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SPECIAL ISSUE ARTICLE

The Lawyers' Movement in Pakistan: how legal actors mobilise in a hybrid regime

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Abstract

Drawing primarily from qualitative interviews conducted between 2017 and 2018, this empirical study tells a granular story of how legal actors mobilised during the Lawyers' Movement in Pakistan (2007–2009) from the perspective of lawyer-leaders who organised, steered and sustained support for the Movement through rapidly shifting political conditions. By underscoring the contribution of lawyer-leaders in empowering judges, the article seeks both to displace uncritical assumptions and arguments about courts as the nucleus of legal mobilisation in Pakistan, and to highlight the crucial role of political parties in the restoration of the judiciary against the backdrop of disintegrating lawyer-judge coalitions. Given Pakistan's political context of a 'hybrid regime', the article reflects on the unsuitability of the 'legal complex' theory of 'political liberalism' for analysing and understanding the Movement, and locates it instead in the literature on legal mobilisation in authoritarian regimes.

Keywords: legal mobilisation; socio-legal studies; legal complex; law and social movements; hybrid regime; post-colonial South Asia; Lawyers' Movement

> '*It was an extremely difficult task keeping all factions of lawyers together at every stage and at every decision. The lawyers' community is split up amongst some 30 political parties and persuasions, each likely to pull in different directions at every critical stage of the movement. Our objective was to arrive at a common ground which would be acceptable at a minimum level to each group . . . This was crucial to keeping the unity of the bar.*
> *Judges were an entirely slippery factor in the movement. Many more were ready to get on Musharraf's bandwagon and take jobs from the government. A number of them did slip away. Judges attribute to themselves the full journey. Those who did, had to be kept in chains! They had to be goaded into moving along. We had to make them believe that it would be ruinous for them otherwise. At many occasions there were semi-revolts within the movement, there were dissenters who lost hope on the way.*'
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> Aitzaz Ahsan
> President, Supreme Court Bar Association, 2008
> Interview, April 2018

1 Introduction

The Lawyers' Movement (2007–2009) was a dazzling instance of impassioned lawyers taking to the streets across cities and towns in Pakistan for weeks on end to protest the forced removal of the Chief Justice of the Supreme Court by then military head of state, President-General Pervez Musharraf. The international media spotlight on these 'black coats', as they came to be known, inspired cause lawyers around the world. The American legal academy was also enamoured by the

courage of a judge in the face-off with a post-colonial military dictator – who was then ironically at the forefront of the US War on Terror – as well as the spectacle of street-based politics of lawyers in propping up the judge. Just as Harvard Law School bestowed the Medal of Freedom, its highest honour, on Chief Justice Iftikhar Chaudhry, some global law scholars saw in Pakistan's example fertile ground for theory-making on lawyers and judges. Indeed, the Movement became a major hypothesis-generating case study in the British post-colony on the influential theory of the 'legal complex' that seeks to explain the ebbs and flows in 'political liberalism' through the mobilisation of legal actors across some very different contexts (Halliday, Karpik and Feeley, 2012). What is more, because this theory became the immediate Global North gaze for analysing the Movement, any 'hindsight' scholarship that seeks to nuance the grand spectacle within the specificity of its context must first grapple with the fundamental premises of the legal complex, and in the process, critically justify any divergences from it before arriving to the point.

As a scholar from the Global South engaging the North's gaze, I adopt this ritual of first explaining why the legal complex paradigm overstates the liberal aims and outcomes, if not seriously prejudices a *contextual* understanding, of the Movement. I argue that in order to situate the Movement within political discourses that speak to actual conditions, it is imperative to displace what I believe is a most misleading lens of political liberalism as it masks deeper questions of structure and power. The arbitrariness of this lens is evident from its ordering of political systems within the British post-colony on a sliding scale of 'legal-liberal' to 'volatile' to 'despotic', where India is the paragon of the 'legal-liberal' order. With the Indian Supreme Court's spectacular capitulation to the populist-majoritarian government of Prime Minister Modi (Bhuwania, 2020), this is an important moment for South Asian scholars to decouple the politics of lawyers and judges in the post-colony from the normative premises of political liberalism, and to unpack the contextual meaning behind the otherwise universal idiom of 'rule of law' and 'judicial independence' (Munger, 2015). In the case of Pakistan, I assert that the relationship of judicial autonomy with political liberalisation is exceedingly complex and conflicted, so that the former operates as a structural constraint on the latter against the backdrop of 'hybrid regime'[1] politics. In pivoting from the predetermined frame of liberal-illiberal contestations in the post-colony towards an exploration of the dynamics of legal mobilisation in conditions of authoritarianism, I aim to foreground context and power.

Finally, I turn to the core purpose of this article, which is to tell a more granular story than has been hitherto attempted of how legal actors mobilised during the Lawyers' Movement, with a reasoned emphasis on the role and agency of lawyer-leaders. That lawyers were the key articulators and mobilisers of the Movement ought to provoke a natural curiosity about the people who led and organised the Movement, how they mobilised and what their motivations were in mobilising. However, these questions of *who*, *how* and *why* have only been treated in broad strokes through observations based on media and human rights reportage. In the present study I draw on 'close-to-the-ground' empirical data (Moustafa, 2014) to provide a thick description of lawyers' strategies for organising, steering and sustaining the mobilisation through different political phases; their efforts toward maintaining cohesion and internal discipline within the bar; their efforts to build, or conversely resist, coalitions between the bar and other players attempting to join, penetrate or appropriate the Movement and their role in sustaining judges' support for the Movement, both inside and outside the courts. By underscoring the contribution of lawyer-leaders in empowering judges, I seek, among other things, to displace uncritical assumptions and arguments about courts as the nucleus of legal mobilisation in Pakistan (Ghias, 2012; Trochev and Ellett, 2014). I argue that a sharper focus on the relative contribution of lawyers and judges in driving the Movement recasts the court as a site of contestation between pro and anti-regime forces, an overwhelming majority of judges being in the pro-regime bloc. Thus, a crucial part of the story about lawyers'

[1]A 'hybrid regime' is one that is 'neither clearly democratic nor conventionally authoritarian' (Diamond, 2011, p. 25).

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agency in the Movement is about how anti-regime lawyers prevailed over the very judges who were beneficiaries and agents of the regime.

In the final analysis, I also emphasise that the Movement would very likely not have been successful in restoring the judiciary without political party support because of the intervening elections of 2008, suggesting a critical intersection of the legal bar with political parties in the context of Pakistan's hybrid regime politics. This empirical insight connects back to my larger critique of the legal complex theory. That proponents of the theory interpret the Movement as 'pure liberal politics of struggle for the independence of courts and, thereby, for the moderation of the state' (Halliday, Karpik and Feeley, 2012) completely overlooks both the partisan turn upon which the success of this 'struggle' became conditional in its final phases, and the anti-democracy jurisprudence that evolved from judicial assertion in the Movement aftermath.

The study is structured as follows. Part 2 addresses important preliminaries: it provides a historical sketch of the politics of legal institutions in Pakistan and explains the necessity for moving away from the legal complex framework on political liberalism; locates the present study on the Movement in the literature on legal mobilisation in authoritarian regimes; and elaborates on the method for the study. Part 3 retells the story of the Movement from the perspective of lawyer-leaders. Based on this retelling, part 4 presents the central arguments, observations and conclusions of the study.

