

SEPARATION OF POWERS AND HISTORY OF JUDICIAL INDEPENDENCE IN PAKISTAN

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Abstract

The goal of the "separation of powers" idea is to shield the populace from the rulers' capricious, unchecked, and reckless actions. Democracy all over world feel that tyranny and unlawful rule of the State can be eliminated by applying the division of powers in its correct context. The idea of "Separation of Powers" lacked a precise position in Pakistan. Since Pakistan's founding in 1947, the executive branch has been able to exercise its own judicial and legislative power. This technique shaped Pakistan's precarious democracy and brittle political structure. As a result, military forces had repeatedly overthrown civilian governments.

Courts were prepared to use justifications like the "law of necessity" to support the military takeover. The judicial branch in the nation finally began operating as a truly independent institution in 2009, following the reinstatement of Chief Justice Chaudhry. This marked the first instance in Pakistan's political history of a division of powers. This article investigates four instances from the aforementioned period to determine whether or not Pakistan actually practices separation of powers.

KEY WORDS

Separation of powers, independence of judiciary, the executive, the legislature, constitution

1-INTRODUCTION

A democratic paradigm known as Trinity democracy, or separation of powers, entails the division of political authority among the three departments of government: the legislative, executive, and judicial. A system with an independence of powers prevents one branch from interfering in another's domain. Baron de Montesquieu, a French political and social philosopher, founded the theory of separation of powers, also known as the principle of balance between independent and co-equal branches of government. In essence, the theory of the division of powers maintains that the three main branches of government the legislative, executive, and judicial branches should be independent and have equal, clearly defined powers in order to prevent a dominance of authority in the control of a minority within a political system (Tasneen, 2012). Stated differently, the principle of the separation of powers maintains that the three main branches of government the legislative, executive, and judicial branches should be independent and have equal, clearly defined powers in order to prevent the accumulation of authority in the hands of a minority within a political system. The elected legislature has ultimate authority over the other branches of government. Each branch has a significant amount of autonomy from the others under the separation of powers. This independence results from the fact that each branch is chosen or elected separately from the others, and neither branch is dependent on the others to survive (Ax ford, 1997). The separation of powers doctrine was first systematically theorized in the 18th century by Montesquieu and viewed as a tool to discourage accumulation of power in a particular branch of the government. The model of Montesquieu, although founded on the experience of constitutional monarchies, was echoed in contemporary democratic constitutions which aimed to establish the list of checks and balances between the law-making, executive and judiciary bodies. The theories spawned judicial independence institutional and decisional, that proved to be necessary facets of the judicial role. Independence of a judiciary without any external or internal coercion is crucial not only to the fair adjudication of law but also to the maintenance of constitutionalism and confidence of citizens in rule of law (Russell & O'Brien, 2001). The legislative and executive branches are the two main pillars of government according to Montesquieu's theory

of the separation of powers. According to Montesquieu, the judiciary, whose members are chosen from the general public and go back to their regular lives after their task is done, is the ultimate source of power. Therefore, in a sense, judicial power is non-existent and invisible, according to Montesquieu (Manent, P. (2003). In Pakistan these theoretical models have been tried and abandoned in the history of constitutional development. All those constitutions (of 1956, 1962 and 1973) provide the division of powers and judicial independence in a way that is nominally consistent with the separation of the power. Nevertheless, the recurring interferences in democratic rule, mostly by military interventions and extended dictatorships, have eroded the capacity of the court system to be independent minded. At different periods judiciary in Pakistan has justified unconstitutional governments by adopting the rule of necessity, tolerated the encroachment by the executive on judicial duties and on the other hand also retained some resistance in landmark cases like Al-Jehad Trust case and reinstatement of Chief Justice Iftikhar Muhammad Chaudhry (Newberg, 2002) (Lau, 2005). The idea of separation of powers was proposed and signified in Pakistan as early as 1947, when the country gained its independence. In 1949, Abdul Rashid, who was the chief justice of Pakistan's federal court at the time, stated that the judiciary could only become independent if it were distinct from the legislature and executive (Mirza, 2015). Pakistan has ratified three constitutions: the 1956, 1962, and 1973 versions. Despite the repeal of the first two, Pakistan's 1973 constitution remains in effect with a number of changes. The Westminster model served as the foundation for the 1973 constitution. In contrast to the US president, the prime minister is in charge of the executive branch under this system of government, which must originate from the parliamentary system and report to it. The elected legislature so controls the state's executive branch (Mirza, 2015).

