

## Pakistan Army Amendment Act 2020: An Appraisal

Shazia Sultan<sup>1</sup> Tahira Jabeen<sup>2</sup> Dr. Manzoor Ahmad<sup>3</sup>

1. Assistant Professor, Department of Political Science, HED, KP, Pakistan
2. LLM Scholar, Faculty of Shari'ah & Law, International Islamic University, Islamabad, Pakistan
3. Chairman, Department of Political Science, AWKUM, KP, Pakistan

### Abstract

*Efficient civil-military relation is the backbone of strong political system. In Pakistan all the governments and political parties always seem to have cordial relations with military. Therefore despite the severe differences between the government and the opposition parties, they look unanimous in the Parliament over the matter of the head of the military branch of the state. Prior to the unity of the government and prominent opposition parties the Supreme Court suspended the notification order of the extension in tenure of the army chief Qamar Javed Bajwa and pointed out the mistakes did by the government in the notification order and subsequently empowered the Parliament to decide the fate of the army chief. This research paper analyzes the current Executive-Judicial tussle over the extension in tenure of the Chief of Army Staff in Pakistan. It scrutinizes the dynamics of the decision taken by the PTI government and the subsequent challenges from the Supreme Court of Pakistan. The proceedings of the Supreme Court in its short and detailed verdict as well as the counter strategy of the government that was the Amendment in the Pakistan Army Act 1952 are assessed in this paper. This paper concludes that Pakistan Army amendment Act was a positive step towards resolving institutional conflict in Pakistan.*

**Key Words:** Army Amendment Act, COAS, Judiciary, PTI Government

### Introduction

Pakistan has faced frequent and long military interventions in its politics and the judiciary remained quiet over the military coups and continued busy in its validation up to 2007 but then in the era of Chief Justice Iftikhar Muhammad Chaudhry, when Musharraf proclaimed emergency against Judiciary by not performing according to his wishes and an unusual rebellion movement against him by judiciary had suddenly challenged the traditional power structure and Judiciary became successful to restore its prestigious, and credible and independent position. From 2007 up to now, the judiciary has focused its attention towards dispensation of justice and has used article 184(3) of the 1973 constitution as its main weapon through which the judges of Superior Courts could intervene in the matters concerned with fundamental rights and public importance cases or matters of public interest litigation related to governance as well.

As far as the role of army in the governance issues is concerned, as compared to the past, it became minimum after the judicial coup in 2007 and in the aftermath, the situation of the country where the army and intelligence agencies along with nation was in the severe grip of terrorism after joining Americans in their war against terror. And on the other side after Musharraf tussle with Judiciary National and International media remained busy in questioning the role of army in Pakistan politics. But military involvement in the political affairs has not been eliminated yet as in the General elections of 2018 the Imran Khan government has been alleged by his opponents that it came into power by the strong backing of army and their mutual

relationship became prominent when Imran administration granted three years extension to the tenure of the Chief of Army Staff Qamar Javed Bajwa.(Alvi, 2019) Before Bajwa Pervez Kiyani had been granted extension in his tenure by Pakistan People's Party government while Raheel Sharif retired on his due date despite the fact that Nawaz Sharif administration was inclined to grant extension to him.(Afzal, 2016)

When Pakistan Tehreek-e-Insaf government likewise lagged the convention of PPP government and sanctioned Bajwa to continue as COAS for another three years of term the Judiciary befitted dynamic and suspended Bajwa's extension of tenure. In the proceedings of the Supreme Court the government could not present constitutional provision for the extension act as they employed Article 243/245 of the constitution for extending the term of the COAS that was superseded by the court that these articles might not be used for the army chief extension and they also could not defend themselves for those drawbacks they did in the notification order. The Court ordered the government to do enactment on the matter as there is any such provision neither in the constitution nor in an army Act. The government in its reply amended the Army Act and inserted a new chapter in the Army Act of 1952 through which the retirement age of the chiefs of all the forces that is army, air force and navy may be extended by the president of Pakistan by the advice of Prime Minister and this could not be challenged in any court of law (Saddique, 2020).

