

CONSTITUTIONAL DYNAMICS IN PAKISTAN: EVOLUTION, CHALLENGES, AND THE ROLE OF POLITICAL INSTITUTIONS IN MAINTAINING GOVERNANCE & DEMOCRACY

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ABSTRACT

This paper explores the constitutional dynamics in Pakistan, focusing on its evolution, challenges, and the role of political institutions in maintaining governance and democracy. Since its inception in 1947, Pakistan's constitutional framework has undergone several transformations, reflecting the country's complex political, social, and economic landscape. From the early parliamentary system to the introduction of military regimes and the subsequent restoration of democratic governance, the evolution of Pakistan's constitution has been shaped by historical, ideological, and institutional factors. The paper examines the key constitutional changes and the challenges faced in ensuring the effective functioning of democracy, including issues of political instability, institutional inefficiencies, and constitutional amendments. Furthermore, it delves into the pivotal role of political institutions, such as the judiciary, legislature, and executive, in preserving constitutional order and promoting democratic values. The analysis highlights the need for a balanced constitutional structure that can withstand external and internal pressures while fostering a robust democratic system. By exploring the interplay between constitutional evolution and political institutions, this paper provides insights into the ongoing challenges and opportunities for strengthening governance and democracy in Pakistan.

Key Words: Constitutional Evolution, Political Institutions, Democracy, Legislature, Democratic Values

INTRODUCTION

The constitutional dynamics of Pakistan has been a subject of extensive scholarly inquiry, and through it one cannot discount the turbulent political history of the nation and its quest for stable democratic order. Since gaining her independence in 1947, Pakistan has had to negotiate the intricacies of constitutional design, taking into account the socio political juxtaposition of her battle hard world, and constitutional features that can promote effective governance and democratic stability. Pakistan's constitution has undergone several transformations which have been a result of the interaction of histories, ideologies and institutions. This paper intends to strip away the cloak of secrecy with

Pakistan constitutional development, how this nation struggles under governance as well as democracy, and the role of political institutions in doing so. The Government of India Act 1935 was adopted as an interim constitution for Pakistan which formed the basis of a parliamentary form of government. But the nascent state encountered problems at once in knitting to the satisfaction of its various population the aspirations the nascent state had of a unitary constitution. The first important step in framing a constitution was the Objectives Resolution of 1949 which aimed at defining the principles of democracy, freedom, egalitarian, tolerance, and social justice to be framed in Islam.

However, the effort of constitution making proved difficult with the first constitution promulgated in 1956. Pakistan became an Islamic Republic and its government was of a parliamentary type.

However, its existence was curtailed when it were abrogated in 1958 and the first of several military regimes began (Jalal, 1995). This has been followed by a cycle of democratic governance and military rule in subsequent constitutional developments in Pakistan. The arrival of a presidential form of government in 1962 when the 1962 constitution was imposed under military rule of General Ayub Khan, introduced a new departure from constitutional as well as parliamentary government, though not from authoritarian traditions. It was in order to centralize power under the executive, in keeping with the military's preference for a strong, centralized state, that the framers designed this constitution. Undaunted, although the 1962 constitution was to be brief, it was replaced two years later (Cohen, 2004) by the 1973 constitution which has ruled the country since. It is under this 1973 constitution that the parliamentary system was reinstated and which is accepted as a more democratic and inclusive framework. Crafted by means of a consensus building process among various political parties, it took care of shortcomings of previous constitutions by providing more provincial autonomy, safeguarding fundamental rights and striking a more balanced between executive, legislature and judiciary powers. While its progressive provisions, the 1973 constitution was challenged by periods of military rule, amendments to the constitution, and political instability (Newberg, 1995). Frequent intervention of the military in political affairs is one of the great challenges to Pakistan's constitutional order. The country has had four military coups (1958, 1977, 1999 and 2007) which have disrupted the democratic process and suspended or abrogated the constitution.