2. History, Literature and Method

2.1 Why not 'legal complex'? Contextualising politics of legal institutions in Pakistan

The legal complex advances a dynamic political theory of collective action to explain how and under what conditions legal actors mobilise to embed 'political liberalism', defined loosely as the three 'pillars of a liberal order': a moderate state, civil society and basic legal freedoms. Key to this theory is the idea of the 'legal complex', or the larger constellation of legal actors and institutions – judges, lawyers, law professors and academics, prosecutors, rights advocates, paralegals and others – and the 'critical interdependence' between them. Proponents of the theory argue it is not lawyers or judges or other legal actors alone but the politics of the legal complex more expansively, especially the nexus between the bar and the bench, that universally determines transitions towards or away from political liberalism.

Had there been a linear relationship between judicial empowerment and state moderation, the legal complex theory would be the obvious lens for analysing the Movement. In the context of Pakistan's hybrid regime, however, the *principal contradiction* that any legal mobilisation for judicial autonomy must contend with – quite apart from its immediate impact on moderating the military state – is its more long-range consequences for the balance of power between the judiciary and elected governments. The tenuous civilian-judicial relationship, characterised by the Supreme Court routinely overriding civilian political decision-making, stems from the evolution of the apex court as an intermediary between the military and civilian ruling classes over the past few decades. Indeed, the Movement marked the high point of a steady trend toward judicial overreach and populism at the expense of democratic politics.

This dynamic of judicial power in Pakistan's hybrid regime is part of the global story of the post-Cold War era when authoritarian regimes around the world held elections and set up other institutions associated with democratic systems as a means of conferring legitimacy upon their rule (Levitsky and Way, 2003). As Pakistan emerged from a brutal decade-long military dictatorship under General Zia-ul-Haq in the 1980s – a US proxy in the Soviet-Afghan war – it entered into a new phase of multi-party elections and was viewed through the prevailing lens of democratic 'transition' (Carothers, 2002). In retrospect, it is hardly surprising that the so-called 'transition' of the 1990s was underwritten by the military through various mechanisms to perpetuate its rule. One of these was General Zia's infamous 'Eighth Amendment' which, among other things,

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subverted the parliamentary character of the constitution through a provision enabling the President to 'dissolve the National Assembly in his discretion where, in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary' (article 58(2)(b)) (Siddique, 2006). With such discretionary authority concentrated in the office of the president, the military maintained a foothold in this crucial site of executive power. Article 58(2)(b) was also central to the expansion of the Supreme Court's judicial review powers. The Court's jurisdiction to adjudicate on the constitutional validity of the dissolution of assemblies was by no means explicit, but even so the Court insinuated itself into this process as an arbiter between military power – channelled through the president – and elected governments.

The Court's activism on the political question of article 58(2)(b) was facilitated by the growth of public interest litigation ('PIL'), a kind of 'pro-poor' jurisprudence that originated in the Indian Supreme Court in the late 1970s. The core feature of PIL was to relax procedural rules of standing to allow poor and marginalised litigants direct access to the apex court. The constitutional migration of PIL from India to Pakistan coincided with the post-Zia revival of elections in the 1990s, and was welcomed by rights advocates. But there was something more insidious about the Supreme Court's famed PIL-based activism: the Court came to sit in judgment over the fate of elected governments under article 58(2)(b) by using the core logic of PIL itself – namely, direct access to the apex judiciary through a liberalisation of the rules of standing on the basis of social justice. As the Court's proclivity for judging politicians grew on the basis of its PIL powers, so did its appetite for the judicialisation of politics more generally (Khan, 2014). Contrary to the perception created under the garb of PIL, there was nothing counter-majoritarian about this judicial assertion. As an overseer of the democratic 'transition', the Court acted mostly from a position of strength over fragile coalition governments. Barring few dissents, it partnered with the military-executive in derailing attempts at democratisation through the 1990s, even as it opened its doors to human rights and socio-economic causes.

In 1999, Pakistan oscillated back to overt military rule through a *coup*. The new dictator, General Pervez Musharraf, accelerated the neoliberal drive toward economic deregulation and privatisation, just as his regime became a proxy once again in the US-led 'war on terror'. Consistent with the growing recognition of regime heterogeneity in the comparative literature on democratisation around this time, many contemporary political analysts began to describe Pakistan as a 'hybrid regime' or 'hybrid democracy' – a system that combines both democratic and authoritarian elements as a structural feature of its politics, so that it is neither a 'transitional' democracy nor merely an aberration or sub-type of a democratic or authoritarian state (Adeney, 2017). General Musharraf's 'guided democracy' was essentially in the nature of a hybrid regime, propped up by global powers. Unlike Zia's dictatorship of the 1980s, an essential characteristic of the Musharraf regime was an empowered judiciary, albeit one that had been subjected to a comprehensive purge at the time of the *coup*. Keeping the constitutional courts open was emblematic of the deepening neoliberal framework that gave primacy to credible commitments and judicial safeguards in the process of economic liberalisation (Aziz, 2012). Equally important was the legitimacy-granting role of the judiciary, so that functioning courts – along with a controlled process of elections – were the principal means for retaining a façade of democracy. In an elegant irony, the Supreme Court used its emancipatory PIL jurisdiction to legitimise and consolidate the Musharraf regime (Khan, 2014). The Lawyers' Movement happened in the political context of the impending elections of 2007, when the regime moved to neutralise the Court to pre-empt judicial defection on the question of Musharraf's re-election in his dual capacity as the President and army chief. The ensuing contestation between the military and the judiciary after nearly eight years of unmitigated judicial-military collaboration became a moment of cyclical renegotiation of civil-military relations.

The trajectory of judicial power in Pakistan maps onto the experiences of courts in other authoritarian contexts. In leaving the courts open for business as usual, the Musharraf regime

ran the risk of judicial rulings against regime interests from time to time. This 'double-edged capacity' of courts vis-à-vis established authority is an important empirical insight from across a very heterogenous set of authoritarian regime types (Moustafa, 2014). But what is more critical from the perspective of judicial autonomy in hybrid regimes is the courts' embedded institutional power to delegitimise civilian governments – a power that the reinstated Supreme Court under Chief Justice Iftikhar Chaudhry exercised liberally in the Movement aftermath. This tenuous dynamic between judicial independence and political liberalisation, which has been documented in quite some detail by scholars on South Asia (Kalhan, 2013; Khan, 2014; Siddique, 2015; Khan, 2019), has been noted in other case studies too (Bali, 2012), but is far from receiving the recognition and emphasis it deserves in the literature on legal mobilisation. Suffice to say, it provides good grounds to pivot from the legal complex theory in revisiting the Movement.

2.2 Legal mobilisation in hybrid regimes: bars as 'judicial support networks'

That said, the legal complex framework makes an important contribution in expanding the lens for studying judicial politics by highlighting the interdependence of judges and other legal actors in legal mobilisation (Halliday, 2013). While scholarship on legal mobilisation in authoritarian regimes acknowledges the significance of 'judicial support networks' (Ginsburg and Moustafa, 2008), it treats this line of inquiry as ancillary to the politics of courts and judges. This, then, is the point of departure for the present study: to foreground the politics of lawyers in the construction of judicial power in Pakistan, and in so doing, to add to recent case studies that similarly spotlight the political role of autonomous bars in anti-authoritarian movements (Lee, 2017; Gobe and Salaymeh, 2016).

