for essential goods and services has negatively affected the poor and their quality of life.

- (c) Stabilization and structural adjustment programmes have generally led to a sharp deterioration in public spending on social services, often during economic downturns, while debt obligations continue to be paid.
- (d) The quality of education and healthcare has generally declined as a result of pressures to reduce public expenditures.
- (e) Cost-sharing schemes have imposed serious constraints on access by poor people to health care and education (SAPRIN, 2004: 214-16; See also Abouharb and Cingranelli, 2007: 231-32).

Ali notes that the effect of structural reforms on poverty reduction in Pakistan is not encouraging, as neo-liberal reforms of privatization created unemployment and especially affected the women whereas liberalization of the agricultural division has decreased the power of the poor to purchase foodstuff (2008: 29). A number of researchers suggest that privatization and downsizing of government departments which were initiated under the neo-liberal reforms of the IFIs aiming to decrease government spending on employment in the public sector was unable to achieve the required results as it decreased by 35.3% to 28.7% from 1987 to 1994. The unemployment ratios have increased from 3.1% to 6.1% in between 1989 to 1996. In the case of Pakistan, the effects of these reforms have not been helpful for poverty alleviation (Khan, 1999: 15; Anwar, 2001; Kemal, 2001; Ali, 2008). A similar view has been expressed by the NGOs:

The global economy governed by international financial institutions, the World Trade Organization, and Multinational Corporations proposes structural adjustment for countries in the South in the name of fiscal health. The result is increasing poverty, debt, and unemployment (Burnside and Dollar, 2000).

Some civil society stakeholders such as the Human Rights Commission of Pakistan (HRCP), NGOs, procurer rights blocs, unions, study organizations, labour classes and human rights organizations, media men and political parties have publicly refused the configuration, substance and procedure of the PRSP in Pakistan. They wrote a letter to the finance ministry and express their concerns that PRSP is the replacement of the SAPs and unsuccessful model of expansion which not only challenges the democratic practice but also risks the autonomy of the state. The stakeholders criticize the various programmes of deregulation, liberalization, privatization and unsympathetic tax system for the poor people in the course of PRSP and excessive control of the Asian Development Bank (ADB), the IMF and the World Bank on Pakistan¹⁵² (APCSF, 2003: 19). Khan (2008) suggests that Pakistan has been the burial ground of growth plans funded by the several international aid providers.

Gazdar (2009: 13) has explored the ineffectiveness of the government of Pakistan in increasing the tax-GDP ratio which has been almost static for more than a decade. Similarly, Kemal has noted that in the decade starting from 1987-88 to 1997-98, the structural adjustment reforms of IFIs introduced in taxation have had an adverse effect on the poor as it troubled them by 7.4% whilst relieving the higher earning groups by 15.9% (2001: 20).

Shirazi, Mannap and Ali (2010) suggest that the appropriate use of external assistance in Pakistan can improve human development and an operative public service distribution. Burnside and Dollar (2000: 2) suggest that foreign assistance can be supportive if the economic, regulatory and trade strategies are good at the

¹⁵² A letter was written to the Ministry of Finance by the advocacy programme, Sustainable Development Policy Institute of Pakistan on December 20, 2002 (APCSF, 2003: 19).

domestic level in underdeveloped states. Easterly, Levine and Roodman after careful observation gave their opinion on Burnside and Dollar's findings and raised some doubts about the relationship between effectiveness of aid and good policies. In his conclusion he does not say that foreign assistance cannot be an effective tool for development in underdeveloped states but proposes that financial experts must be less optimistic in confirming that foreign assistance will accelerate development in states with good strategies. Moreover, he suggests some further investigation to answer these questions about the political economy of foreign assistance (2004: 779-80).

There are various views on the relationship between aid and development. Khan (1993) suggests that aid contributed significantly to development particularly savings and imports that are largely reliant on foreign assistance but its improper use has massively increased foreign debts. Prasad, Rajan and Subramanian (2007) and Baharumshah and Thanoon (2005) note that recent research found a positive relationship between foreign assistance and development. For effectiveness of aid, its proper use is highly desirable. However, most of the aid projects appear to be unsuccessful in developing countries including Pakistan. Masud and Borianan (2005) after extensive study classified three key reasons for failure of foreign aid. Firstly, the aid is not distributed to those most in need. Secondly, there is no appropriate use of aid by the aid receiving countries. Thirdly, assessment of aid success with GDP is not the correct procedure. Moreover, Kraay and Raddatz (2006) have argued that the improper use of aid results in failure for the achievement of required objectives and a massive amount used inadequately can bring bad outcomes.

The World Bank identified a number of reasons for the incidence of poverty in Pakistan:

Issues of Governance, for instance in the form of the lack of accountability, are at the heart of many of the difficulties encountered in mitigating poverty and broadening access to social services in Pakistan. Neither debt reform nor the mere availability of donor funds is likely to dispel these problems (World Bank, 2002a).

The Asian Development Bank recognizes the same thing in case of Pakistan, noting that “a number of factors explain the existence of an increase in poverty in the last decade. However, poor governance is the key underlying cause of poverty in Pakistan” (ADB, 2002).

The government of Pakistan acknowledged in its Pakistan Millennium Development Goals Report 2010 (PMDGR)¹⁵³ that due to certain specific circumstances, it will not be possible to achieve required results as set by the MDGs and provided a comprehensive list of challenges faced by the economy and the country as valid justifications for growing poverty as mentioned below:

1. In 2005, a large number of people around 70,000 lost their lives whereas plenty of others badly suffered as a result of severe earthquake and a big shock to the economy because of destruction of infrastructure.
2. The worsening financial and political circumstances during 2007 and 2008 together with the worldwide economic crisis are probably to have bad effect on the state of joblessness and poverty in the country.

¹⁵³ The government of Pakistan is a signatory to the UNMDGs and bounds to implement its goals as prescribed in the said declaration. Therefore, the report was presented to the UN to analyse its performance (GoP, 2010: 9-11).