The study has scrutinized the decision of the PTI government, then Supreme Court reaction against the extension of tenure of Bajwa and the counter approach of the government to cope with the tussle that arose after the Supreme Court order of suspension of notification. The verdict of the court has been considered in the paper. An assessment of the amended act is evaluated and the salient features of the Army amendment Act 2020 have been scrutinized.

### **Extension in the Tenure of COAS**

In the last two decades Raheel Sharif was the first COAS who retired on his due date. His forerunner General Ashafaq Pervez Kiyani and General Musharraf acquired extension and Jahangir Karamat was the sole COAS who was sent to home before the expiry of his term and overall six army chiefs in the past have extended their term of office either on the time of retirement or extended by the then governments. After declaring his announcement of retirement General Raheel Sharif says that "I do not believe in extension and will retire on the due date" he reassure the nation that army was a strong institution and his departure would not affect the fight against terrorism (Syed, 2016).

General Qamar Javed Bajwa is the sixteen and fourth oldest(age of 56) Chief of Army staff of Pakistan. He possessed some extraordinary professional qualities, but according to the internal resources of the then government of Nawaz Sharif his detachment in indulging in politics throughout his career distinct from his past COASs, his pro democratic tendency and his neutral stay in the issue of Kashmir and his deliberation that terrorism and religious extremism are the focal threats to Pakistan security, were those elements that might be considered appropriate by the than PM Nawaz Sharif in 2016 for appointing him as COAS (Foizee, 2016).

The PM Imran Khan approved and signed the extension of COAS tenure order for another term of three years before nearly three months of the time of his due retirement. The announcement added that “the decision has been taken in view of the regional security environment” (Khan, 2019). The extension arouse severe criticism from all around the country and was thoroughly been discussed at national and international level. The extension order of Bajwa was issued by the government under article 243(4)(b) of the constitution and was precedent of the General Kiyani extension did by PPP government which was challenged in the Islamabad High Court in 2012 but the court dismissed it as “non- maintainable “over article 199(3) of the constitution that HC could not hear a case against persons subject to Pakistan Army Act.(Saddique N. a., 2019)

### **Dynamics for the Extension of COAS**

- I. PM Imran Khan first year administration primary feature is his infrequent coherence and harmony between the Civil and military branches of the government unlike the Past traditional fraught between these two as it could be easily manifested when Bajwa defend the tough economic measure of Imran government by saying that “difficult but essential”(Khan, 2019)
- II. The traditional stiffness between India and Pakistan obstinate twice in last year when in February, 2019 a suicide car bombing killed forty Indian paramilitary police in Indian Held Kashmir (IHK) and she put the entire responsibility on Pakistan. But the situation take an extreme turn when India strip-of the distinctive constitutional status of IHK by scrapping article 370 and imposed a crippling curfew in the territory that is continued so far. Pakistan condemned the decision and took it to various international forums even to United Nation Security Council in September but it does not cool down the tension over the border.(SC issues detailed judgment on army chief’s extension, 2019) The Foreign Minister Shah Mehmood Qureshi said that the extension of COAS would send a “clear message to India that Pakistan political and military leadership are not only prepared but are on the same page”(Khan, 2019)
- III. The decision of the extension was correspondingly connected by the government to the strategic role that is carrying out by Pakistan in the peace dialogues between the US and Afghan Taliban that intend to imperil a withdrawal of American forces in exchange for insurgents promises that Afghanistan will not be used as a secure shelter for the Al-Qaeda Militants.(SC issues detailed judgment on army chief’s extension, 2019)