I contend that the singular focus on courts, judicial activism and the personal courage of Chief Justice Iftikhar Chaudhry (hereinafter 'CJ') in a critical mass of work on the Lawyers' Movement (Kausar, 2012; Ghias, 2012; Kennedy, 2012) is misplaced, and needs to be purposefully revisited from the perspective of lawyers' agency in catalysing the Movement. Even those works within the Movement literature that recognise lawyers as primary interlocutors (Ahmed and Stephan, 2010; Munir, 2012) stop short of fully exploring the organisational role of the bar leadership. What were the motivations of lawyers in mobilising? What kind of organisational machinery did lawyer-leaders use to mobilise the bars? How were lawyers able to effectively deploy such a wide repertoire of mobilisation methods and tactics? How did bar leaders build coalitions within the bar, and between the bar and the bench? I make a modest attempt at engaging with some of these fundamental questions about how the politics of lawyers in the process of legal mobilisation propped up the judiciary. In so doing, I marshal evidence to repudiate an argument that has received much traction in the literature but is deeply flawed – namely, that the CJ laid the foundation for anti-regime mobilisation *prior* to the Movement through a 'politics of reciprocity' between the bar and the bench (Ghias, 2012). I assert that, on the contrary, it was the bar that led the way in recasting the image of the CJ as an anti-regime judge *after* the regime backlash that precipitated the Movement.

A clarification is in order here. By no means were lawyers the only actors in the 'judicial support network'. The latter included the media, political parties (whose contested role I outline below), human rights groups and other non-governmental organisations, as well as civil society at large. Thus, the present study should not be read as trivialising the role of non-legal actors. Civil society actors, in particular, were probably the most invested group in the CJ's judicial activism pre-Movement, as it had helped to carve out a legal opportunity structure (Mate, 2013) for highlighting pressing issues of misgovernance, corruption and human rights abuses. But this widespread support for the restoration of the judiciary should not detract from the fact that the core strategising around the Movement stayed almost exclusively in the hands of lawyer-leaders. As such, lawyers' mobilisation was the condition precedent for the Movement.

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2.3 A note on method

The present study is based on twenty-three qualitative interviews conducted between 2017 and 2018 with lawyers who spearheaded the Movement as leaders, articulators and mobilisers ('Interviews'). The Interview respondents were selected on the basis of their leadership role in the Movement, as described widely in the media and literature on the Movement. I placed the respondents in two different categories according to the nature of their leadership role. In the first category were 'repeat players': prominent leaders of the Movement who occupied crucial positions of bar leadership in the period leading up to and/or during Movement, and a large majority of whom were senior counsels on the legal team representing the CJ ('Repeat Players'). I adapt Galanter's notion of 'repeat players' to mean political lawyers who anticipated and pushed for anti-regime mobilisation of the bar based on past experience (Galanter, 1974). In the second category were lawyers who were bar office-holders at different tiers of the bar in the pre-mobilisation phase (2000–2007) and/or during the Movement (2007–2009), and who made important contributions to one or more of these phases in their capacity as bar representatives.

The Interviews were conceived as qualitative explorations into the motivations and actions of their subjects in organising the Movement. The study triangulates the Interviews through archival and official data, including media and newspaper reports, official bar resolutions, records of public statements and writings by judges and lawyers, bar association election outcomes and court judgments. Additionally, it relies on a further seventeen interviews with other lawyers, civil society and political party actors who participated in the Movement.

The emphasis of the study on the politics of the bar at the national and apex level of the Supreme Court is unavoidable. In the years leading up to and during the Movement, all the Repeat Players were Supreme Court advocates, with domiciles from across Pakistan. The sample of Bar Representatives, on the other hand, was drawn primarily from the provincial bar in Punjab – Pakistan's largest province – barring a few exceptions. I acknowledge the limitations of this Punjab-centric focus in understanding variations in lawyers' agency across regions and organisational hierarchies within the bar. Nonetheless, to the extent that the Punjab bar is disproportionately large and politically influential in relation to the legal bar as a whole, it plays a pivotal role in determining outcomes in any anti-regime mobilisation in the country.

3 The Lawyers' Movement – who, why and how?

3.1 Organisational machinery of the legal bar

The legal bar in Pakistan is organised through a parallel structure: *bar councils* which fulfil the state's imperatives for the professional licensing and regulation of lawyers, and *bar associations* through which lawyers exercise their right to voluntary association (Schmitthener, 1968). The Pakistan Bar Council ('PBC') and its provincial off-shoots are the professional regulatory bodies for lawyers. These are statutory bodies that formally regulate the entry of law graduates into the bar and maintain standards of legal education as well as professional conduct of licensed lawyers. The bar associations, on the other hand, exist at every tier of court practice. They facilitate co-ordinated activity for lawyers across and within different regions, and enable them to lobby for issues critical to their work and welfare. At the very bottom of the structure are small local *taluka* and *tehsil* bar associations that are vertically integrated into the district-level bar associations just above them. District bars, in turn, are linked up with High Court bar associations at the provincial level. At the apex of this federal structure rests the Supreme Court Bar Association ('SCBA'). The SCBA provides the national leadership for the bar's collective action. Established in 1989, it is a relatively recent addition to the organisational structure of the bar. Prior to its formation, the bar depended on *ad hoc* horizontal co-ordination among the provincial bar associations. The introduction of the SCBA provided a permanent platform for aggregating the struggles of bars across regions, especially to high-status lawyers involved in political lawyering.

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The different tiers of bar associations correspond to the judicial hierarchy: *tehsil* and district bar associations enrol members who have a license to practice in the district judiciary; High Court or provincial bar associations enrol advocates who hold a High Court license; and the SCBA is composed exclusively of Supreme Court lawyers from across the federation. The lower tiers are mutually inclusive of higher tiers, such that all High Court lawyers are also members of their domiciliary district bar association, and all Supreme Court lawyers are members of their domiciliary district and High Court bar associations. While there are nearly 200 sub-district and district-level bar associations around the country,[2] there are, at most, a dozen High Court bar associations enrolling lawyers from conglomerations of districts within each province who qualify for a High Court license, typically after two years of practice in the district courts. Membership of the SCBA, in turn, requires a Supreme Court license that may be obtained only after a minimum seven years' good standing as a High Court advocate. The bulk of the lawyers' population, therefore, is located within the High Court bar associations, as most lawyers of over two years' standing from all districts within a province congregate within them. This structure generally gives the bar a wide demographic middle in each province. However, there is much variation in the size of bar associations, and some of the big district-level bar associations are larger than provincial bar associations of smaller provinces. For instance, the Lahore Bar Association, the district bar for the city of Lahore, is significantly larger than any of the provincial bar associations – with the exception only of the Lahore High Court Bar Association ('LHCBA') which is by all existing accounts the largest bar organisation in South Asia.[3] Because of the sheer size of bar associations in the Punjab, the province's lawyers truly dominate bar politics.

Pakistani bar organisations at all levels hold annual elections. These are highly motivated and contested events and bring out the remarkable internal diversity of the bar. Lawyers active in the bar tend to have a strong self-identification with this democratic tradition, especially in the context of the larger unstable politics of the country and what they see as lawyers' historical struggles against dictatorships. The factors that appear to play a significant role in the bar's electoral politics also provide a window into the social structuring of the bar. These include caste and kinship loyalties, ethno-regional identities, local political affiliations, political party affiliations, professional associations based on law school or law chamber or domiciliary ties and other small group-based memberships. Far from being divided along partisan lines, Pakistan's bar is layered with overlapping identities and cross-cutting cleavages (Munir, 2012). This is not to say, however, that party politics at the national level has no effect on bar politics. Indeed, the general election of 2008 that took place during the Movement brought to the fore party divisions that were to ultimately have a major impact on the cohesion of the bar leadership.