Table: Three branches of government

The state	Three branches	powers
All institutions	legislature	Makes laws
	Executive	Administers laws
	Judiciary	Interprets laws

Source: (Rayan, Parker, and Hutchings, 1999, p. 89)

The executive attempted to control the judiciary from the start. The Governor General had extensive authority under the 1947 Indian Independence Act. He abused this authority by abolishing the Constituent Assembly while it was working to modify the constitutional provisions that gave the Governor General the authority to do so and direct the high court justices to launch an investigation against the ministers. The purpose of this first amendment was to overturn the Public Officers and Representative Offices Disqualification Act (PRODA) of 1949 in order to combat corruption and poor management in public life. The governor general frequently abused this power against the ministers. This abuse of authority led to the dissolution of Khawaja Nazim Uddin's Cabinet in 1953 (PLD 1954, Central Acts 173).

The constituent assembly intended to split up and stop the governor general from firing the government in the same way again. It can be a significant event for the development of parliamentary democracy, but in Pakistan, it turned out to be a "constitutional coup" since the governor general was determined to keep control of the legislature. This conflict resulted in the constituent assembly's dissolution on October 24, 1954, and the governor general declared a stop to what he called legislative squabbling. The dissolution of the constituent assembly during the last phase of the first constitution-making process amply demonstrates the executive branch's true objectives. The governor general's decision was purely personal and devoid of democratic principles (Willcox, 1963). The nation was further appalled by the courts' role during this crucial time. On the basis of the Law of Necessity, it affirmed the Governor General's action. Pakistan first implemented this innovative idea in order to appease Governor

General Ghulam Muhammad. Prior to Justice Munir, this was the fundamental foundation of the law of necessity. Ghulam Muhammad therefore wore the crown. He was thus given the authority to use all powers, exactly as the kings of the Middle Ages did (Ahmad, 2012, P.47). Confusion and chaos engulfed the newly formed nation as a result. Instead of using a formal legislative body, the governor general planned to establish the nation's constitution by decrees. By ordering Prime Minister to appoint two army generals to the cabinet, he further solidified the military's dominance over civilian governance. These were General Muhammad Ayub Khan, the then-chief of Pakistan's army, serving as the country's minister of defense, and Major General Iskandar Mirza, who would go on to become the country's first president (Khan, 2009, p.79). Although the courts were always a component of the government and were regarded as its other institution, the higher judiciary in Pakistan had to resolve disputes amongst the government's institutions more often regarding the allocation of powers. In order to close the gap of institutional incompatibilities, the higher courts have tried. Through its rulings, the higher judiciary provided evidence in politics and society outside of its judicial and constitutional status. By effectively interpreting the state legal issue, they had a significant impact on state institutions to accommodate one another and settle their disagreements, which directly affected national sovereignty. The confirmed coups carried out by the several Army staff chiefs of Path at various points in its history. At different points in its history, the several chiefs of Army staff imposed the confirmed coups. The higher judiciary tried to reorganize the transition between the Pakistan Army and the civil government, and the Pakistani courts had turned into insurgencies during this time. In actuality, rather than recognizing privilege, the higher judiciary fairly approved of nearly armed coups. Those in positions of authority and those vying for them used the courts to air their complaints against the government, while the people were disregarded. One could describe it as an institutional manipulation by the ruler based on assumptions and hypotheses (Newberg, 2002, p. 12) When the Supreme Court heard a case in 2000 contesting the legitimacy of the military takeover and the interim government, coordinated and unimaginative attempts to weaken the judiciary's independence got underway. In order to continue serving under the PCO, the justices of the higher courts were required to swear a new oath of office. Six of the Supreme Court's thirteen judges including the chief justice resigned from their positions after refusing to take the oath. Based on the theory of state necessity, a reconstructed Supreme Court upheld the coup and rendered a decision in the Zafar Ali Shah case (Zahoor, U. (2001).