### **Suspension of the notification by SC in the short verdict**

The decision of the extension was challenged by the lawyer Riaz Rahi who is popular as “serial petitioner” in Pakistan Court circles as he moved the Court against Nawaz Sharif, Pervez Musharraf and former SC judge without much success but later he decided to withdraw the plea but CJ Asif Saeed Khosa took notice of the petition at the last minute of its withdrawing and did not allow to withdraw and clarified that it is not a *Suo Moto*.(Roy, 2019) SC called the government in the court and argued that she adopted the bureaucratic procedure for such an extraordinary notification as they have followed the previous practices only in this matter. So the SC

in its short verdict announced that Bajwa will remain COAS for another six months of term and through this time Parliament will enact on the extension/ reappointment matter of an army chief. The notification was struck down by three-members bench of Supreme Court consisted of Chief Justice of Pakistan Asif Saeed Khosa, Justice Mian Mazhar Alam Khan and Justice Syed Mansoor Ali Shah.

"We, while exercising judicial restraint, find it appropriate to leave the matter to the Parliament and the Federal Government to clearly specify the terms and conditions of service of the COAS through an Act of Parliament and to clarify the scope of Article 243 of the Constitution in this regard," (Qureshi, 2019)

The government assured the bench that Parliament will do enactment within six months allotted by the Federal Court. "If legislation is not done within six months, the appointment will become illegal," (Saddique, 2019) the SC warned the Attorney General of the government.

### **Remarks of the Bench**

The Bench remarked that "government failed to present any reason for extension and that dealing with regional security situation is job of army as an institution instead of single officer" (Jamal, 2019) The Bench questioned the validity of the notification and stressed that there should be a clear system that everyone is aware of and that the three-year appointment will "become an example "Under what section was retired Gen Kiyani granted an extension?" "We want to see what pension and perks General Kiyani got after retirement. (Army Act amendments approved by parliamentary panel on defence, 2019) The Bench further said that

"If there is any regional is any regional security threat, then it is the gallant armed forces of the country as an institution which is to meet the said threat and an individual's role in that regard may be minimal. If the said reason is held to be corrected and valid then every person serving in the armed forces would claim reappointment/extension in his service on the basis of said reason" (Jamal, 2019)

Throughout in the hearing of this case certain technical mistakes did by the government in the notification and summary was pointed out along with mounting fundamental questions regarding the extension of the army chief. The Supreme Court interfered since there were obvious technical flaws in the appointment summary as the PM's Office notification was not signed by the president after the approval of the cabinet and secondly the government has taken on Article 243/245 of the constitution for prolonging the term of the COAS that was thrived by the court that these provisions might not be used for the army chief extension. The court blamed the government for creating deteriorating crises between government and top military brass (Jamal, 2019).

### **Detail verdict of the Supreme Court**

A detailed judgment of the SC on the said matter was issued on December 16, 2019 that was based on 43 pages along with CJ additional note. It was decided that Bajwa will retire if the Parliament became unsuccessful to enact over the above matter of the COAS tenure extension. It was also stated in the judgment that this sensitive

matter is being referred to the Parliament in order to avoid mistakes on sensitive matters in the future because there was no legal grounds for which the term was extended up to three years. The verdict states that “the law to extend the Army Chief tenure does not exist” and that in the past “several generals were appointed and their tenures were extended without proper legislation.”(Qureshi, 2019) The SC pointed out that the COAS tenure extension is also not mention in the Army Act. The CJ Asif Saeed Khosa in his additional note stated that no one is above the law and this element is connected directly to the security of the people. The additional note further stated that this is also violation of the constitution because there is no law for such extension. The CJ further proclaimed in his note that “in our peculiar historical context Chief of the Army Staff holds powerful positions in ways more than one. Unbridled power or positions, like unstructured discretion, is dangerous”.(Abbasi, 2019) He further said that it was “shocking” that terms and conditions of the services of the COAS had stay behind unrestrained by any law so far. He was optimistic about framing of such law by the parliament will rectify the multiple historical wrongs (Qureshi, 2019).