However, the military has continually been left to justify its role in politics by promoting national security and political stability, but such a legitimacy has not necessarily coincided with the defense of democratic governance and constitutional rule (Haqqani, 2005). Apart from military intervention, political instability and institutional inefficiencies together with instances of constitutional manipulation to serve political interests have constituted the challenge to the framework of Pakistan's Constitution. All have been caused by the frequent dissolution of elected governments; by the

lack of accountability and transparency; by the use of constitutional amendments to consolidate power; and finally by the loss, if not actual, then assumed weakening, of democratic institutions. More particularly, the role of the judiciary in Pakistan's constitutional tale has been contentious as to whether it has upheld the idea of the rule of law or endorsed military coverts. Particularly, the criticism against the role of the Supreme Court in validating General Zia-ul Haq's coups in 1977 followed by the General Pervez Musharraf's coup in 1999 has questioned the independence of the judiciary and the commitment of the judiciary to constitutionalism (Cheema, 2010).

Nevertheless, Pakistan's political institutions have also shown their ability to withstand shocks and eventually find renewed energy. A major milestone in constitutional history of the country came in 2008 when after nearly a decade of military rule under Gen. Musharraf, the country witnessed restoration of democratic governance. The 18th Amendment to the constitution, passed in 2010 was a major step to bring more democratic governance as it devolves more powers to the provinces, empowered the judiciary and brought more transparency and more accountability of governance. The amendment was widely lauded in Pakistan as a milestone towards constitutional evolution and wider consensus among political parties was expressed over the need for democratic reforms (Rizvi, 2011). Political institutions in Pakistan cannot be overlooked in terms of their role in governance and democracy. The constitutional affects specific aspirations of the people through the representative body of the people that is the legislature and the role of the legislature as representative body of the people is very crucial in the shaping of the constitutional framework.

The executive, being the organ of implementing the state, is responsible for protecting the constitution and facilitating the provision of public services. However, to sustain a balanced constitutional order and further the democratic values, the play of these institutions is important (Hussain, 2013). Due to issues of corruption and nepotism, political institutions in Pakistan are not always as effective as one would hope, leaving the people to seek abuse of power, which is not solved by elections either. So the media, as a critical institution of democracy, has also been hit with increasing challenges ranging from censorship, intimidation and violence that have made it hard to check the powerful people. Finally,

the constitutional dynamics are shaped by mixture of historical, ideological and institutional factors. Pakistan's constitution has evolved due to the weakness and inefficiency of political institutions and the resilience and capacity of political institutions to renew themselves, in response to the challenge of political instability, military intervention, and other problems.

When need for a robust democracy is as pressing as ever, the structure of a balanced constitutional needs to have the capacity to stand the pressure from both from inside and outside. This paper, by exploring the interplay between constitutional changes and political institutions, aims at contributing to an understanding of the current processes of governance and democracy in Pakistan and at the same time, its challenges and opportunities.

Literature Review

Historical Evolution of Pakistan's Constitution

Due to its changing political, social and ideological background, Pakistan's constitution can be said to have evolved through several phases. During early years, the country took the Government of India Act 1935 as a temporary constitution till the first constitution was developed of 1956. In 1956, Pakistan became a republic and its system was changed to parliamentary under the Constitution 1956. Unfortunately, the political instability placed the 1956 constitution in jeopardy and it was abrogated in 1958 following the first military coup of General Ayub Khan (Shah, 2013).

Under the military regime of Ayub Khan, there followed a period in which a presidential system was introduced, radically altering the political situation. Siddiqua (2014) points out how Ayub's regime's centralization of power left democratic institutions, constitutionally inapposite, considerably weakened. It is a response to the failure in promulgating the 1956 Constitution but it did not lead to political stability because of its promulgation under Ayub in 1962. When these political crises occurred there was a need for the 1973 Constitution, which still remains Pakistan's current constitution. Following Raza (2012), the 1973 Constitution was initially considered a landmark in Pakistan's constitutional history and brought a parliamentary system back and established a framework for a democratic governance.