2-Literature review

(Ely,1980)The authors arrive at varying interpretations regarding the limits of judicial activism. talks about America's most important issues, and we can connect them to Pakistan's current situation. It offers guidance for how the Supreme Court should adapt the Constitution's limitations to the complexities of modern life. He talks about the two fundamental strategies put forth by legal professionals. The first is "interpretivism," which holds that judges should only consider what is evident from the text itself when rendering rulings. The second, non-interpretivism, holds that the courts ought to protect society's fundamental values.

Waseem(2012) argues that the use of judiciary review is growing in popularity these days. Judicial review used to just apply to constitutional issues, but it has now expanded to include governance-related issues as well. According to the study's findings, the court occasionally forces the executive to change decisions made in a role of administration. However, in certain instances, Pakistan's judiciary upheld the military ruler's illegitimate actions. According to Ahron (2006), in order for a law to be applied, it must first be interpreted. A judge can do this without altering the law's statute by giving it new meaning and bridging the gap between the law and life. He also discusses how a law passed in accordance with a social reality may become unconstitutional as a result of a new reality in society. The courts understand the old

statute by giving it new meaning; however, if it does not offer new meaning, then the question of its constitutionality arises. The judge must strike a balance between the need for change and stability. Kishwar Munir and Iram Khalid (2020) looked at Supreme Court rulings from 2008 to 2013 and assessed how they affected Pakistan's social and political climate. This judiciary's proactive role raised concerns both domestically in Pakistan and internationally. The study concentrated on the genesis and extent of Pakistan's judicial influence as well as how it affects the democratic, political, and constitutional processes. The study concluded that although Pakistan's parliamentary democracy is founded on the idea of separation of powers, the judiciary's proactive attitude is going beyond what is allowed by the constitution. Strict adherence to the separation of powers principle can result in a robust democratic and political system. Newberg (1995) and Dawood (1994) talked about the constitutional history of Pakistan, the historic role the country's top judiciary played by means of its rulings, and how the judiciary decided to step in and express its opinion on the nation's purely political situations, which was bound to be contentious. By examining court rulings during political crises, authors looked at how conflicts within the judicial system and between the judiciary and other state institutions have impacted society as an entire entity. This helped to establish the theory of necessity and revolutionary legality, which opened the door for more undemocratic laws.

Leading author Prof. Hassan Askari contends that Pakistan's institutions' overlapping powers have an impact on the democratic process. The non-elected bureaucratic and judicial institutions pose a serious threat to Pakistani democracy. In an effort to increase its control over the legislature, the bureaucracy has backed numerous non-elected organizations over the years. The court has been the primary ally of the military whenever it has seized control of a democratic government. The highest courts have participated in judicial activism throughout all of these military takeovers and crises against elected parliaments. One chief justice seen that the higher judiciary has been superseding parliament in a politically divided setting. (Rizvi, 2012). Kumar (2014) examines judicial activism within the framework of democracy in India. According to the author, the courts uphold constitutional democracy's restrictions on governmental action and dialogue among various government agencies. The author argues that while judicial activism undoubtedly made a significant contribution to Indian democracy, judicial institutions cannot take the place of governance. Although the vast corpus of research on judicial activism recognizes the phenomenon's beneficial effects, it maintains that it is not a substitute for the executive branch. Considered examinations of the constitutional text and practice in Pakistan formulate how the practice of the Supreme Court in using 184 (3) has extended the reach of the court by pursuing irrelevant cases by sua sponte interventions. A comprehensive analysis offered by the LUMS SAHSOL repository highlights the historical jurisprudence of the Article 184(3) of the Pakistani constitution and how courts have utilized the article in response to systemic failures through the case law despite the ongoing academic arguments over the legitimacy of such trends since such practices may empower the enforcement of rights at a cost of undermining the separation of powers by requiring the judiciary to fashion a substitute to executive policymaking practices (Manzar, 2021)

Abdul Rasheed (2020) talked about the judiciary's function in the state's crucial constitutional issues. Former Chief Justice Saqib Nisar's frequent exercise of Suo-moto power brought attention to the idea of judiciary activism among the general public. Additionally, he examined Justice Saqib Nisar's function as a populist judge (Rasheed, 2020). Ghulam Fareed Jattoi argues (2023) This essay examines how important constitutional revisions have been in forming Pakistan's judicial independence, following developments from the 1973 Constitution's ratification to later legislative modifications. Important amendments like the 8th, 17th, and 18th Amendments are closely examined for their effects on the independence of the judiciary and the distribution of power in the state. The study explores how these constitutional amendments

and judicial independence interact dynamically, identifying both improvements and regressions in the judiciary's function (Ghulam Farid, 2023).