3. A rapid increase in inflation as well as implementation of IMF conditionalities to eradicate all big subsidies has aggravated the situation.
4. In 2010, the incidence of catastrophic floods pushed a large number of people into poverty and a huge set back to the economy.
5. The massive increase in the prices of oil and food during the periods of 2008 and 2009, millions of the people have been added to poverty. According to some careful observation during 2005 and 2009, almost 12-14 million have been grabbed by poverty. However, it has been observed a worst situation in the state of poverty from 2009 and onwards. It has been admitted that one third of the population of Pakistan is living in poverty.
6. In the period of 2008-09, the growing terrorism and militancy all over the country and military operations in the province of Khyber Pakhtunkhwa¹⁵⁴ coupled with costs on the Internally Displaced Persons (IDPs) as a result of these operations have unfavourably incapacitated the capability of the government to fully focus on the social and financial progress of the people of Pakistan.
7. On being a front line ally of the ‘American War on Terror’, Pakistan experienced a bad law and order situation which resulted insecurity all over the country and a rapid decline in the economic development due to a massive destruction of social and human resources (GoP, 2010: 9-11).

Poverty is a multidimensional phenomenon and its impact can be observed on various sectors such as education and healthcare. In recent times, due to the Millennium Development Goals (MDGs), a massive amount is going to be invested on education and health care as these two segments are the key indicators for progress. As regards

¹⁵⁴A province of Pakistan previously known as North-West Frontier Province (NWFP) bordering with Afghanistan renamed as Khyber Pakhtunkhwa on the old demands of Pashtuns by 18th amendment in the Constitution of Pakistan 1973 on 15 April 2010 (BBC, 2010).

education and health the following sections explore their relevance and challenges in the context of Pakistan.

7.3.2 EDUCATION

Literate manpower is necessary for the development of a country as mentioned below:

If a country is unable to develop its human resources, it cannot build anything else...the building of modern nations depends upon the development of people and organization of human activity. Capital, natural resources, foreign aid and international trade, of course, play important roles in economic growth but none is more important than manpower (Harbison and Myers, 1964: V, 6).

Education has been recognized as a universal human right and an effective mechanism to develop individual capabilities and to attain financial and social growth. Education facilitates people to formulate choices, extend their scopes and prospects and to have a say in public decision-making (Youssef, 2005; Akram and Khan, 2007: 6). The Universal Declaration of Human Rights said that “Everyone has the right to education.... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”.¹⁵⁵ Wolfensohn (1999) suggested a comprehensive strategy for the international community and said that:

All agree that the single most important key to development and to poverty alleviation is education. This must start with universal primary education for girls and boys equally, as well as an open and competitive system of secondary and tertiary education. Construction of schools, modern curricula geared to the new

¹⁵⁵ Article 26 of Universal Declaration of Human Rights approved by the United Nations in 1948.

technological age, and the real needs of the emerging local market, and effective teacher training and supervision all contribute to successful educational programs.

Quaid-E-Azam Muhammad Ali Jinnah, the founder of Pakistan strongly emphasized on the importance of education in Pakistan and said:

The importance of education and the right type of education cannot be over-emphasized... If we are to make any real, speedy and substantial progress, we must earnestly tackle this question and bring our educational policy and programme on the lines suited to the genius of our people, consonant with our history and culture, and having regard to the modern conditions and vast developments that have taken place all over the world (Jinnah, 2004).

The 1973 Constitution of Pakistan provides protection to the educational rights of the citizens of Pakistan.¹⁵⁶ Article 38 (d) speaks of instilling ethical standards and offering education to all citizens without taking something into gender, caste, creed, or race. In addition, Article 37 (b) specifically mentioned that “the state shall remove illiteracy and provide free and compulsory secondary education within minimum possible period”. Therefore, it is the responsibility of the state government as well as the provincial governments to provide basic education to the children free of cost. However, the efforts of international community for promotion of education cannot be ignored. There are number of programmes initiated by international institutions such as the Fast Track Initiative (FTI)¹⁵⁷ linked with Millennium Development Goals (MDGs) and Education for All (EFA). Pakistan is a signatory to both plans (EFA-FTI) but the low level of government spending on education sector

¹⁵⁶ The Principles of Policy in Chapter 2 under articles 37 (a) (b) (c) and 38 (d) ensure the educational rights of the citizens.

¹⁵⁷ It was originated by 22 bilateral aid providers, development banks and international organizations to help poor states in education. It has been supervised by the World Bank and G-8 aid provider countries. The main objective of this initiative is to provide high quality primary education to all children by 2015 (World Bank, 2002).

shows a depressing situation of the dedication of authorities in this regard. In addition, it has been identified that low level of teaching, sub-standard learning stuff, low salaries to the primary teachers, lack in quality of supervision by teachers, involvement and administration is problematic in the government controlled schools (Lister et al, 2010: 19; IMF, 2010: 169). To overcome this problem UNESCO (2011: 2) has suggested that developing states should allocate at least 4% of GDP for education but it would be extremely difficult without the external support in terms of foreign aid to achieve EFA targets. In an interview, the present minister for education of Pakistan aspires to spend 4% of GDP on education¹⁵⁸ in upcoming phase and up to 8% by 2015. However, the government allocation of GDP for education from 2000-09 can be seen in the table 6.4 above.

Foreign support has been provided by some aid providers – the UK, Japan, USAID, ADB and the World Bank (IDA). The International Development Association (IDA) has provided a major share of the aid for primary education during the period of 1999-2007. In Social Action Programme (SAP), the Economic Affairs Division (EAD) of the federal government was the chief organizer of aid and it aimed to decentralize aid through provincial governments. However, the success of aid in supporting Pakistan since 2001 is doubtful due to its geostrategic use although the character of education has been elevated especially assistance for basic education but the desire to spend for strategic motives could be problematic for the condition of distributing aid more successfully. In addition, the aid to Pakistan is assessed on the basis of security led reservations but not by keeping in view the population size of the country as it is larger than almost 28 smallest FTI-recognized states (Lister et al, 2010: ix).

¹⁵⁸ The National Education Policy of 1998 set it as an objective which was later recommended by the ministry of education, Pakistan (National Education Policy, 1998; Lister et al, 2010: 41)

I have discussed in chapter two that the foreign aid for education failed to achieve its goals due to lack of political will of the governmental authorities for number of other reasons. Anwar and Aman (2010: 355) suggest that in recent years, Pakistan received substantial amount of aid for education whereas Malik (2007: 1) analyses the education policies of previous twenty years and established that while the aid is being provided but it decreased gradually and was unable to get required results. Anwar and Aman (2010: 358) after observation of various education policy papers (1970, 1972-80, 1992 and 1998-2010) said that although the education strategy methods carries a central place in every five years plan of education coupled with some other programmes such as National Education Assessment Systems (NEAS), National Plan of Action (NPA), Social Action Programmes (SAPs) and School Management Communities (SMCs). These programmes were initiated by the government of Pakistan in various periods to produce transparent and accountable atmosphere for proper utilization of foreign aid but unfortunately no government has succeeded to implement comprehensively these policies so far. Anwar and Aman concluded that in case of Pakistan, a positive relationship between education and aid has been observed as it can produce excellent results if properly used. Moreover, it requires the attention of Pakistan authorities to allocate an appropriate amount of budget for education which is currently low. The table 7.6 below shows a comparison of Pakistan with other countries of South and West Asia in Human Development.