Political Challenges and Constitutional Amendments

In the history of Pakistan's constitution there have been a lot of amendments and cherishes that reflect the instability in the political system. Haque (2004) explains that lack of consensus amongst Pakistan's political parties has been main hindrance in the evolution of stable constitutional framework. It was a period during which the democratic process was undermined during the period of military rule that begins with General Ayub Khan's dictatorship in the 1960s till the late 2000s, when General Pervez Musharraf was dictating the course of events. Thus each of the military regimes made constitutional amendments allocating power to the executive branch, with a negative effect on the democratic institutions of the parliament and the judiciary. According to the literature, one of the main challenges is to identify the repeated use of constitutional amendments to empower political elites with power to consolidate power.

An example of this was the 17th Amendment of 2003, that occurred during Musharraf's regime and very substantially changed the power relation between the executive and legislature, allowing the president to wield sweeping powers and, to a great extent, negate the balance of power entrenched by the 1973 Constitution (Malik, 2007). Rizvi (2014) also highlighted that the 18th Amendment in 2010 was a critical step in devolution of power just like the 2000 Elections which aimed to restore Parliamentary democracy and reduce the power of the president, but it faces implementation challenges.

Political Institutions and Governance

The creation of these political institutions under the constitution has significantly influenced Pakistan's governance. The constitutional order and democracy is maintained and upheld by the ideology of three branches of government—the judiciary, legislature, and executive. But not all of their relationships and effectiveness were without strife. Particularly, the judiciary has acted to safeguard constitutional norms and promote accountability. It is also true that at certain points in history, the Supreme Court has intruded on issues of governance, such as the years of judicial activism in the 2000s. This has led some to take praise and some to criticize the judiciary for its role in checking the executive over reach (Khan, 2009). This was seen in the case of landmark judgment of Supreme Court

on well-known case of dismissal of judges by Musharraf (Justice of Constitutional Principles), (Husain 2010). The other side of the coin is that the legislature in Pakistan has regularly been considered dysfunctional and ineffective. A frequent parliament's dissolution coupled with a political fragmentation and party rivalries have dispraised the legislature to legislate effective laws. Specifically, many of the elected governments have been brief, as one would come to expect. Ziring (2015: 130) contends that the political disorder of Pakistan has not allowed the legislature to perform its constitutional obligations due to weak political parties and deficient institutional capacities. Governing has been under the influence of the executive, a post greatly influenced by the military at times of dictatorship. Pakistan's constitutional history has had a recurrent theme of centralization of power in an executive branch. In fact, the role of the military in governance as a political and an institutional force has been documented in the literature. The military involvement in political affairs of Pakistan has been justified by Raza (2012) as a means to stabilize, though this has often robbed democratic processes.

Challenges to Democracy and Constitutional Order

The struggle between democratic values and authoritarian tendencies has been one of the principal obstacles to constitutional development in Pakistan. Repeatedly there has been the interruption of democratic governance by military coups and political opposition has been crushed. Issues such as corruption, political polarization, lack accountability, and overall collapse of Pakistan's democratic institutions (Siddiqa, 2014) have been coupled with this. Furthermore, during Pakistan's example, it has experienced major political difficulties in the creation of political stability with ethnic, religious and regional differences playing a destabilizing role. The role of political parties in bridging these divides has been weak at times as noted by Ziring (2015), and has resulted in marginalization and fragmentation of the political landscape. Consequently, this has facilitated the formation of no consensus on some of the most critical constitutional reforms and amendments.