3-Research Methodology

A qualitative research approach will be adopted in this study since the research is meant to comprehend how the separation of powers functions in Pakistan and what is actually meant by the concept of judicial independence. This study will involve a desk-based approach, which implies the study will be conducted using only credible and existing sources, i.e., academic journals, books, cases, legal reports, governmental reports, and research articles. Interviews and surveys will not be an element of it but will concentrate on reviewing and analyzing the secondary data. This paper shall examine some of its most important areas of focus which are mischief of the executive, ways of appointing judges, constitutional reform and main court decisions. Significant occurrences such as the Lawyers Movement and new amendments to the constitution will also be addressed. This study aims to review how the government, judiciary and the civil society either support or undermine judicial independence. Nonetheless, the research is limited in a sense that it is based on secondary sources only and it has only been conducted in Pakistan. Consequently, it is quite possible that the findings cannot be immediately applied to other nations and jurisdictions.

4-DISCUSSION

The social groups and politically engaged circles are in favor of democracy in theory. They recognize that a desirable political system must include the following elements: the supremacy of law, socioeconomic justice, the rulers' responsibility, and, most importantly, free and fair elections. In the speeches and declarations, they uphold these ideals, and all major parties highlight them in their election platforms. Nevertheless, daily politics do not always fully embody these ideals. Political reality frequently contradicts these ideals. The majority of military and civilian leaders aim for authoritarian political management and the personalization of power (Rizvi, 2011).

The Executive

Under the system of checks and balances, the president, who leads the executive branch, also acts as the head of state, commands the armed forces, and appoints political officials. The legislative branch is subject to the executive branch's veto power. In addition to appointing judges, the executive branch also has the authority to grant pardons. One person or a small group of people acquire all governmental powers in an authoritarian regime, such as a dictatorship or absolute monarchy. The purpose of the separation of powers system is to shield individual liberty from oppressive leadership by transferring some jurisdiction away from the executive branch.

The Legislature

A representative body, the legislature has the authority to enact and amend laws. The structure, names, and powers of legislatures vary throughout the world. Legislative bodies can be either unicameral or bicameral, with elected or appointed members. The terms parliament, congress, senate, national council, and national assembly are some of the names given to legislatures.

The Judiciary

The judiciary is the third pillar of the government. The judiciary plays a crucial function in a democratic society by upholding the laws passed by the legislative and the executive branch and protecting individual liberty. In a democratic government, the court serves as a watchdog. Strong, independent courts have the authority to rule that a legislative or executive action is unconstitutional, void, or the opposite. By reinterpreting the constitution to reflect shifting political and socioeconomic circumstances, the court also preserves a nation's constitution.

Pakistan Judicial History

In 1947, the Indian Independence Act established the Constituent Assembly of Pakistan, entrusting it with the responsibility of creating the country's constitution and overseeing its affairs. The Indian Independence Act of 1947 mandated that the cabinet, which answered to the Constituent Assembly, handle all governmental operations. It was believed that the cabinet's counsel would guide the governor general's use of his authority.