### **Counter Strategy of the Government**

In the required future course of action government had few options in which constitutional amendment, simple act of parliament or simple amendment in the army act are included. Before to use any option, to implement court verdict government filed a review petition in the SC, raising 26 questions of law against the judgment while pleading for “preservation of two leading institutions” for a “healthy democracy” The government said that there are various legal gaps in the court decision and she requested to SC to formulate larger bench and conduct in-camera hearing of the review.(Malik, 2019) Along with the review she also went for the amendment in the act of army.

### **Army Amendment Act 2020**

The cabinet approved the draft of bill to amend the army act called “Pakistan Army Amendment Act 2020”. Both houses of the Parliament passed the bills that are the amendments in the Pakistan Army Act 1952, Pakistan Air Force Act 1953 and Pakistan Navy Ordinance 1961 respectively on January 7, 2020 and the opposition parties PML (N) and PPP offered full support it in the Parliament. The PML(N) declared their unconditional support by claiming that they does not want to make the COAS position controversial while PPP said that she will support it if it is done through the Parliamentary rules and regulation (Saddique, 2020).

The Amendment Act was consisted of three bills presented by Defense Minister Pervez Khattak in the Parliament. The three bills were Pakistan Army (Amendment) bill 2020, Pakistan Air Force (Amendment) Bill and Pakistan Navy (Amendment) Bill 2020 according to which the President was given the power with the advice of the Prime Minister to specify the tenure, terms and condition of the chiefs of the three armed forces (Ahmed, 2020).

The amendment Bills include the following features:

- I. The maximum age limit of the army, navy and air force chiefs and joint chief of staff committee will be 64 years in case they are given an extension in their tenures.
- II. Section-A, B, C, D, E, F will be inserted in the Army Act where Section-8-C about the retirement age and service limits of the army chief says: “The retirement age and the service limit prescribed for a general, under the rules and regulations made under this act, shall not be applicable to the COAS, during his tenure of appointment, reappointment and extension, subject to a maximum age of 64 years. Throughout such tenure, the COAS shall continue to serve as general in the Pakistan Army”.
- III. According to clause 8B the president on the advice of the PM, may “reappoint the COAS for additional tenure of three(03) years on such terms and conditions, as may be determined by the President on the advice of the PM, in the national security interest or exigencies, from time to time.
- IV. The appointment, reappointment or extension of the COAS “shall not be called into question before any court on any ground whatsoever” (Saddique , 2020).

The government claimed that all political parties in the parliament are on the same page regarding the amendment in the Army Act but during the session of the Parliament Jamiat Ulema-i-Islam-Fazal (JUL-F), Jumaat-i-Islami and representatives of Federally Administered Tribal Area(FATA) walked out of the session and declared that the assembly is ‘fake’ and opposed the bill (Mehmood, 2020).

Supporters of the amendment act declared the consensus of the opposition and government benches in the parliament over army act as a progressive step towards civilian supremacy and initiation of democratic traditions in the country as they considered that non-mitigation of such a contest will be disastrous for Pakistan. (Saddique, 2020) If the politicians mishandled the conflict in the parliament, it will lead to demoralization of the most important and powerful institution of the country in the current domestic and regional scenario where great threats to the security of Pakistan are present. The fact is quiet clear till now that although despite of the consecutive transition of democratic regimes Army is still a dominating force in the political landscape of the country and showing no consensus over such controversial issues among the politicians will be unsustainable (Siddique, 2020).

Internal resources from the PML (N) and PPP conveyed that there were phenomenal conflicting views regarding the amendment amongst the party leaders, as they sought to offer Imran administration a threatening time but the top leadership took the decision.(Safi, 2020) Analyst have enumerated a few reasons of the unconditional support, firstly they would want to avoid any confrontation with the most powerful institutions of the country. Secondly PML leadership sought to take relief from government in the various cases that are in the grip of accountability courts as Nawaz Sharif has been granted permission to take medical treatment in England and Asif Ali Zardari has also been released from the prison. So they declared it as a hidden deal between the opposition and establishment branch. Thirdly these political stakeholders understood now that Imran is there in the government because he displays himself more deferential and competent before the army and the previous

confrontation which they take with military in the past has cost them badly. So these parties exhibit before military that the Khan administration has mishandled such an important and sensitive matter and it is they that who made it right by taking wise and correct decision and demonstrate that despite the ironic blunders did by the government they did not exploit the matter and manifested themselves more efficient and obedient before military (Safi, 2020).