Table: 7.6 Human Developments in South and West Asia

Country	HDI Ranking	Public Expenditure on Education as % of GDP	Literacy Rate % (15+ Years)
Bangladesh	146	2.4	53
India	134	3.3	66
Iran	88	5.6	82
Maldives	95	8.3	97
Nepal	144	3.8	57
Pakistan	141	2.8	54
Sri Lanka	102	5.4	91

Source: “Financing Quality Basic Education for All in Pakistan”, PILdAT 2010, Briefing Paper no. 38. <http://www.pildat.org/Publications/publication/EFA/FinancingQualityBasicEducationforAllinPakistan-BriefingPaper.pdf> (See Also HDR 2009)

Malik after broad analysis of education policies consolidate some results and notes that the ratio of literacy enhanced from 33% to 53% in a decade starting from 1993 to 2003. She observed the increase in primary enrolment stage from 12.7 million to 21.3 million in between 1993 to 2004 but decrease in net enrolment rates from 70% to 52% in the same tenure. The government allocation of GDP with slight variations stays almost 2.1% for education since 1993. The depressing share, objective productivity and quality of the education division has diminished aid providers’ responsiveness in Pakistan and started discussion about possible options for delivery of education. Development support in the shape of concessional finances and endowments to encounter the supply disruption are perceived as the key recipe for tackling the problems of quality, expenditures retrieval and maintainability of collaboration between the public and private segments. It is a fact that the government of Pakistan was unable to accomplish EFA objectives, and the obvious aims of assistance have not been encountered. In addition, government spending on education continues to be low and stagnant at almost around 2% of GDP well below other developing countries in the region. The problems of low registration objectives, gender inequalities, poor quality of education in government controlled schools, severe shortage of skilled educators and obsolete curricula are common throughout

the whole country. Literacy has increased but the required levels are still to be achieved especially in the rural areas of Pakistan (Malik, 2007: 20-21).

Moreover, the government of Pakistan acknowledged that various studies verify a trend of the middle class and well-off people living in the far-off as well as settled parts select private educational institutions to educate their children due to poor quality of education, absenteeism of tutors and pitiable infrastructure in the government owned educational institutions (GoP, 2010: 35). The table 7.7 below shows the literacy of population 10 years and older in Pakistan from 2001 to 2009.

Table 7.7 Literacy – Population 10 Years and Older of Pakistan 2001-02 to 2008-09

Annual	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Male %	58	59.4	63.7	65	65	67	69	69
Female %	32	32.1	39.4	40	42	42	44	45
Total %	45	50.5	51.6	53	54	55	56	57

Source: Pakistan Social & Living Standards Measurement Surveys (PSLM): 2005-06; 2006-07; 2007-08; 2008-09. http://www.statpak.gov.pk/fbs/pslm_publications (See also Economic Surveys of Pakistan: 2002-03; 2003-04; 2004-05; 2005-06; 2006-07; 2007-08; 2008-09). <http://www.finance.gov.pk/>

7.3.3 HEALTH

Good health has been considered as a significant role player in shaping human resources for sustainable development. Good health of individuals contributes to build up better capabilities as well as enhance the output of workers that eventually adds a positive share in the financial development. Generally, governments provide health facilities to their citizens at very cheap rates in order to get healthier, capable, well-organized and dynamic workforce. Normally, governments supply these services by investing the full or fractional charges in overall health costs. The structure of health services varies from state to state as it depends upon the volume and delivery of these services. However, the primary problem is how to make these services more effective and successful? Furthermore, the governments spend on

various projects relating to primary health care provisions to get rid of burden of diseases (BOD) in the early years of life (Akram and Khan, 2007a: 1; WHO, 1999; Abbas, 2010: 16). Amartya Sen perceives health as a fundamental capability which produces financial growth and liberty of the nation. He underscored the importance of healthcare facilities especially for the poor people even in his early writings:

Quality of life depends on various physical and social conditions, such as the epidemiological environment in which a person lives. The availability of health care and the nature of medical insurance-public as well as private-are among the important influences on life and death...The statistics on mortality draw our attention to all these policy issues. Mortality information can throw light also on the nature of social inequalities, including gender bias and racial disparities (Sen, 1998: 1).

The problem of improving the health of deprived individuals has received considerable attention from the donors in the international agenda for development. The poor have higher health problems with shorter life expectancy than the well off. Poor children are also more likely to fall ill than those from wealthier backgrounds. Good health is a key positive feature especially for the poor. It becomes quite difficult for the poor people to meet the daily expenses as well as expensive health facilities expenditures when they so require. Moreover, health is currently a centre of attention, and global actors have established a strong link between health and poverty. Three out of eight key indicators of MDGs: dropping infant fatality, decreasing maternal deaths and reducing the speed of HIV/AIDS, tuberculosis and malaria targeted particular health development objectives by 2015. In addition, health is progressively analysed as key to the first MDG, eliminating poverty and intense famine. The Commission on Macroeconomics and Health (CMH) has made moderate contributions to the development of a relationship between monetary

growth and health. In 2002 and 2003, the public and private divisions participated jointly to institute a Global Fund on AIDS, TB and Malaria which subsequently supported by the G8 to provide essential funds in order to get better the health of poor persons (OECD, 2003: 1).

The government of Pakistan in its MDGs report of 2010 highlighted that there is an elevated trend in the mortality rate in children below five years. Some other diseases such as measles, Acute Respiratory Infections (ARI), malaria, prenatal causes and diarrhoea are the fundamental prerequisite of malnutrition. Nutrition plays an important role for the nourishment of the child as well as for the better health of a mother while on the other hand undernourishment is considered as a major reason for high rates of diseases and casualties. In previous years, the plans and performance of nutrition programmes have been hampered due to a number of reasons such as lack of control and accountability, poor administrative and professional assistance to the provincial governments and nonexistence of country nutrition strategy and strategic agenda (GoP, 2010: 58; 62).