3.2 Finally, the Movement!

There are notable examples of lawyers' mobilisation in Pakistan's (post-colonial) history, but none characterised by the kind of formidable lawyer-judge nexus that became the hallmark of the Movement. In the past, lawyers typically mobilised against the incumbent regime as allies of political parties and other supporting civil society groups. This anti-regime mobilisation cut both ways, so that lawyers were active in a movement to dislodge a civilian government in 1977 that culminated in Zia's military *coup*, as well as in a movement against Zia's martial law during the 1980s, known as the Movement for the Restoration of Democracy ('MRD'). The common factor in these instances of legal mobilisation was the direct nexus of the legal bar with political parties. In the minds of anti-regime lawyers and bar leaders in the anti-Zia MRD mobilisation – many of whom also spearheaded the Lawyers' Movement – there was a clear distinction between lawyers'

[2]In Punjab alone, there were 100 *tehsil* and thirty-six district bar associations in 2017–2018.

[3]The LHCBA was formed in the late 19th century. Estimates of lawyers enrolled in the LHCBA in 2018 range from about 32,000 (per the LHCBA) to 53,500 (per the Punjab Bar Council).

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mobilisation during martial law while political activity was suppressed on the one hand, and political action by political parties to force a democratic turnaround on the other. The former was intended to catalyse the latter, as lawyers were cognisant that their agenda was not autonomous of larger political goals and struggles. Thus, lawyers envisaged their role largely as auxiliaries to opposition political parties at the helm of the MRD, while the latter routinely engaged in political activity under cover of lawyers' conventions.[4]

Against the backdrop of this history of legal mobilisation, I draw on the Interviews and other sources to make five big observations about lawyers' agency in the Movement. Firstly, in contradistinction to the prevailing wisdom that the Supreme Court was the main site of anti-regime mobilisation, I highlight that lawyer-leaders were the key catalysts and organisers of the Movement. Secondly, lawyer-leaders expressed their overarching goal in the ideological language of 'rule of law' and the preservation of the institutional autonomy of the legal profession, and not in narrow terms of the CJ's activism or courage in resisting regime repression. Thirdly, I show that, in order to sustain the Movement, lawyer-leaders actively strategised to win the co-operation of judges, who, at the start of the mobilisation, were regime-neutral at best and pro-regime at worst. Fourthly, I observe that lawyer-leaders sustained the Movement over a long period by proactively maintaining internal discipline and cohesion in the bar, and particularly within the bar leadership itself. Divides within the leadership over Movement goals and strategies were anathema to the Movement in its final stages, making the eventual success of the Movement contingent on political party actors. Finally, I emphasise that Movement leaders were instrumental in constructing and evolving a narrative for the Movement that would not only attract the broadest support but also help in the survival of the Movement through fast-changing political conditions. These observations upend some of the prevailing assumptions about how and why the Movement happened, and point to the centrality of lawyers' agency in the mobilisation. The following discussion recounts the Lawyers' Movement from the perspective of lawyer-leaders.

3.2.1 Before the dam broke: 'pre-mobilisation' (1999–2006)

When General Musharraf reconstituted the Constitutional Courts after the October 1999 *coup*, there was no organised anti-regime resistance. In the couple of years that followed, public opposition from bar organisations was sporadic and low-key. The bar's apathy was consistent with the general political atmosphere. With political adversaries in exile, Musharraf was able to further fragment and co-opt the political opposition by holding general elections in 2002 and creating a façade of parliamentary politics.

Co-ordinated action within the bar built up only after the elections when the regime proposed constitutional amendments – known as the Legal Framework Order ('LFO') – for entrenching the military executive. The LFO spurred an 'anti-LFO movement' (Malik, 2008, pp. 11–15; Khan, 2016, pp. 445–449) in which bar leaders came together to demand that the constitution be restored to its pre-LFO status, and that proposed that the extensions in the retirement age of Supreme Court judges be halted. Bar leaders referred to these judges as 'PCO judges' as they had taken oath under the regime's Provisional Constitution Order ('PCO') in 1999 that had suspended the constitution. These PCO judges were a major obstacle in declaring the LFO unconstitutional. Indeed, they had consistently proven their loyalty to Musharraf through a veritable jurisprudence of regime legitimation. The highlight of the anti-LFO movement came in late 2003 when the regime withdrew the extension in judicial tenure from the LFO. However, parliament's approval shortly thereafter of the 'Seventeenth Amendment', containing Musharraf's controversial constitutional amendments, took the steam out of the bar's advocacy on restoration of the constitution.

Notwithstanding this, anti-regime lawyers continued to agitate for regime change, calling for Musharraf to be tried for treason. Thus, when Iftikhar Chaudhry became CJ in June 2005 – having

[4]Interviews with Repeat Players.

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decided in favour of the regime in all salient political cases since 2000 – the core relationship between judges and this cohort of lawyers was deeply strained at best. Despite the CJ's early activism in matters involving government corruption and human rights violations, influential sections of the bar leadership maintained an oppositional posture toward the Court, not least because of the CJ's reputation as a close aide of Musharraf, and his brusque and oftentimes very hostile courtroom demeanour towards senior lawyers.

Prominent players among these anti-LFO mobilisers later became the leaders of the Lawyers' Movement. They consisted of senior lawyers, including the incumbent SCBA President Muneer Malik, former PBC chair and SCBA President Hamid Khan, retired judge and former SCBA President Tariq Mehmood, former PBC chair Ali Ahmad Kurd and Aitzaz Ahsan, a veteran lawyer-politician who had been at the forefront of the MRD in the 1980s along with the others. These Movement leaders shared a generational experience of anti-military regime lawyering, and most of them were also deeply embedded in bar politics. Another thing they had in common in the run-up to the Movement was a strong perception about Supreme Court judges as establishment judges, manifesting in strained, even acrimonious, relations between these lawyers and the bench.

The anti-regime bloc in the bar came to be strengthened by the election of Muneer Malik as President SCBA in the annual election of October 2006. In the previous two years, the SCBA had been effectively captured by pro-regime blocs. The 2006 election was also predominantly split along pro and anti-regime lines. The outgoing SCBA President, Malik Qayyum, was a well-known regime loyalist. Presiding over the election, Qayyum declared victory for the pro-regime candidate. Dissatisfied with the result and suspecting rigging, the anti-regime candidate, Muneer Malik, approached the PBC in its capacity as the apex regulatory body to resolve the election dispute. The PBC Executive Committee at the time consisted of a strong anti-regime group led by Hamid Khan, which was instrumental in overturning the SCBA's decision and replacing it with a declaration in favour of Malik. However, the SCBA was quick to reject the PBC's decision. The dispute escalated to the Lahore High Court ('LHC') which ruled in favour of the pro-regime candidate. Malik then appealed to the Supreme Court, this being the first such bar election dispute ever to reach the apex court.

Aitzaz Ahsan, the PBC's counsel in the Supreme Court, recounts the appellate proceedings in great detail. He describes the 'hostile' atmosphere of the Court toward Malik, recalling that the CJ 'bludgeoned' Malik's counsel and extracted an agreement from both parties and their lawyers to remand the case to the LHC. Just as the CJ began 'dictating a unanimous order' for the remand, Ahsan fervidly interjected on behalf of the PBC, arguing that the Court could not 'barter away the PBC's jurisdiction' in a bar election dispute. Ahsan further describes how the CJ first attempted to get the PBC to agree to his terms. However, when the other ten judges on the bench began intervening with questions, the CJ was compelled to open up the matter to arguments. After four hours of 'lengthy cross-talk', the Court reached a consensus on sending the case to the PBC instead of the LHC. Muneer Malik corroborates Aitzaz Ahsan's account of the CJ's opposition to his case, arguing that 'the fact that the case was sent back to the PBC for re-election was a compromise because of the divisions in the Court'. Ultimately, the Supreme Court was compelled to set aside the LHC's decision and to remand the case back to the PBC for re-election, which Malik ultimately won in late 2006, just weeks before the start of the Movement.