The sad thing about all this drama is that around 20 of Bajwa's juniors would retire and that Pakistan has many proficient generals to substitute Bajwa but government's extraordinary support is an indication that Imran administration feels secure under Bajwa's shadow. According to the unconfirmed media reports that some generals backed by CJ were behind the move to frustrate Imran and Bajwa.(Kaura, 2019)

Internal sources from the Pakistan People Party reported that their party has offered some recommendations in the act firstly, the extension should be restricted to one year or six month instead of three years and secondly if the government of the time decided for an extension than at place of Prime Minister the Parliament would be authorized to do so. But on the day the move was presented at the National Assembly, they were quiet. So it became clear that they were agreed and did not create any hurdle in the journey of the bill.(Amir, 2020)

## **Conclusion**

It is the opinion of many critics and analyst that SC decision has questioned the role of army in Pakistan politics, as pretty openly the opposition parties, civil and social media are blaming military role in propping up khan government. Unlike the past, the partial and controversial role of army in politics is now being questioned and even deliberately criticized. Thus it is now an optimistic belief that military could not remove an elected government through a coup d'état. Yet dragging the strings of the government from behind the scene still exists. The SC proved its independence by kicking the ball into the court of the elected representatives of the people to decide the fate of the army chiefs when they reach to their age of retirement. The third main significance of the decision that raised is, that why the army chiefs needs extension, as this question is perhaps a disastrous thing for the image of such a discipline and professional institution of the country not only before the public who love them a lot but before the international world where she possessed extraordinary professional competence and credibility.(Khattak, 2019) It has been noted that usually journalist, politicians and think tanks avoid discussing the matters that are related to army freely and informally in the media as they always been keep silence over the image of politicians that they are capable of correcting the country's wrong but after the decision of the court, the politicians have been empowered to decide the fate of an army chief service tenure who always did it by themselves or putting pressure on the elected government by pretending state necessity. Some analysts consider the decision as a legal blow to the military involvement in the country politics and stated that this is a clear direction to the government, to the intelligence agencies and to the public officers in the bureaucratic structure to operate in their allotted constitutional frame (Khattak, 2019).

In the short run the government got relief from judicial activism by amending the army act with the support of their opponents instead of amending the constitution that was a difficult task for them, but in the long course certain challenges arose that has to be confronted by the political stakeholders of Pakistan in future. An opportunity that has been created by the court for restricting the role of army in international and national matters has been lost by them that may be inflated to them in the future as was indicated by the Supreme Court in their proceedings. It may be speculated that they unbridled the military once again. Secondly they exposed that they are still depending on the individuals instead of institutions which will demoralize the collective performance of the department and will frustrate the competent generals and professional soldiers who are sacrificing their lives on the borders and in eliminating internal extremism. Thirdly the politicians are always accusing the army for interfering in the politics but the reality is that these politicians gave the opportunities to them to intervene in the matters by creating such atmosphere. Fourthly the categorical support of the PML (N) and PPP showed their 'U-Turn' in such matters. They determine that they are doing so for the sake of their own interest and not for the government or its institutions. That exhibits their traditional politics of self-interest for which they were trying to root out by putting the slogan of "*vote ko Izzat do*" means pay respect to vote. So their voters and supporters were expecting aggressive strategy from them by opposing strongly the amendment act but they adopted hostile strategy against their expectations. So here they did not perform the role of a purely strong democratic opposition who could suggest better way out for the country wrongs.

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