The IMF in its country report on Pakistan observed a low progress in healthcare services and no positive improvement in the past decade. The public hospitals at tehsil¹⁵⁹ and district level do not have sufficient number of doctors, paramedical workers, investigative apparatus and lifesaving medications (2010: 39). The specialised public hospitals are in the settled parts of the country or in big cities and the patients especially the women from rural areas pay a high price for transportation along with embarrassment in order to look for secondary-level treatment. Moreover, the patients were forced to go for private treatment for quality facilities. During an interview, many people said that the deprived never received any monetary support

¹⁵⁹ A division that is smaller than a district but bigger than a town in Pakistan.

in health services. Generally, dispensaries, Basic Health Units (BHUs), Rural Health Centres were not completely operative and did not offer a suitable application of facilities in these localities. The people strongly emphasized that life-saving drugs must be provided at BHUs by the government. A number of people think that due to an effort of public private collaboration by the head of Punjab government in principal healthcare services, the situation to control BHUs has been better in the preceding three years (IMF, 2010: 39). The presence of doctors, ancillary staff, the supply of essential drugs and services has been better. However, it was required to implement at some larger scale in the country. One of the recent projects that people considering a distinct development in the past few years was the Lady Health Workers (LHWs) plan. The LHWs were accessible where required in the rural areas in order to have appropriate and effectual facilities. The People living in rural areas were normally pleased with vaccination facilities for kids and especially with the anti-Polio vaccination course. In the end, the individuals recommended that deprived and low income people should be given an easy and without any charges access to healthcare services (IMF, 2010: 39). The governments play a decisive role in providing social services to their citizens.

The recent transfer of powers in the delivery of social services to the provincial governments requires a transparent support in the allocation of appropriate funds to the provinces.¹⁶⁰ The provincial governments have started a programme in collaboration with public and private sectors on trial basis for delivery of health facilities. In addition, in collaboration with the World Bank, an Enhanced Lady Health Workers (LHW) programme has been started to decrease the presence of diseases, early death rates especially in mothers and babies physical conditions. The

¹⁶⁰ Under 18th amendment in the Constitution of Pakistan 1973, the social services delivery to the people of Pakistan has been transferred to the provincial governments.

central government is supporting the Non-Governmental Organizations (NGOs) and local people to supply health and other essential facilities. While Pakistan is at a low risk of HIV/AIDS careful observation for prevention is needed. The contagious/transmissible illnesses like Tuberculosis (TB), hepatitis B and C and malaria are a key risk to the health of people due to its continuous incidence in the country for the past many years. However, with the help of WHO various programmes have been started to alleviate the problem and estimated that Pakistan will be very close to its MDGs in 2015 even if not completely achieved (GoP, 2010: 70; 76). Sen (2002: 861) has shown that countries which invest on their public to get them literate and adequate health care services are in an improved situation to detect and observe their particular diseases as compared to the countries with less spending on the said sectors acquire poor knowledge of curable situations.

Pakistan is suffering from an increased problem of poverty-related contagious ailments, aggravated by undernourishment and health threats to pregnant women. The level of government health facilities is considered as insufficient by several people consequently a substantial decrease in consumption of facilities. According to an assessment, only 55% of people benefitted from the health facilities which further declined to 30 percent in general for kids and maternal wellbeing whereas barely 57 percent kids completed their usual vaccination and the number for pregnant women who complete immunization against tetanus is 40 percent (UN (2010: 16)).

The government of Pakistan, in trying to meet the Millennium Development Goals (MDGs) has developed various plans to provide healthcare services to the poor as in its five year plan “Health for all” for 2005-10. The ministry of health, Pakistan has built up a strategy enclosing assistance to formulate more concrete policies based on

well-organized, fair and consistent approach. Although, the funds distributed for the health division have improved and which is currently 0.7% of GDP¹⁶¹ these are however, insufficient as compared to the other South Asian countries in the region (EUEA, 2007: 12). Unfortunately, government spending on health has been decreased gradually rather than increased as it was 0.72% in 2000-01 but after that period it has dropped to levels ranging from 0.50% to 0.60% of GDP for almost a decade. It has been observed that the poor spending on healthcare services by the government of Pakistan is a key factor for declining health situations in Pakistan (GoP, 2006; Uddin and Swati, 2006; Hassan and Mehmud, 2006; Lashari, 2004; Abbas, 2010: 28). The World Health Organization (WHO) Commission on Macroeconomics and Health in its document identifies that US\$ 34 per capita is compulsory for a whole programme of essential health care facilities in Pakistan but currently, it is just US\$ 18 per capita and notably the public share is only US\$ 4 per capita. These poor figures of government expenditure on health of the people unveils the lack of dedication of governmental authorities in the health division and especially for those deprived individuals and families living in disadvantaged and far-off areas of the country who cannot pay for private health services (Akram and Khan, 2007a: 15).

However, the government has started various programmes in different periods in order to tackle the health problems faced by the people of Pakistan like Poverty Reduction Strategy Papers (PRSPs); Millennium Development Goals (MDGs) linked with health issues; National Health Policy; Medium Term Development Framework (MTDF)(2005-10) and Vision 2030 (Akram and Khan, 2007a: 1-2).

¹⁶¹ Currently, the government spending on Health is 0.56% of GDP as per the economic survey of Pakistan, 2009-10 (Ministry of Finance, Government of Pakistan; See also, State Bank of Pakistan; Federal Bureau of Statistics; Table 6.4)

In the health sector reforms, “the National Health Policy 2001”, the federal government formulated a joint structure in collaboration with the provinces to offer them plans according to their preferences and needs. It was decided that the responsibility of federal government will be helpful and coordinated in key elements such as infectious illness management schemes. However, the major responsibility for investing money to build up the configuration and healthcare facilities was given to the provincial governments. The government strategy for healthcare facilities comprises ten key sectors:

1. Reducing widespread prevalence of communicable diseases;
2. Addressing inadequacies in primary/secondary health care services;
3. Removing professional/managerial deficiencies in the district health system;
4. Promoting greater gender equity;
5. Bridging basic nutrition gaps in the target-population;
6. Correcting urban bias in health sector;
7. Introducing required regulation in private medical sector;
8. Creating Mass Awareness in Public Health;
9. Effecting Improvements in the Drug Sector; and
10. Capacity-building for Health Policy Monitoring (Akram and Khan, 2007a: 10).