Pakistan became a virtual administrative state with vice-regal traditions, while officially it was a parliamentary administration (Lawrence Ziring, 1997). The governor general position was eliminated by Pakistan's first constitution, which was enacted in 1956. Instead, the president, whose administrative authority surpassed that of the elected prime minister, was given the same authority. Despite the constitution's provisions for a federal and parliamentary system of government, the president maintained ultimate authority and the federal government outweighed the provinces (New Berg 1995). The constitution of 1956 was put on hold when the nation experienced its first martial law in 1958, and a new constitution was enacted by the military administration in 1962. The 1962 constitution gave the president full executive authority and eliminated the position of prime minister. Additionally, the constitution established a nonpartisan legislature with some legislative authority. The nation's president was General Ayub Khan, the Chief Martial Law Administrator. When the legislature was not in session, he had the authority to declare an emergency, enact laws, issue ordinances, and dissolve the assembly. The 1962 constitution made military interference in politics official (Lawrence Ziring, 1997). Ayub Khan resigned in 1969 after a widespread uprising against him, annulled the 1962 constitution, and reinstated martial law. The devastating East Pakistan issue, the 1971 Indo-Pakistan war, and the country's eastern wing's secession—now known as Bangladesh—came next. In 1973, the new Pakistan that arose following the defeat of its eastern wing ratified a new constitution. The constitution of 1973 established a parliamentary system of governance. The president, as the official head of state, was required to follow the prime minister's instructions since the prime minister served as the nation's main executive. Another martial law terminated the autocratic but civilian rule in 1977. General Zia ul Haqq, the head of the army, suspended the constitution and disbanded the National Assembly. Article 6 of the 1973 constitution, which declared that anyone who sought to do so or planned to do so would be guilty of high treason, led to its suspension rather than its dissolution. Zia ul Haqq issued the Provisional Constitutional Order (PCO) in lieu of a new constitution. The PCO granted the military administration the authority to change the constitution whenever it pleased in addition to granting it the power to rule. Late in 1999, the country entered its fourth period of direct military rule.

The Supreme Court upheld General Musharraf's coup, the proclamation of emergency, and the issue of a second PCO, citing the "Doctrine of State Necessity." In an April 2002 vote, Musharraf won the right to serve as president for five years. The Legal Framework Order (LFO), which he introduced that same year, restored all of the eighth amendment's provisions and gave the president more authority. He was able to dissolve the National Assembly and designate the chairman of the Joint Chiefs of Staff Committee, as well as the heads of the services and provincial governors. In 2003, the 17th amendment to the Constitution lowered the legislature to the status of a rubber stamp. The Lawyer's Movement of 2007, which sought to reinstate Mr. Iftikhar Chaudhary as Pakistan's Chief Justice at the time, served as the impetus for judicial activism in that country. General Pervez Musharraf's dictatorship resulted in his dismissal. Therefore, the first indication of opposition to the authoritarian system was the entry of attorneys into the murky world of politics. Following this legal battle and movement, the attorneys and political parties were able to reinstate Iftikhar Chaudhary. However, he changed the rules of the game between the military, SCP, and parliament. Despite the fact that the courts

were established under the PCO by taking a new oath of allegiance of the military ruler, and as a result, the judges of the superior courts were subordinate to the executive, the Supreme Court of Pakistan remained influential in deciding constitutional matters, and as a result, it was known to legalize the actions of the Army Chief. There is no Supreme Court at all when martial law is in effect (Atta Ullah, 2020).

Tamizuddin case in 1955

Higher courts accepted the doctrine of necessity in the Tamizuddin case in 1955, which led to Pakistan's political and democratic instability. On October 24, 1954, Governor General Ghulam Mohammad disbanded Pakistan's constituent assembly. Moulvi Tamizuddin Khan, the speaker of Pakistan's constituent assembly at the time, filed a writ suit in the Sindh High Court under section 223 challenging the governor general's unconstitutional act. According to the Sindh High Court, the act of dissolving the assembly was unlawful.

Miss Asima Jillani Case 1971

Martial Law Regulation No. 78 led to Malik Ghulam Jilani's imprisonment on December 22, 1971. In the Lahore High Court, his daughter Miss Asima Jillani contested the detention. The court ruled that it was not possible to challenge the martial law statute after hearing the case and dismissing it. A panel of judges, consisting of Chief Justice Mr. Hamood Ur Rehman, Mr. Justice Wahid Ud Din, Mr. Justice Muhammad Yaqub Ali, Mr. Justice Salah Uddin Ahmad, and Mr. Justice Sajjad Ahmed, heard Miss Asima Jilani's challenge to the Supreme Court's ruling. According to the appeal's ruling (Asima Jillani vs. Government of Punjab, PLD 1972), Gen. Yahya Khan's declaration of martial law was unlawful.