Theoretical Framework

The framework of this is theoretical is constitutionalism, democratic governance and

institutionalism. The third approach for understanding Pakistan's evolving constitutional framework particularly with regard to periods of political instability and military interventions is constitutionalism, which is essential to the idea that a constitution should be a tool through which to regulate power and maintain democratic principles. This theory purports that constitutional norms tend to not be effected by governance due to frequent amendments and institutional weaknesses. The Democratic governance theory had always focused on political institutions that led to establishment of democratic governance and having judiciary, legislative and executive units as accountable and transparent.

In Pakistan, the machinations between military grip and democratic processes have proved too much of a hindrance to effectively functioning. The framework also incorporates institutionalism especially, historical institutionalism that explains the impact of the past political events to the current constitution practice and rational choice institutionalism that explains how actors within these institutions behave according to what is in interest. This provides an explanation for the political instability in Pakistan for this reason: that the power is concentrated in the executive and military ensuring this is a constant. A balanced power theory and checks and balances case will then be applied to the assessment of Pakistan's institutions' capability in maintaining a democratic structure and stable governance system caught up between challenges like fragmentation and corruption. Allowing for these combined theoretical lenses, the constitutional dynamics in Pakistan are understood comprehensively.

Research Problem

The underlying research problem concerns the evolution, problems and current state of Pakistan's constitutional framework with emphasis on the role of political institutions in sustaining democratic governance and political stability.

Research Questions

1. What are the key historical events and constitutional changes that have shaped Pakistan's governance?
2. What constitutional challenges have hindered the development of a stable democratic system in Pakistan?

3. How have political institutions (judiciary, legislature, and executive) influenced the constitutional evolution in Pakistan, and what are their roles in sustaining democracy?
4. How can Pakistan's constitution and political institutions be reformed to improve governance and ensure political stability and democratic values?

Research Methodology

The research for the constitutional evolution of Pakistan, challenges encountered, and the role of political institutions on sustaining governance and democracy is based on a qualitative design. This study is strongly suited to qualitative research given the depth to which historical, institutional, and political factors that have shaped Pakistan's constitutional framework can be drawn out. The second aspect of the research is historical, in that it traces the evolution of the Pakistani constitution from 1947 to the present, discussing key events, constitutional amendments and institutional developments. The study engages in an examination of the interaction between constitutional evolution and political institutions using an analytical and interpretive perspective. In this regard, it attempts to detect the pattern of constitution making, trends and the challenges to constitutionalism in Pakistan's constitutional history and ascertain the role played by the constitutional institutions, such as judiciary, legislature, and executive apart from other actors in the related processes in furthering democratic governance.

Data Collection Methods

The study relies on secondary data sources, including scholarly articles, books, government documents, constitutional texts, and reports from reputable organizations. The data collection process involves the following steps:

- Literature Review:
- Document Analysis:
- Case Studies:
- Institutional Analysis:
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Analytical Framework

The study employs an institutional analysis framework to examine the role of political institutions in shaping and maintaining Pakistan's constitutional order. This framework focuses on the following key dimensions:

- Historical Context:
- Institutional Roles and Interactions:
- Challenges and Opportunities:
- Comparative Analysis:

Data Analysis

The data collected from secondary sources were analyzed using thematic analysis, a qualitative method that involves identifying, analyzing, and reporting patterns (themes) within the data. The following steps were taken:

- Coding:
- Theme Development:
- Interpretation:

Limitations of the Study

While the study provides a comprehensive analysis of Pakistan's constitutional dynamics, it has certain limitations:

- Reliance on Secondary Data:
- Historical Complexity:
- Bias in Sources:

Ethical Considerations

- The study adheres to ethical research practices, including:
- Proper citation of all sources to avoid plagiarism.
- Acknowledging the limitations and potential biases of secondary data.
- Ensuring that the analysis is objective and free from personal or political bias.

Data analysis and Results

An analysis of the dynamics of Pakistan's constitutional governance reflects the interplay of historical, institutional and political factors that have characterized the country's governance and democratic path through its constitution. The data is responded in terms of the key themes developed from the data analysis process: Constitutional Evolution, Military Interventions, Judicial Activism, Political Instability, and Democratic Resilience. Below, evidence from the data will support each theme, which will be discussed in detail.