In each sector of the above targets, the time frame has been allocated to achieve them. However, the success of these indicators requires the cooperation of world aid providers and the partnership of public and private segments (Ibid). The new National Health Policy 2006 as a step forward to the National Health Policy 2001 was launched but unfortunately due to poor procedure it was unable to achieve the required outcomes linked with Millennium Development Goals (MDGs). Recently, the government of Pakistan initiated the National Health Policy 2009: “Stepping

towards Better Health” aimed to introduce a health care policy for all citizens of Pakistan especially for the poor to keep them healthy (MoH, 2009: 1).

The government of Pakistan is obtaining considerable aid for growth in the form of budgetary assistance. The Paris Declaration clearly indicates that the aid providers are highly supportive in terms of development projects and are in contact with the regimes to devise policies for development. It is worthwhile to mention here that there is no conclusive indication that the Paris programme assistance is available to the healthcare area of Pakistan (WHO, 2007: 25-26).

However, governance is a crucial element in the fight against poverty given that it encourages the involvement of deprived classes of the society, poor friendly strategies and strong macroeconomic organization. It guarantees the fair distribution of national resources, supports development of the private segment, encourages efficient supply of social services and facilitates to institute the rule of law. In this era of globalization, good governance is a necessary tool to circumvent or decrease the unsympathetic impacts of financial crunch previously experienced by the Asian economies. The proficient and successful delivery of social services to all individuals especially the deprived and poor classes of society as it matters for them whereas poor governance harms excessively. In addition, poor policies, incompetence and corruption turn the sufficient quantity into inadequate assets to provide essential intensity and excellence of social facilities in order to reduce poverty. Therefore, inadequate spending on the primary social facilities on the poor is just one of the problems (ADB, 1999: 12-13).

There are a number of problems which creates demoralizing consequences (a) institutional organization exclusive of system of checks and balances, (b) under

management of local elites, (c) prevalent bribery, (d) ethnically established disparity, (e) no voices of the poor or their dynamic involvement in the development. The societies which are engaged in such kind of problems need comprehensive transformation to shift from weak governance to a kind of government answerable to the poor for their acts. However, it is the responsibility of the governments to support poor friendly policies for development with social growth at the same time in the shape of primary public services at the grass root level (Ibid). Therefore, the ADB followed Amartya Sen's capability approach and expanded it as "human capital development" to fight against poverty.

7.4 CONCLUSION

For the last fifty years, law and development has been prescribed to help the process of development in developing states. Whilst the prescription has generated some positive outcomes, the rationale behind it had not gone uncontested. Tamanaha (2009) for instance is cautious about the capacity and the assumed utility of the rule of law movement given the substantial investments made in projects whose impact is difficult to gauge. The main aim was to integrate and link "good governance programmes to rule of law and development" (Tamanaha, 2009). But the potential of the intersection between law and development led international institutions such as the UNDP, the World Bank and the ADB to adopt them as important tools in the attainment of development.

The concerns relating to the effectiveness of the law and development movement was further echoed by the World Development Report 2006 which highlighted the absence of clear vision and lack of understanding of the impact of previous initiatives. In this light, Nader warns that the rule of law programmes will remain

deficient if law seeks to consolidate problems of power and control (Nader, 2007: 20-21). To mitigate this, Tamanaha (2009) emphasizes the need to build indigenous capabilities in order to enhance the probabilities for effective legal progress. He asserts that Sen has provided a practical approach to improving the capabilities and freedoms of individuals. Collier (2007) suggests that the movement has been largely overlooked by the states and the lending amounts were misappropriated or used to purchase military weaponry at the expense of economic progress.

The need for a more proactive focus on capabilities as a tool for confronting poverty and underdevelopment is an urgent one. This is more so because the types of reforms initiated by the World Bank and IMF had for the most part led to the aggravation of problems rather than alleviating them. This is because the lendings have generally been insensitive to the plight of poor people while imposing heavy burden on them through debts. In addition, one of the reasons for its failure was that the IFIs lendings to Pakistan were mostly conditional to achieve the U.S. led geostrategic plan in the region which affected the effectiveness of aid. Another significant reason was that lending makes authorities dependent on aid rather than build their own resources, infrastructure and formulate meaningful development agendas. But it is also the case that the dysfunctionality of the government of Pakistan is partly to blame for poor management of foreign aid. This has also been aggravated by a number of internal problems such as lack of effective infrastructure, political instability; pervasive corruption and massive expenditure on the war on terror. In addition, a lack of coordination between the IFIs and the government of Pakistan has been observed and that was one of the major obstacles in the way for ensuring aid effectiveness.

Poverty is one of the major problems of Pakistan as one third of the population is living in poverty and this situation is worse in rural parts of the country. The World Bank among others identified that there are various reasons responsible for poverty and non-availability of resources and social services to the poor and especially for those who are living in rural areas of Pakistan. The IFIs with the help of the government of Pakistan have started a number of poverty reduction programmes. But these have failed due to corruption, diversion of domestic resources and foreign aid towards budget deficit and heavy expenditure on defence, lack of land reforms, uneven sharing of opulence, mismanagement of finances, lack of rule of law culture, lack of good governance and the very small tax net.

In addition, poor allocation of funds by the government of Pakistan to the education and health sectors is a major hurdle in the way of development. However, it requires a strong commitment and well planned policies as a precondition for well-established infrastructure of education and national health services structure. It is suggested that the allocation of a significant portion of GDP by the government for the education and health sectors can produce better results for the achievement of the targets set out in the MDGs. It is possible to conclude that the government of Pakistan as well as IFIs are partly responsible for some of the pressing challenges faced by the country.

The findings of this chapter are twofold: the Structural Reform Strategies (SRSs) of the IFIs can make a better contribution to the development of Pakistan if they are not aligned to the U.S. geostrategic interests in the region. For the most part however, Pakistan has been unable to effectively manage foreign aid. It can be achieved through the introduction of better policies, control of corruption, accountability,

promotion of the rule of law culture, good governance, reasonable government spending on poverty reduction and social services.