3.2.2 First phase: lawyers and the making of the Movement (March–July 2007)

On 9 March 2007, Musharraf summoned the CJ to the army house where, in the company of senior military and intelligence officials as well as the prime minister, the CJ was pressured to resign on the basis of multiple allegations of misconduct. Soon after, media broke news of the incident, repeatedly televising images, released by the government, of the CJ flanked by military personnel. The same day, a hastily convened Supreme Judicial Council ('SJC') – the constitutional body for removing constitutional court judges – suspended the CJ pending adjudication of a

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Presidential Reference against him ('Reference'). Lawyers in various towns and cities swarmed onto the streets in a show of spontaneous anger, triggering a larger mobilisation of lawyers, civil society activists and political party workers in the coming weeks. Voluntarily allied with the protestors were the media, who reported on the protests round-the-clock and were quick to publicise backlash against protestors and the media (Ahmed, 2012).

What imparted cohesion and purpose to this collective outrage was the strategic action of anti-regime lawyer-leaders at the apex of the bar. Muneer Malik, then SCBA President, was initially sceptical about taking any action, knowing that the CJ was disliked within sections of senior bar circles. In a statement highly revealing of his ambivalence to call for protests against the CJ's suspension, Malik says:

> 'I had no pretenses that if I gave a call, I could end up looking like a fool!'

Malik's conviction to press ahead grew from the support he received from bar leaders across the country, including the anti-regime cohort in the PBC. He recalls:

> 'I must have made over a hundred phone calls to presidents of bar associations around the country over the next ten hours, who all backed me in reacting strongly with a nationwide strike.'

At 5 a.m. the following morning, Malik eventually connected with the CJ over phone and told him to 'stay put and not resign'. Later the same morning, the PBC called for a nationwide strike. Lawyers around the country answered the call, with some bar associations organising strikes and others breaking out into spontaneous protests.

On the occasion of the first SJC hearing, several hundred lawyers converged around the Supreme Court building in support of the CJ. Once inside the court premises, the CJ met with Muneer Malik and Aitzaz Ahsan in the courthouse dispensary, 'as not even the doorman was prepared to give the CJ a seat'. Malik suggested that the CJ engage Ahsan as his counsel, to which the CJ replied, 'if only he would agree' (apologetically alluding to his abrasive attitude toward Ahsan during the court hearing on the SCBA election dispute). Ahsan agreed on the condition that the CJ would refrain from giving 'any politically nuanced public statement against Musharraf to the media', forewarning that 'the judges will abandon you if you become politicized'. With Ahsan at the helm of the CJ's defence team, other bar leaders also coalesced around him. A fortnight later, this group of Repeat Players launched the CJ on a 'countrywide lecture circuit' of bar associations, allowing the CJ direct audience in the bar even as he stood trial in the SJC. Within days, Movement leaders brought mobilising lawyers under their control and organisation, catapulted the legal fraternity at large into the media spotlight, and adopted the CJ as the rallying symbol for their anti-Musharraf struggle.

A turning point came some weeks into the Movement when the CJ's defence team challenged the jurisdiction of the SJC to hear the Reference on grounds of judicial bias (Malik, 2008, pp. 162–195). This shift in strategy was intended to force a transfer of the matter to a full bench in the Supreme Court, thereby creating more favourable conditions for the CJ's reinstatement under the media's scrutiny. The Supreme Court moved cautiously, staying the SJC hearings at first and then increasing the size of the bench from five to thirteen. On 20 July 2007, after almost three months of continuous proceedings, an emboldened Supreme Court reinstated the CJ in a landmark judgment (Iftikhar Muhammad Chaudhry, 2010).

The unprecedented nature of this judgment eludes the fact that the gradual and guarded volte-face made by the Supreme Court judges sitting on that fateful bench was highly reactive to political action by lawyers and their champions and supporters in the media and civil society. What is seldom reported is that most judges were initially unmoved by the Reference against the CJ as they viewed Musharraf's intervention through the SJC as 'constitutional'. Knowing this,

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lawyer-leaders hoped to incrementally sway a majority of the thirteen regime judges on the Supreme Court bench away from this *status quo* position through a parallel process of courtroom strategy and public protest. But much to the chagrin of these leaders, the initial proceedings were an uphill struggle. Heading the Supreme Court bench was Justice Khalil-ur-Rehman Ramday – a judge notorious for obsequiously soliciting an invitation from the regime to take oath under Musharraf's PCO in 1999.[5] Ahsan describes the 'tough time' and 'hostility' that Justice Ramday showed to the CJ's legal team on the maintainability of the case in the Supreme Court. The attitude of the bench began to soften only after a major lawyers' convention organised by the LHCBA in early May, during which Aitzaz Ahsan drove the CJ through a thronging cavalcade from Islamabad to Lahore, drawing large crowds of not just lawyers but rights organisations and advocacy groups, academics, university students and common people in general. The event was covered live by the media.

Although this powerful show of street-based resistance made the job of the CJ's legal team somewhat easier in court, the proceedings dragged on interminably. In an interesting turn of events, and after a long and inexplicable delay, the government was finally compelled by the court to make a full disclosure of the evidence relating to the Reference in July. In making this disclosure, the government's counsels negligently omitted to expunge irrelevant material provided by the intelligence agencies concerning other judges on the bench. To his utter shock, Ahsan discovered 'inflammatory' and 'derogatory' references to several of the Supreme Court judges while scrutinising the 800-page evidentiary document.[6] As Ahsan strategically and theatrically presented these one by one to the bench, he could sense the judges 'flaring up'. He remarks:

> 'I now knew I had the Supreme Court ... the case had become a question of the personal integrity of all the judges on the bench, not just the CJ ... Now they had no way out.'

The judicial consensus on the reinstatement of the CJ came on the heels of this disclosure, which the CJ's legal team masterfully exploited to their advantage. This was the crucial point when Movement lawyers decisively swung a wavering judiciary into a co-operative one, with anti-regime lawyers and judges fully converging for the first time against the regime.

3.2.3 Second Phase: anti-regime lawyers and judges in concert (July–November 2007)

The first phase of the Movement was about lawyers mobilising to reinstate the CJ through a combination of street mobilisation and strategic litigation; in other words, about *lawyers empowering judges*. The second phase deepened lawyer-judge relations, setting in motion a cycle of *mutual empowerment* between lawyers and judges. The CJ returned to the Supreme Court riding on an unprecedented crest of popular opinion. He appeared, by all accounts, to dominate the Supreme Court. Ahsan echoes the views of many senior lawyers when he describes the tenor of the post-reinstatement Court:

> 'The CJ showed signs of an autocrat ... indeed every judge on the Court was vanity personified.'

The CJ initiated or reactivated hearings on important constitutional controversies within weeks of reinstatement, including Musharraf's presidential re-election case.[7] Lawyers deployed a combination of tactics to buttress the Court's activism, including strategic litigation to facilitate anti-regime

[5]Allegedly, Justice Ramday was retained as a PCO judge by Musharraf because of the personal interjection of common friends and aides.

[6]This material is a matter of public record. See *Iftikhar Muhammad Chaudhry*, paras. 183–190.

[7]The challenge to Musharraf's eligibility was based on a violation of constitutional provisions that barred the dual office of President and army chief (article 63 of the constitution).