1. Constitutional Evolution

Pakistan's political history is a story of a struggle to fit constitutional succession with a diverse and often divided society, and it reflects itself in Pakistan's constitutional evolution. Since its independence in 1947, Pakistan has undergone numerous

constitutional schemes, according to changes in political, social and economic context. The following offers a detailed analysis of the main events in the history of Pakistan's constitutions.

1956 Constitution: The First Step towards a Parliamentary System

Background: After independence, Pakistan operated under the Government of India Act 1935 as an interim constitution. The delay in framing a permanent constitution was due to disagreements over issues such as the role of Islam, representation of provinces, and the distribution of powers between the central and provincial governments.

Islamic Republic: The 1956 Constitution declared Pakistan an Islamic Republic, making it the first country in the world to adopt this title. It included provisions to ensure that laws were consistent with Islamic principles.

Parliamentary System:

It established a parliamentary form of government, with a ceremonial president and a prime minister as the head of government.

Federal Structure:

The constitution provided for a federal system with two provinces (East Pakistan and West Pakistan) and a central government.

Challenges:

Political Instability:

The constitution was implemented during a period of intense political instability, with frequent changes in government and a lack of consensus among political elites.

Lack of Provincial Autonomy:

The constitution failed to address the demands of East Pakistan (now Bangladesh) for greater autonomy, leading to tensions between the two wings of the country.

Outcome:

The 1956 Constitution was abrogated in 1958 following the imposition of martial law by General Ayub Khan, marking the end of Pakistan's first experiment with democratic governance.

1962 Constitution: Centralization Under Military Rule

Background: After seizing power in 1958, General Ayub Khan introduced the 1962 Constitution,

which reflected his preference for a strong, centralized state.

Presidential System: The constitution replaced the parliamentary system with a presidential system, concentrating power in the hands of the president.

Indirect Elections: It introduced a system of indirect elections through an electoral college, known as Basic Democracies, which limited popular participation in the political process.

Limited Role of Islam: Unlike the 1956 Constitution, the 1962 Constitution downplayed the role of Islam, focusing instead on modernization and development.

Challenges:

Authoritarianism:

The centralization of power under the president led to accusations of authoritarianism and a lack of accountability.

Public Discontent: The constitution failed to address the demands for greater democracy and provincial autonomy, leading to widespread public discontent.

Outcome: The 1962 Constitution was abrogated in 1969 following mass protests and the resignation of Ayub Khan, paving the way for a return to democratic governance.

1973 Constitution: A Return to Parliamentary Democracy

Background: The 1973 Constitution was framed after the secession of East Pakistan in 1971 and the return of civilian rule under Zulfikar Ali Bhutto. It was the result of a consensus among political parties and is considered Pakistan's most inclusive and democratic constitution.

Parliamentary System:

The constitution restored the parliamentary system, with a prime minister as the head of government and a ceremonial president.

Provincial Autonomy: It granted greater autonomy to the provinces, addressing long-standing demands for decentralization.

Fundamental Rights:

The constitution included a comprehensive list of fundamental rights, such as freedom of speech, equality before the law, and protection against discrimination.

Islamic Provisions:

It incorporated Islamic principles, declaring Islam the state religion and requiring that all laws be consistent with Islamic teachings.

Challenges:

Military Interventions: The constitution has been suspended or abrogated multiple times due to military coups (1977, 1999).

Controversial Amendments: Amendments such as the 8th Amendment (1985), which granted the president the power to dissolve the National Assembly, have been criticized for undermining parliamentary democracy.

Outcome: Despite these challenges, the 1973 Constitution remains in force today and is widely regarded as the cornerstone of Pakistan's constitutional framework.