It is an important fact that the projects related to development cannot flourish in the absence of rule of law and governance. In order to introduce an effective rule of law structure, it is important to take into consideration Tamanaha's suggestions as it is better to address problems within the indigenous structures before introducing rule of law projects. In the case of Pakistan it is imperative that consideration is given to its particular circumstances. However, Pakistan's security challenges vis-à-vis its active role in the U.S. led war on terror implies that the critical issues of rule of law, governance and development are hard to formulate or enforce in the current circumstances. What this means is that the extent to which rule of law and governance and development can be synchronized is to a considerable degree dependent on the ability of Pakistan to transcend on-going security challenges.

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATIONS

8.1 INTRODUCTION

This thesis has argued that IFIs involvement in Pakistani domestic affairs has aggravated social injustice rather than alleviating it. The absence of social justice in Pakistan results from the interaction between IFIs policies and weak structures of governance, the rule of law and development in Pakistan. While IFIs policies have recently attempted to emphasise the rule of law, good governance and development, these have been ineffective partly because IFI's submissiveness to geo-strategic interests of the U.S. and Western powers and partly because of internal factors.

8.2 KEY FINDINGS OF THE THESIS

The purpose of the thesis has been to assess the impact of Structural Reform Strategies of IFIs on rule of law, good governance and development in Pakistan. In addition, it investigates how the instrumentality of these components could be useful in attenuating the challenges of social justice.

The theoretical and analytical framework involved a socio-legal analysis of the delivery of 'social justice' in relation to IFIs policies in Pakistan. The thesis adopted Amartya Sen's Capability Approach as its theoretical framework. The main argument of Sen's exploration is that the poor can play a crucial role in society if they are provided freedom and choice of life as per their own desires (Sen, 1999). He advocates that they should have a choice to decide their fortune rather than be tied up by undesirable social programmes and poverty reduction strategies. The chapter explored a number of dimensions that are relevant to this thesis especially in the context of Pakistan. The capability approach provides a platform through which a

socially dysfunctional order can both be engaged and rectified. The chapter suggests that the 'Capability Approach' can be practically applied in many dimensions to Pakistan. Sen correlates the individuals as substantial instrument of development as well as equally include them in the process of development.

In the current situation, the thesis recommends the introduction of good governance structures crucial in achieving development and empowering the people in order to realise their full potential. Therefore, Sen's capabilities and social justice approaches do provide the connection between the dimensions of capabilities and good governance and both are significant for human-centred development. However, Sen's approach has not covered the dynamics of international power systems. Chimni provides a useful friendly critique of Sen's capability approach. Chimni says capabilities approach is a very important way of thinking about poverty and impoverishment and development, but Sen does not deal with the imbalances of power both at the national and at the global level. My thesis suggests that those imbalances which are crucial to the absence of good governance in Pakistan because of both the internal factors of poor governance and external IFI's strategic dimensions contribute to poor governance. Therefore, Sen's approach is relevant in terms of the dimensions of development and its interfaces with the capability approach but needs modification to take into account the global context of power.

Prior to outlining the main argument of the thesis, it was essential to first understand the geostrategic significance of Pakistan in reference with PAK-U.S. relationships. This was necessary to put into context the structural reform programmes introduced by IFIs in Pakistan from 1980 to 2009 and the influence of the U.S. on the decisions leading to these reforms. With these preliminary analyses outlined in the introductory

chapter, the focus of chapter three was to set out the argument in respect of the geo-strategic position of Pakistan, which has been utilized as a means of advancing U.S. interests in the region. The chapter demonstrated that the World Bank and the International Monetary Fund were created with the sole purpose of providing financial and economic support to war-torn Europe after World War II. The focus of the institutions later shifted towards developing countries for purposes of balance of payment adjustments, poverty related programmes, structural reforms as well as reconstruction and growth plans.

The experience of developing countries with the World Bank and IMF has been a chequered one. The proponents of these institutions argue that their role is vital in solving the economic problems of member countries. However, opponents of the World Bank and IMF make a case that the institutions have created numerous problems in developing countries. They charge that the institutions are highly politicised and in turn make decisions based on political considerations, rather than keeping in view the economic realities of a particular member country. The major critique however, has been levied on “conditionalities” attached to the loans, which have disrupted prospects for sustainable economic growth in the countries concerned. It is evident that internal factors are also responsible for the failure of Structural Reform Strategies but most of the policies of IFIs are aggravating the situation because of political interference in decisions-making processes. The dominant position of weighted ‘Voting Power’ and effective ‘Veto Power’ of the U.S. in the decisions of World Bank/IMF is creating disparity among member countries.

As far as Pakistan is concerned, poverty reduction is the major focus of both these institutions. There is contradiction in the policy framework of the programmes

introduced by the World Bank and IMF as on the one hand, these institutions are highly interested in the efforts to reduce poverty and are ready to provide funding but on the other hand, emphasise the privatization of public institutions, withdrawal of subsidies and initiation of deep cuts in public expenditure. Pakistan is facing serious problems of increasing poverty, heavy burden of external debts and the soaring inflation rate since the introduction of World Bank and IMF Structural Reforms in its economy.

The thesis then relies on the recent structural reforms after learning lessons from the failure of previous policies as discussed in chapter three. Bad governance has been identified as one of the real causes of the beginning of various problems in the developing countries especially Sub-Saharan Africa. Moreover, bad governance offered a favourable atmosphere for the development of corruption and corrupt practices. However, good governance is often considered as a prerequisite for the attainment of development in an era of globalization. The International Financial Institutions have declared good governance as a precondition for borrowing countries seeking new lendings. The lacklustre results of the Structural Adjustment Programmes, East Asian Crisis, African Crisis, institutional weaknesses and other factors contributed to provide IFIs an opportunity to reform its policies and to shift its attention towards Good Governance. For the last two decades, good governance and rule of law have become essential for the developed world and the International Financial Institutions. However, the global good governance and rule of law policies introduced by the IFIs are not embedded in the local cultures as these have been introduced without clear consciousness of the local legal and political cultures of these countries. In the last four decades, the IFIs had gone through numerous changes

in their reform policies and even the recent trends are not very successful but efforts have been made to achieve the required results.

The issues relating to the eradication of poverty, bad governance, and worsening rule of law conditions, weak institutional structures, economic instabilities, social injustice and growing corruption forced the United Nations to introduce Millennium Development Goals (MDGs) which have to be achieved by 2015. Therefore, the achievement of these goals depends to a considerable degree on the mechanism for proper organisation and utilization of external aid. The global governance reforms require sincere efforts, political motivation and consistency.