The Nusrat Bhutto case, 1977

The Nusrat Bhutto case, in which the Supreme Court of Pakistan ruled that martial law of 1977 was lawful and constitutional, further demonstrated the connection between the judiciary and the military. Zulfikar Ali Bhutto, the prime minister of Pakistan at the time, and his eleven fellow PPP members were imprisoned in September 1977 and threatened with military tribunal hearings following the declaration of martial law and the repeal of the constitution by General Zia ul Haq, the chief of army staff. Begum Nussrat Bhutto petitioned the Supreme Court of Pakistan to contest the legitimacy and constitutionality of martial law (Rizvi, 1986).

Haji Saifullah vs Federation of Pakistan 1989

1988 On suspicion of corruption, Gen. Zia ul Haq removed Muhammad Khan Junejo, Pakistan's elected prime minister. The 1989 writ petition contested the national assembly's dissolution order. Ten judges, including Chief Justice Muhammad Haleem, heard it; Justice Naseem Hassan Shah wrote the majority ruling. According to the ruling, the President's decision dissolving the National Assembly was unlawful. However, the Laches principle led to the writ petition's dismissal. There was a delay in bringing the petition because of the British legal doctrine of laches. Therefore, even though the act of dissolving the assembly was unlawful, the constituent assembly could not be reinstated ((Patel, 2000).

Ahmed Tariq Raheem vs Federation of Pakistan 1992

President Ghulam Ishaq Khan ousted Prime Minister Benazir Bhutto and dissolved the National Assembly on August 6, 1990. A full panel upheld the order of dissolution of assembly after Khawaja Tariq Raheem challenged the President's order in the Lahore High Court. In the Supreme Court of Pakistan, Mr. Tariq Raheem contested the Lahore High Court's ruling. Ten Supreme Court judges made up the full bench that heard this case. Because Mr. Justice Saifur Rehman wrote the court's order, it was determined that the president's action was unlawful. However, since a new National Assembly had taken the oath, the petition was denied. It was yet another blow to the nation's democratic and constitutional progress.

Mian Muhammad Nawaz Sharif Vs President of Pakistan 1993

President Ghulam Ishaq Khan continued to dissolve the National Assembly, and on April 18, 1993, he did so while firing the prime minister at the time. The Supreme Court of Pakistan heard a direct challenge to the dissolution of the assembly, with Chief Justice Mr. Justice Naseem Hassan Shah leading the ten-judge panel. The bench ruled that the president's conduct of dissolving the assembly was unlawful. On May 26, 1993, the Chief Justice restored the national assembly. Compared to earlier decisions, this one was unique and further prompted a range of opinions from political circles.

Mohtarma Benazir Bhutto vs President of Pakistan 1996

The same thing happened to Mohtarma Benazir Bhutto's elected assembly, and in 1996, then-President Mr. Farooq Laghari dissolved the National Assembly once more on corruption-related grounds under article 58(2B). The president's act of dissolving the Pakistani National Assembly was affirmed by the Supreme Court of Pakistan when it was challenged in the Apex Court. However, the ruling had the effect of generating a belief both inside and outside the state that no elected assembly could fulfill its five-year legal term and would always be subject to the shadow of 58(2B). Additionally, the ruling led to instability and turmoil in the state's democracy (Ahmad, 2012)

Zafar Ali Shah vs Pervez Musharraf 2000

General Pervez Musharraf dismissed Nawaz Sharif and suspended the 1973 constitution, dissolving the National Assembly. Syed Zafar Ali Shah filed a writ suit in the Supreme Court against the implementation of martial law. Iftikhar Muhammad and twelve other judges made up the full court bench that heard the case. Chief Justice Irshad Hassan Khan ruled that General Pervez Musharraf's actions were legal (Khan F. A., 2012)

LAWERS MOVEMENT 2007

The reinstatement of Chief Justice Iftikhar Muhammad Chaudhry in March 2009 contributed to a new level of judicial activity in Pakistan. As a result, the judiciary gained independence and strength after prevailing in a protracted struggle for existence. However, this effort led to the separation of the judiciary into two groups: judges who took the PCO oath and judges who did not. The judiciary's position in political and constitutional history was different in this instance than it had previously been (Kokar, 2013).