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challenges through the judiciary. But despite the Court's ascendance, lawyer-leaders had the foresight to anticipate the limits of judicial co-operation in challenging an incumbent military executive. Thus, when the Court first rejected petitions challenging Musharraf's dual office – causing anger in some sections of the bar – Movement leaders embarked on a program of action that involved street agitation along with fielding an opposition candidate to Musharraf (Malik, 2008, pp. 215–223). Taking the cue, the Supreme Court raised the stakes just days before the election and admitted petitions challenging the Election Commission's acceptance of Musharraf's nomination as a presidential candidate. The Court prohibited the Commission from announcing or publishing the election result until the final disposal of the petitions – a move that allowed the Court to keep alive the possibility of disqualifying Musharraf while temporising on the final decision.

A day before the Presidential election, the outgoing parliament approved the National Reconciliation Ordinance ('NRO'), a power-sharing agreement between former Prime Minister Benazir Bhutto of Pakistan People's Party ('PPP') and Musharraf that enabled the former to return to Pakistan from exile and paved the way for the latter's re-election as President, subject to the final judgment on the dual office issue. Perhaps because it feared backlash, the Court continued to adopt a strategy of delay on the question of Musharraf's eligibility. It approached this question indirectly, by admitting petitions challenging the constitutional validity of the NRO and issuing an injunction against it, as it was only through this 'deal' that Musharraf could hope to leverage the PPP's support in parliament for his re-election. The Court's strike at the NRO was naturally to have implications for pro-PPP lawyer factions in the Movement, as well as for PPP's relationship with the Movement more broadly.

3.2.4 Third phase: lawyers and judges under siege (November 2007–February 2008)

The third phase of the Movement began with a regime reprisal against the judiciary in the form of an emergency declaration in November 2007, which resulted in a largescale judicial purge – with sixty-four out of ninety-five High Court and Supreme Court judges dismissed and put under house arrest for refusing to take a new oath – and a violent crackdown on protesting lawyers and activists. A newly installed Supreme Court headed by a new Chief Justice, Abdul Hameed Dogar, swiftly validated the emergency.

This was a huge setback for the Movement as it deprived anti-regime lawyers of co-operative judges in the courtroom. Paradoxically, it was also irrefutable evidence of the Movement's success in building strong anti-regime lawyer-judge coalitions in the weeks leading up to the emergency. The emergency led to two-thirds of all High Court and Supreme Court judges relinquishing their offices and throwing in their lot with Movement lawyers. The anti-regime cohesion within the bar was also at an all-time high. The annual SCBA election held just prior to the imposition of emergency provides a window into the consensus among the senior cadre of lawyers. SCBA elections are extremely contentious and closely fought battles, with the margin of victory never exceeding a few percentage points. Aitzaz Ahsan's electoral victory as the President SCBA in 2007 was a truly historic landslide with a staggering 85 percent votes polled in his favour.

After the emergency was lifted in December 2007, lawyers had to arrive at an agreement on their response to the post-purge judiciary. The bar initially decided in favour of a complete court boycott, but then modified the boycott to once every week along with a one-hour token strike every day in view of the hardship to both litigants and daily-wage lawyers. Despite the resumption of court activity, there were some in the bar who nonetheless continued with a complete boycott. In any case, by redefining their objective in terms of restoring the judiciary to its pre-emergency status, lawyers viewed the courts as part of the problem, thus eschewing court-centred mechanisms and strategies in their Movement repertoire.

3.2.5 Fourth phase: lawyer-judge coalition de hors courts (February–August 2008)

The fourth phase began with the electoral transition in early 2008. For the first time the reality of partisan identities within the bar became salient to the survival of the Movement. After the lifting of emergency in mid-December 2007, political parties began to galvanise for the general election scheduled for February 2008. The PBC, however, decided to boycott elections in line with their politics of judicial restoration and as an expression of solidarity with the deposed judges. As a result, many prominent lawyers-cum-politicians withdrew their nomination papers against the decisions of their parties[8] to 'keep the Movement intact'. Nevertheless, there were some lawyer-politicians, largely belonging to the PPP, who defied the election boycott, deepening the split between the PPP and pro-election PPP lawyers on the one hand, and the Movement on the other. This split within the PPP was not least because of the PPP leader Benazir Bhutto's internal party decision to withhold support for the Movement even as she and her party were compelled to publicly endorse the cause of judicial restoration.[9]

Be that as it may, as soon as the newly elected coalition government headed by the PPP came into power in March 2008, it ordered the release of all detained judges and lawyers, with a promise also to restore the judges in the near future. However, when the government repeatedly reneged on its commitment in the coming weeks, lawyer-leaders rallied around the deposed judges and assimilated them into their street mobilisation. This led to a unique configuration of lawyers and judges pursuing a harmonised agenda but entirely *de hors* the courtroom. For the next three months, Movement lawyers and deposed judges were interlocked in this relationship of mutual support. The government's overtures to judges for reinstatement on the basis of fresh oaths were rejected. In June 2008, the bar organised a 'long march', in which an itinerant cross-country caravan of lawyers and judges, including the CJ, was joined by huge numbers of political party workers and civil society organisations in an overwhelming show of popular support.

This first long march was led by Aitzaz Ahsan, then SCBA President, and marked the apogee of the Movement. Ironically, it also proved to be the start of the decline in the lawyer-judge coalition. Once the long march caravan reached the capital city, Islamabad, a big crowd congregated outside the Supreme Court in preparation for what many lawyers expected would be an indefinite sit-in till the government yielded to their demands for restoration. The euphoria turned to disbelief when Ahsan announced that there would be no sit-in. Young lawyers, in particular, were inconsolable and bitter over Ahsan's move. There are conflicting reports and views on Ahsan's motives for taking this decision, just as there are different accounts about the process of arriving at the decision. But while one may never be able to ascertain the actual details of this episode, it is clear that differences among bar leaders as well as between them and young lawyers over the question of the sit-in threatened to disintegrate the internal command of the Movement, and with it, the carefully constructed lawyer-judge alliance.

3.2.6 Fifth phase: a disintegrating lawyer-judge nexus (August 2008–March 2009)

This led into the fifth phase of the Movement, a period of flux in which the PPP government attempted to impeach President Musharraf. Musharraf pre-empted impeachment by resigning in August 2008, allowing the PPP to elect its party co-chairperson, Asif Ali Zardari, as the new President. The schism in the bar leadership during the first long march – only two months before Musharraf's exit – presaged the consolidation of power by the new government. Musharraf's departure had the effect of widening the existing rift within the bar, the first concrete

[8]Both Aitzaz Ahsan, a very old PPP member, and Ali Kurd withdrew their nomination papers on the insistence of Hamid Khan to boycott the election. This was ostensibly because of Hamid Khan's affiliation with the Pakistan Tehreek-i-Insaaf party that boycotted the election.

[9]Email from Benazir Bhutto, dated 23 December 2007. A copy of the email is on file with the author.

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sign of which came immediately after Musharraf's resignation, when the new PPP-appointed Attorney General – Sardar Latif Khosa, who had hitherto been an active Movement participant – challenged the authority of the SCBA to lead the Movement. Presiding over the PBC as its *ex officio* Chair, Khosa announced that the PBC alone was authorised to lead the Movement as the parent body of the legal fraternity. He replaced Rasheed Razvi – a Repeat Player – with a pro-PPP PBC member as the chairman of the PBC's Executive Committee.

In response to these political shifts, the SCBA broke away from the PBC and declared an independent agenda for steering the Movement. Aitzaz Ahsan formed a new 'National Coordination Council' consisting of Movement leaders that charted out an independent plan for street mobilisation. However, the lawyer-judge coalition crumbled further when deposed judges began to return to the bench under fresh oaths. Movement leaders accused the PPP government of hijacking the Movement, but even so, continued to lobby both the government and opposition for restoring the remaining judges.