While, the thesis is a critical appraisal of the reform policies of the IFIs, recent efforts for the achievement of global development provides an opportunity to the third world countries for progressive and improved conditions of the good governance and rule of law. However, the role of IFIs is also crucial in the development of third world countries. In so doing, emphasis ought to be placed on policies, which are reflective of the specific economic, social and political circumstances of developing countries rather than impose unwanted reforms by undermining these conditions. The role of the development partners should be encouraged by declaring no compromise on the effectiveness of the accountability mechanisms no matter whether they have been provided at national or international level. The political influence of powerful nations should also be removed and the participation of third world countries in these IFIs should be gradually improved. The conditions of good governance and rule of law in third world countries may hamper the menace of growing terrorism in the world. To realize these, however, there is

need to support the governments in designing their policy objectives especially in relation to the Millennium Development Goals.

Presently, Pakistan is faced by challenges resulting from terrorism. Therefore, the U.S. interests involving 'war on terror' supersede good governance and rule of law policies of the IFIs in Pakistan. Yet, a strong and reformed Pakistan can perform better as a coalition partner of the U.S. on war against terrorism (Hussain, 2009: 11).

In chapter four, the thesis noted that an independent, efficient and strong legal and judicial system safeguards economic, political and trade activities of a country. In Pakistan, the civil as well as military regimes tried to control the judiciary in order to make it subservient to the executive and to fulfil their own interests. The decisions of important constitutional cases shows a clear influence of the executive which imprint deep impact on the constitutional governance and future trends of politics in Pakistan. Political involvement in the institutions not only undermines the rule of law and good governance conditions but also establishes the culture of corruption that badly affected the efficiency of public servants.

The Constitution of Pakistan provides for a democratic form of government but four Martial Law regimes exacerbate the condition of the rule of law and good governance in the country. It is a fact that the democratic governments find a very short time to grow and establish strong foundations for the smooth functioning of the country, which is also a reason for weak public institutions. The other problem is that the Constitution has never been enforced in its true letter and spirit because the Martial Law as well as civilian regimes disfigured the shape of the original Constitution of Pakistan 1973 by inserting new provisions with the help of their puppet parliaments. Although, there are various mechanisms available for the

enforcement of rule of law and good governance, weak enforcement and ineffective systems of accountability result in poor outcomes. Moreover, the ‘war on terror’, unemployment, poverty, social injustice, illiteracy and growing corruption are the real impediments in the way of sustainable economic development in Pakistan. The International Financial Institutions are also involved in many ways in terms of reform policies in Pakistan. However, the policies of IFIs produced weak results as these were introduced without clear consciousness of the local culture of Pakistan i.e. legal and political culture.

The organs of a state are indispensable elements for the promotion of rule of law and good governance. Yet lack of coordination among these pillars has been observed throughout the history of Pakistan. Most of the time, the judiciary and bureaucracy have been undermined either by political involvement or by curtailing their powers. An independent judiciary and a free bureaucracy are also crucial for the achievement of the Millennium Development Goals, which requires a careful attention. In order to realise their effective role, there is need to adopt a strict policy for their appointments and transfers on merit as well as to stop political influence in their affairs. In addition, there is an urgent need to update them according to the changing requirements of the country. In the last decade, the media which emerged as a powerful pillar of the state played an important role in the ‘war on terror’ and public access to information. Presently, Pakistan is in the state of war against terrorism and a stable political government is necessary to achieve future goals.

The thesis also explored corruption in Pakistan, noting that it is prevalent in many facets such as in the economic and political spheres. Petty and grand corruptions are rampant in the country and bribes are commonly demanded from the people when

they appear before the public institutions to avail primary public services. Transparency International Pakistan in its national corruption survey reports of 2002 and 2006 mentioned that the issue of petty corruption has been on the rise (Chene et al 2008: 4).

The study explored that the process of privatization can produce better results if the following suggestions are considered. Firstly, the process of privatization must be carried out in a transparent way. Secondly, to make sure that the private sector is ready to tackle the issue of unemployment in case of right sizing. Thirdly, the privatization programs must be designed with clear consideration of the domestic circumstances of Pakistan rather than by the external designs of the IFIs. Fourthly, the officials involved in the process must be fully accountable before the courts for their acts relating to privatization.

The thesis draws attention towards one of the most important issues of low wages for public servants. It suggested that the matter should not only be confined to the extent of corruption but a program in broader spectrum for transformation of civil service should be considered including the revision of pay structure in order that an average family may survive. In addition, a strict surveillance to control the inflationary trends and such other issues must be given cautious and grave consideration if such circumstances exist in a state (Myint, 2000:41; World Bank, 1998: 38).

The thesis identified the most active determinants of corruption in Pakistan and that it has not only been institutionalized but also that there seems to be selective granting of 'blanket immunity' to some people with influence. The pervasive nature of corruption in Pakistan is one of the root causes of the other problems. It has hampered the efforts for development and the provision of basic needs for the poor

and created social injustice, disparity and disappointment in the society. The looted or misappropriated money is ultimately deposited in foreign banks.

However, it is obvious that throughout the history of Pakistan almost all regimes including military and civilian not only avoid the implementation of accountability laws but also provided immunity to the politicians and high officials by making special laws which in a way encourages the culture of corruption in the country. There has been an absence of honest and capable leadership after independence except for the early days. This kind of irresponsible attitude by the political and military leadership had always been problematic for the rule of law culture in Pakistan.

The thesis suggests that the government should take prompt steps and provide consolidated legislation in order to establish an efficient institutional structure so that the people may be able to have free access to information. While, the Freedom of Information Ordinance (FOIO) 2002 does conform to each one of these values its applicability is only confined to the federal government sectors, the provincial and local divisions with private institutions, to whom financial assistance is provided by the government, are not in its purview.

The study concludes that the problem of corruption cannot be resolved unless there is a strong political will to do so and in Pakistan this has never been present. What has happened is that regimes came promising to end corruption and even introduced new machinery to deal with it. However, their attempts have been unsuccessful. This is either because they never intended to deal with corruption in the first place and have used the new machinery cynically to punish their opponents or they have not been able to cope with the forces which promote corruption and have been corrupted in

the process. Thus while the legal machinery as well as the institutions to deal with corruption are important, they need to be reformed, real reforms will not take place in the absence of strong political will reinforced by public pressure from below for change.