The 18th amendment in 1973 constitution 2010

In Pakistan's constitutional history, the 2010 implementation of the 18th amendment to the 1973 constitution by the ruling Pakistan People's Party government marks a significant turning point. In addition to increasing regional autonomy, it has taken away the president's authority to dissolve the national assembly. This in turn reinstates the parliamentary system and reverts to the semi-presidential system. Furthermore, by altering the process for choosing judges for higher courts, the amendment has increased judicial independence. The Chief Justice of the Supreme Court suggested a group of applicants to the president prior to the 18th Amendment. The judicial commission and the parliamentary committee were the two venues through which the selection process for judges had to go following the 18th Amendment (Cheema, 2018).

Imran Khan Niazi vs Mian Muhammad Nawaz Sharif 2017

In an attempt to disqualify Nawaz Sharif due to Panama Leaks, Imran Khan filed a suit against him on August 29, 2016. Panama Leaks exposed the Nawaz Sharif family's ties to eight offshore businesses. The Supreme Court established a Joint Investigation Team (JIT) to look into the Panama leaks and their connection to the Sharif family. Five judges make up the Supreme Court's panel following the submission of the JIT report. The Supreme Court of Pakistan condemned Prime Minister Nawaz Sharif to ten years in prison, a fine of \$10.6 million, and lifetime disqualification from serving in the National Assembly on July 28,

2017. The Apex Court's ruling was one of the most well-known and regarded as significant (Alecci, 2018).

26th Amendment In 2024

The purpose of the 26th Amendment was to address some governance concerns, especially with regard to judicial supervision. Its consequences for judicial independence, however, have not received enough attention in the literature to yet. "On the evening of Sunday, October 20, the 26th Constitutional Amendment was introduced to the Senate, and it was passed within hours. The National Assembly, the Lower House of Parliament, then heard its introduction and passed it early this morning, Monday, October 21. It also obtained the President's approval shortly after, and the Gazette formally published it. One significant change to Pakistan's constitution is the 26th amendment to the 1973 constitution. It has fundamentally altered Pakistan's legal system. The amendment significantly altered the Supreme Court's and lower courts' authority. As the government gains more authority to influence the court, the amendment is also accountable for shifting the power distribution between the two branches. "Pakistan's judicial system has undergone a number of drastic changes as a result of the 26th Constitutional Amendment, which detractors claim would influence the higher courts and weaken judicial independence (Tripathi & Kumar, A, 2024).

5-Conclusion

To summarize the paper, it can be concluded that judicial independence in Pakistan represents the ongoing conflict between constitutional norms and political reality. Although the system of a separation of powers has deep roots in the statutes, its practical implementation is also exposed to the threat of executive harassment, the interference of politics in the process of appointing judges, as well as the historical trends of a disproportion of power. There have been instances of strength and resilience among the judiciary especially the Lawyers Movement that highlights its possible role as an upholder of constitutionalism. Nevertheless, this autonomy has not always been preserved because of the lack of strong mechanisms that protect the independence against the external influence and a rather transparent system of appointment which relied not on merit but on political favor. To have achieved true judicial independence in Pakistan, the institutional checks and balances need to be reinforced, and clear institutionalized procedures of transparent and depoliticized judicial appointments must have been designed and reinforced, and the culture of law must be embedded in the democratic process that should be stringent with impartial over departure of political expediency. Not only is judicial independence a constitutional mandate, but a pillar of democracy, which is critical to the fulfillment of fundamental rights, and fair governance and ultimately the integrity of state institutions being in the eyes of the people. The separation of powers will continue to be more of a constitutional ideal that it is a political/institutional reality without ensuring that the identified systemic challenges identified in this paper are addressed to make this reality true.

After gaining independence, Pakistan's democratic crisis persisted. According to this study, the judiciary has been crucial to these democratic and political crises. Every institution in Pakistan must fulfil its constructive function and cooperate within the parameters of its constitutional framework to manage the challenges in the political system in order to enhance the country's democratic conditions. A judge with political motivations might not be able to prevent the legislative and executive branches of government from abusing their authority and undermining democratic norms and values. Restoring the judiciary's independence and autonomy and reviewing the 26th Amendment are essential for maintaining its efficacy and integrity. Furthermore, a strong and independent court is essential to maintaining the Constitution. It upholds Pakistan's rule of law and safeguards human rights. To protect the judiciary's integrity and ensure that it continues to be a beacon of hope for democracy and the

rule of law in Pakistan, it is critical that all relevant parties including the executive, legislators, and civil society cooperate.

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