Ali Kurd's decisive victory as President SCBA in October 2008 revived hopes for the restoration of the remaining judges, but by the end of the year the number of judges had dwindled to only eleven, including the CJ. This group mostly consisted of judges who had not even been offered a new oath by the government. Movement leaders describe specific instances during this period when they had to actively intervene to keep judges from taking an oath, but ultimately failed to hold them back.

Just as the Movement was facing this crisis, fissures began to emerge between PPP and its main coalition partner, the Pakistan Muslim League led by Mian Nawaz Sharif ('PML-N'). For reasons largely unrelated to the Movement, the Supreme Court upheld a High Court decision in February 2009 to disqualify Nawaz Sharif from holding public office, resulting in President Zardari imposing governor's rule in Punjab where the PML-N held a majority. Thus, it was no coincidence that when pro-restoration lawyers organised a second 'long march' to coincide with the retirement of Musharraf's hand-picked Chief Justice Dogar in March 2009, the Movement was joined, among others, by a big cohort of PML-N party members and workers, including Nawaz Sharif himself. Before the long march crowds could assemble at the Supreme Court building for a sit-in, the PPP government announced its decision to restore the judges through executive decree.

Within the legal fraternity, there is a widely held view that the Movement's success was tied to PML-N's involvement in the second long march, possibly combined with a negotiated political agreement involving the new army chief General Parvez Kiyani. It is important to nuance views about PML-N's contribution to the Movement. Some Interview respondents argue that PML-N's role was relevant only to the extent of the final thrust required for the restoration and that the party capitalised on the mobilising impetus created and sustained by the lawyers. Others emphasise the loss of momentum in the Movement and assert that PML-N's support provided timely and crucial street power for the restoration. Still others opine that the second long march created a kind of snowball effect which facilitated a spontaneous alliance between lawyers and PML-N party workers for the restoration, but for which PML-N unfairly claimed all the credit. The difference between these perspectives seems primarily to be one of degree. In the final analysis they all tend to emphasise co-operation between pro-restoration lawyers and PML-N – not to mention civil society in large numbers – thus displacing narratives about the centrality of the lawyer-judge nexus in the Movement's culmination.

4 How and why did lawyers mobilise? Key observations

The foregoing account of the Lawyers' Movement from the perspective of lawyer-leaders underscores five key findings that relate to why and how lawyers mobilised for judicial autonomy. This Part elaborates on these findings in the context of prevailing assumptions about the agency of lawyers and judges in the Movement.

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4.1 Anti-regime bar leaders, not regime judges, were key to mobilisation

The existing literature on the Movement asserts a primary or dominant role for the judiciary in creating the Movement and pre-determining bench-bar coalitions that were crucial to its success. There are different strands of this argument. One states that 'it was the bench that led the way by being the first to resist the dictatorship before the bar followed' (Shafqat, 2018). Another contends that the CJ was responsible before the Movement 'to consolidate the control of politically liberal and probench factions' by strategically intervening in the SCBA bar election of 2006 (Ghias, 2012, p. 344).

While the first strand of this argument is based on a conventional, narrow understanding of the CJ as the *cause celebre* of the Movement (*see* 4.2 below), the second is premised on a fundamental misunderstanding about the way in which the SCBA election dispute was settled by the Supreme Court. Indeed, it is based entirely on conjecture about the Court making a partisan decision favouring the anti-regime candidate, Muneer Malik. As narrated by lawyer-leaders and as corroborated by other lawyers, Court proceedings reveal the CJ's bias *against* Malik. When asked about the prevailing thesis on the Supreme Court's intervention in the SCBA election dispute, both Ahsan and Malik – the two Repeat Players who were directly involved in the dispute – expressed astonishment at the suggestion that the CJ made a partisan decision favouring Malik.[10] There cannot be clearer support than this for the proposition that the Movement began in the absence of any pre-existing anti-regime alliances between the leaders of the Movement and the CJ or the Supreme Court in general.

4.2 Lawyers mobilised for preserving institutional autonomy

The literature foregrounds another explanation about the original motives of mobilising lawyers which is a corollary to the previous argument about the politics of reciprocity between the bar and the bench. It suggests that lawyers mobilised in defence of a CJ who had gained a reputation as a 'people's judge' through his judicial activism and had, in the process, turned rogue against the Musharraf regime (Ahmed and Stephan, 2010). In other words, there was increasing support within the bar for the CJ and his growing anti-regime posture prior to the Movement, motivating lawyers to take to the streets for his reinstatement.

Again, lawyer-leaders' own narratives appear largely to contradict this argument. While judicial activism offers a cogent explanation for the Musharraf regime's decision to remove the CJ, it does not explain the motives of lawyers in mobilising. A large majority of Interview respondents express the view that they did not perceive the CJ's judicial activism between 2005 and 2007 as anti-regime. Interestingly, in the prominent Pakistan Steel Mills case – that revoked the regime's decision to privatise Pakistan's largest state-owned steel mill case, and implicated Musharraf's handpicked prime minister in a grand corruption scandal in the privatisation process – many respondents believe that the CJ had intended to target corrupt elements in the civilian coterie of Musharraf's government who appeared to be working against the interests of the regime, but not Musharraf himself. Moreover, a large majority also believe that the CJ did not have any concrete support in the bar before the Movement began, nor did they report personal support for the CJ. The very few lawyers who appreciated Chaudhry's activism did not speak in terms of the CJ being an anti-regime or populist judge. Importantly, none of the Repeat Players reported personal sympathy for the CJ prior to the Movement. Indeed, many of them were openly hostile to him, and none of them knew him personally.

What, then, did the lawyers mobilise for if not for an activist or anti-regime CJ? A few Interview respondents believe that the CJ's defiant refusal in the face of the dictator's ultimatum was the immediate spark for the Movement. A large majority of respondents take a more nuanced view

[10]Aitzaz Ahsan: 'To the contrary, the Court was completely hostile toward us!'; Muneer Malik: 'I am amazed to hear this, there were absolutely no such lawyer-judge coalition to speak of at the time.'

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and explain that it was the hierarchical and unceremonious manner of the CJ's removal in the presence of senior military officials that conveyed a sense of assault on the legal fraternity as a whole. Barring few exceptions, respondents expressed the motivation to mobilise *despite* lack of support for the CJ, on behalf of larger causes variously expressed as 'rule of law', 'independence of the judiciary' and 'rule of constitution'. Virtually all respondents responded to the news of the CJ's suspension with 'spontaneous' or 'instinctive' 'anger', 'shock', 'outrage' and 'humiliation', and the media certainly fuelled these immediate emotional reactions. Interspersed with these impulsive reactions in lawyers' narratives were explicit references to anti-Musharraf sentiments. Many suggested that the context of intensifying anti-regime political consciousness was critical to the mobilisation. Lawyer-leaders tended to historicise their reactions in terms of an 'anti-state' or 'anti-authoritarian' instinct provoked by an unpopular President-in-uniform. These sentiments seem less to point to CJ-centred motivations for the Movement and more to institutional and professional motivations of preserving the autonomy of the bar and the bench against an *extra-constitutional* regime.

4.3 Movement leaders engaged in active politics to win the co-operation of judges

The literature on the Movement does not systematically deal with the question of the relationship between the CJ and other judges of the Supreme Court, or between lawyers and judges, despite the heavy focus on the Court and its activism. On the whole, it creates an impression of tacit judge-judge and lawyer-judge co-operation, with lawyers mobilising to empower judges and judges acting in concert against the regime. However, a close scrutiny of lawyers' agency shows that lawyer-leaders engaged in strategic political action to change the course of an otherwise pro-regime judiciary to achieve their goal of restoration of the judiciary.