In chapter seven, the thesis explored the two groups of writers with varying views on the impact of IFIs reforms in Pakistan. One of the groups argues that that the World Bank and IMF initiated reforms, aggravated the problems rather than alleviating them. This is because the trend of prolonged use of IMF lendings ignored the development needs of poor people. They also aggravated the conditions of people with soaring foreign debts. In addition, the IFIs lendings to Pakistan were mostly conditional to achieve specific U.S. interest in the region. What this has meant is that aid to Pakistan was usually framed around these external influences in the region. This trend encourages the authorities to be dependent on aid rather than to build their own resources, infrastructure and development targets. The second group argues that the inefficiency of the government of Pakistan together with a number of internal problems such as lack of effective infrastructure, political instability; pervasive corruption and massive expenditure on war against terrorism are largely responsible for Pakistan's problems of governance, underdevelopment and impoverishment.

In practice, lack of coordination between the donors and the government of Pakistan has been a major obstacle in ensuring the effectiveness of aid. The chapter focused on three areas such as poverty, education and health in Pakistan. Poverty is one of the major problems of Pakistan as one third of population is living in poverty and this situation is worse in rural parts of the country. The World Bank and others, observe that there are various reasons responsible for poverty and non-availability of

resources and social services to the poor especially those who are living in rural areas of Pakistan. The IFIs with the help of the government of Pakistan have started a number of poverty reduction programmes, but have failed due to corruption, diversion of resources and aid towards budget deficit and heavy expenditure on defence, feudal who are against reforms in rural areas, uneven sharing of opulence, mismanagement of finances, lack of rule of law traditions in society, lack of good governance, a highly stratified and underdeveloped farming structure and very small tax net. On the other hand, various independent groups, writers and civil society organizations argue that the Structural Reform Strategies of the IFIs are largely responsible for a significant part of the problem in Pakistan. For example, the neo-liberal policies like privatization and downsizing failed resulting in high rate of unemployment in the country.

Although little progress on the level of female literacy has been attained, it would be however, extremely difficult for the government of Pakistan to achieve the required targets of MDGs in 2015. It has been recommended that the government should spend 4% of GDP on education coupled with some other issues of prime importance that exacerbate the condition like unsuccessful service delivery, weak organization, weak governance and absence of checks & balances system (GoP, 2010: 37). Therefore, poor allocation of funds by the government for social development is another problem to achieve development indicators.

A number of health executives and development associates have realised that there is an urgent need to reform the health sector to formulate a fair, efficient and consistent system. The donor agencies must organize, correspond and bring their efforts to maintain the state health progress programme but it involves consistent efforts to

start different government health plans as well as an efficient health structure at different stages for better quality of services. However, it requires a strong commitment and well planned policies as a precondition for well-established national health services structure which bears a heavy responsibility on the shoulders of governmental authorities (WHO, 2007: 26). It has been suggested that a Basic Development Needs Program (BDNP) with the help of local people, public sector institutions, district establishments to work with people living in far-off areas of the country and for their development towards set goals. The main objective of this plan is to achieve the health related targets while working as a team. Currently, the plan is operational in nine areas and produced positive results in providing quality facilities to the local people. It has been suggested that the allocation of sufficient part of GDP by the government can produce better health outcomes that are targeted as MDGs in 2015 (GOP, 2010: 70).

The IFIs policies have created problems for Pakistan because they have been largely framed around the dictates of geo-strategic interests and neo-liberalism of the Washington Consensus. This has exacerbated historic internal problems of Pakistan leading to an absence of good governance, rule of law and development. While recent IFI policies have tended to emphasise good governance, rule of law and poverty alleviation, they have not been able to surmount the problems created by the original policies and the continuing geo-strategic interests.

It is for future scholarship to consider more detailed and precise implications of the PAK-US relationship but the study concludes that the aid provided by the U.S., other organizations and IFIs has not been managed effectively. The introduction of better policies, control of corruption, accountability, promotion of the rule of law culture,

good governance, a reasonable government spending on poverty reduction and social services may make a substantial difference to the people of Pakistan.

8.3 SUGGESTIONS FOR POLICY AND PRACTICE

The results of this inquiry are twofold. First, it is significant in the context of Pakistan as the foundation of its argument is that IFIs support programmes must be designed without the influence of U.S. geostrategic agenda in the region and the funds will be disbursed purely on merit and for need based projects. As the World Bank Operations Evaluations Office (OED) suggests that:

Recipient countries should lead aid management and coordination through stakeholder partnerships. Donor-recipient relationships should be actively managed by the recipient country as a partnership and not dominated by donor preferences. Partnerships built on mutual trust and consultation can improve aid coordination and reduce the inefficiencies, asymmetrical power relationships, and tensions of donor-led aid initiatives (OED, 2003: 2).

Second, the study reiterates that at the domestic level, government authorities should avoid the ‘aid dependency policy’. The study does not suggest an immediate termination of all IFIs lendings, but that it must be gradually decreased by increasing dependency on their own resources and the best way could be to fix a time period for example a decade to get rid of heavy debts. The development of China is the best example of successful avoidance of the policy prescriptions by the World Bank and IMF.¹⁶² In the case of Pakistan, the rule of law, good governance and development projects can achieve the required results if they are planned in clear consideration for domestic circumstances rather than relying on dependency policy for a very long period.

¹⁶² (Abouharb and Cingranelli, 2007: 17-18; Stiglitz, 2002)

The study suggests a few things that need immediate attention of the governmental authorities of Pakistan. Firstly, tax restructuring is a significant issue and the authorities must make it pro-poor. In addition, imposition of agricultural tax is necessary for the long benefit of the economy. Secondly, government spending on poverty, health and education must be ensured according to international standards to achieve human development objectives. Thirdly, although there exist relatively good accountability mechanisms, enforcement has been problematic. Thus the study emphasises the importance of consolidation of accountability in every government department. Fourthly, war against corruption should be started at the governmental level but can only be successful if it can be sustained by strong popular pressure. Further, the World Bank OED recommends for aid receiving countries that:

Strengthen results orientation by increasing citizens' right to demand results and government's ability to respond. Train public servants to open up information channels and educate the public, strengthen systems for internal and external accountability, and present development strategies through the media and in languages and forms that the general public will understand (OED, 2003: 3).

While I am making these proposals, there will be no real solution until Pakistan is not adversely affected by geo-strategic interests and neo-liberal policies as well as there is an internal political will supported by popular movements in Pakistan. In this respect, the lawyers' movement is a sign of the potential for change but was in itself very limited.

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