Interview respondents referred to different phases when Movement leaders could not take judicial co-operation for granted and had to actively lobby for it. At the beginning of the Movement, there was little visible support among judges of the Supreme Court for the CJ. Lawyers deployed litigation in parallel with street mobilisation to influence judicial calculus and ensure judicial co-operation. The Court's activism in the second phase also has to be seen in the context of continuing pressure from lawyers. With newfound legitimacy and public support, the post-reinstatement Court was under severe compulsion to rule on some of the most controversial mega-political questions in advance of the presidential election scheduled for October 2007. The Court's initial ruling on the question of Musharraf's electoral eligibility was evidently ambiguous and guarded, provoking anti-regime lawyers to restart street agitation and field their own presidential candidate.

In the post-election phase, lawyer-leaders once again made hectic efforts to ensure that deposed judges would not take a fresh oath under the new government. All expressed dismay at their failure in persuading judges against oath-taking. Indeed, by September 2008, after a majority of the remaining judges had taken oath under the PPP government, the pro-restoration lawyers naturally looked to the political parties rather than the judges for political support.

4.4 Movement leaders sustained the Movement by maintaining internal cohesion

A significant weakness of the Movement literature is its virtual silence on the internal politics of the bar, perpetuating the sense that the bar is a largely monolithic organisation and that lawyers' motivations for mobilising were largely homogeneous. To the contrary, lawyer-leaders and influential anti-regime groups in the bar remained deeply and continuously engaged with intra-bar contestations to maintain internal cohesion. While the Movement ignited a spontaneous collective response from lawyers at large, it could not have been sustained without active contestation and co-ordination at every level of the organisational hierarchy; coalition-building between different segments of the bar; and a high level of mobilisation for annual bar elections at all tiers.

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Bar leaders' constant efforts in maintaining internal cohesion was a necessary condition for *sustaining* the Movement, both to ensure continued mobilisation of anti-regime lawyers and to counter attempts by pro-regime groups, and later the PPP government, to fracture or diminish the Movement. Indeed, when cracks emerged within the core bar leadership during the first long march in June 2008, the Movement began to fragment. The decision of many deposed judges to return to the bench through a fresh oath after Musharraf's exit should be seen in light of the lack of internal cohesion in the bar leadership and not merely as a result of coercive tactics used by the PPP government. If the schism within this core leadership appeared muted in the weeks after the long march, it became completely public during the canvassing for the LBA election in January 2009, when Aitzaz Ahsan and Hamid Khan, the two leading lights of the Movement, fielded different candidates for the presidential slot. The chances of restoring the remaining judges looked slim after this, and despite the apparent commitment of each Movement leader to restoration, the success of the second long march came to depend on forces outside of the bar.

4.5 Movement leaders strategically constructed a 'fungible' narrative for the Movement

Another argument in the literature lends the impression that the Movement was successful because it was driven by a 'single-issue' or 'one-point agenda' (Munir, 2012; Shafqat, 2018). On the surface, a vast majority of Interview respondents reinforce this view, arguing that a 'one-point agenda' enabled an otherwise diverse and, at times deeply divided, bar to transcend political affiliations, disagreements and factionalism. At the same time, however, the respondents have different perceptions and interpretations of the 'one-point' at stake. Some argue it was the narrow objective of restoring judges. Others suggest it was the broader aim of restoring the constitution through regime change. Still others suggest that it was as much an anti-Musharraf and pro-judicial independence movement as it was a movement for the revival of democracy. Some lawyer-leaders additionally argue that at certain moments they portrayed the Movement as a 'welfare state movement', although they acknowledge this was more a rhetorical strategy to garner broad support for the Movement. This plurality of responses points to the multiplicity of goals that even lawyers – and not only other civil society actors (Shafqat, 2018) – viewed the Movement as championing.

What was the 'one-point' around which the Movement cohered? It appears that all these issues were relevant, either in different phases of the Movement or to different degrees over the course of the Movement. Thus, the mobilisation was organised around a cluster of related issues that were, for the most part, overlapping, interchangeable and fungible. In this sense, the Movement was more a 'fungible-issue' mobilisation than a 'single-issue' one. The Repeat Players played a pivotal role in constructing these multiple yet cohesive narratives to respond to a rapidly evolving political situation. The breach in the fifth phase between the Movement's goal of restoring the judges and the majority of deposed judges' own views about the constitutionality of oath-taking under an elected government, demonstrates that the Movement ebbed at a time when lawyers' political action turned from a fungible-issue to a single-issue mobilisation fixated on restoration.

4.6 Conclusions: did Movement leaders make a difference?

How and to what degree did lawyer-leaders condition the Movement within the structural context of a hybrid regime and an activist but regime-complicit judiciary? What were the key issues that pivoted on the decisions, choices and interventions of Movement leaders? Conversely, what were the limitations of leaders' agency in shaping the Movement and its outcomes?

Many of the Repeat Players were mobilised against the regime well before the Movement emerged, but lacked the momentum and critical numbers to mount an efficacious challenge to the regime. Their biggest contribution was to exploit the structural opportunity provided by the trigger-event of the CJ's peremptory suspension against the backdrop of deepening political

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opposition and lack of international support for the Musharraf regime. While there is little doubt that lawyers from different bars across the country engaged in spontaneous street protests, the Repeat Players' role in swiftly coalescing the bar leadership at all tiers on a common platform was instrumental in co-ordinating a coherent institutional response. The concerted initiative of the bar's apex institutions – the SCBA and the PBC – ensured a fair degree of central decision-making at the national level, although the efficient execution of these decisions remained decentralised and contingent on the provincial and district bars. Lawyer-leaders also made the critical and timely decision to recruit a most effective political negotiator and legal strategist for arguing the CJ's case – Aitzaz Ahsan – who then extended his role as the lead articulator of the Movement. With Ahsan's inclusion in the Movement, the Repeat Players made a highly strategic decision to concurrently pursue impact litigation and contentious street politics. The latter, in particular, enabled an avenue for the broader mass of lawyers and other civil society actors to participate directly in the Movement. Other strategic actions of the lawyer-leaders, including the countrywide 'lecture circuit' of the CJ and a series of lawyers' conventions, were also of critical importance to creating conducive conditions for coalition-building between lawyers and judges, especially at the Supreme Court level. Moreover, lawyer-leaders capitalised, whenever possible, on opportunities created by regime backlash. Musharraf's emergency was an important case in point, in the aftermath of which lawyers regrouped and united the bar in opposition to the post-emergency judiciary while strengthening alliances with deposed judges. Finally, the lawyer-leaders were indispensable to the propagation of an encompassing ideological narrative for uniting and sustaining the Movement.

On the other hand, the two major structural issues that the lawyer-leaders seemed unable to surmount were (i) partisan pressures after the electoral transition – not only in the bar as a whole but within the core Movement leadership itself – and (ii) the weakening of pro-restoration lawyer-judge coalitions because of a majority of the deposed judges deciding in favour of returning to the bench. The final restoration of the remaining judges was thus significantly dependent on the political sphere. In retrospect, what was most peculiar about the Lawyers' Movement was the lawyer-leaders' insistence that their agenda was independent of political party objectives and interests. Given the political conditions and trajectory of the Movement itself, this claim was untenable at best. Not only was the final success of the Movement contingent on party support, the Supreme Court had already made partisan choices in its anti-regime activism in the earlier phases, so that it was apparent that any battle to restore the judiciary would have consequences for relations between the judiciary and civilian politics in the process of regime change.

Conflicts of Interest. None.

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