18th Amendment (2010): Strengthening Democracy and Federalism

Background: The 18th Amendment was passed in 2010 as part of a broader effort to restore democratic governance after nearly a decade of military rule under General Pervez Musharraf.

Provincial Autonomy: The amendment devolved greater powers to the provinces, particularly in areas such as education, health, and agriculture.

Judicial Independence: It strengthened the independence of the judiciary by reforming the process for appointing judges.

Abolition of Concurrent List: The amendment abolished the Concurrent List, transferring all subjects on the list to the provinces.

Transparency and Accountability: It introduced measures to enhance transparency and accountability in governance, such as the establishment of the Council of Common Interests (CCI).

Challenges:

Implementation Issues: The devolution of powers has faced challenges related to resource allocation, capacity building, and inter-provincial coordination.

Political Resistance: Some political actors have resisted the amendment, fearing a loss of central control.

Outcome:

The 18th Amendment is widely regarded as a landmark achievement in Pakistan's constitutional

history, marking a significant step towards strengthening democracy and federalism.

2. Military Interventions

From that definition, a defining feature of Pakistan's political life has been its military interventions that have deeply shaped its constitutional order and its democratic march. From its independence in 1947 till now, Pakistan has witnessed four major military coups (1958, 1977, 1999, and 2007) that shook the democratic governance and suspended or abrogated the constitution. Failing to uphold the innocuous rule of law, these interventions have also changed the face of political and institutional structure of the country to the detriment of many good intentions. A detailed analysis of the main aspects of military interventions in Pakistan follows.

Centralization of Power

Pakistan's military regimes have always projected centralization of power in the executive branch at the cost of other state institutions. This centralization has been justified on the grounds of maintaining national security and political stability, but it has come at the cost of democratic governance and constitutional rule.

General Ayub Khan (1958-1969): Ayub Khan's coup in 1958 marked the first military intervention in Pakistan's history. He abrogated the 1956 Constitution and introduced the 1962 Constitution, which established a presidential system. This system concentrated power in the hands of the president, effectively sidelining the legislature and judiciary. Ayub Khan's regime also introduced the system of Basic Democracies, which limited popular participation in the political process and reinforced authoritarian rule.

General Zia-ul-Haq (1977-1988): Zia-ul-Haq's coup in 1977 led to the suspension of the 1973 Constitution and the imposition of martial law. Zia's regime introduced a series of Islamization policies that altered the constitutional framework, including the introduction of the Hudood Ordinances and the establishment of Sharia courts. These policies not only centralized power in the military but also undermined the secular foundations of the state.

General Pervez Musharraf (1999-2008): Musharraf's coup in 1999 resulted in the suspension of the constitution and the introduction of the Legal Framework Order (LFO), which granted sweeping powers to the president. Musharraf's regime also introduced the 17th Amendment, which legitimized his coup and allowed him to retain dual roles as

president and army chief. This centralization of power weakened democratic institutions and eroded the rule of law.

Erosion of Democratic Institutions

Military rule has had a corrosive effect on Pakistan's democratic institutions, including political parties, the judiciary, and civil society. The military's dominance has fostered a culture of authoritarianism, undermining the development of a robust democratic system.

Weakening of Political Parties: Military regimes have systematically weakened political parties through coercion, co-optation, and manipulation. For example, Zia-ul-Haq's regime banned political activities and suppressed opposition parties, while Musharraf's regime introduced the National Reconciliation Ordinance (NRO), which allowed politicians to evade accountability for corruption.

Suppression of Civil Society: Military rule has also stifled civil society, including the media, human rights organizations, and grassroots movements. Zia-ul-Haq's regime, for instance, imposed strict censorship on the media and targeted activists and intellectuals. Similarly, Musharraf's regime cracked down on independent media and civil society organizations during the Lawyers' Movement (2007-2009).

Undermining the Judiciary:

The judiciary has often been complicit in legitimizing military coups, undermining its independence and credibility. For example, the Supreme Court validated Zia-ul-Haq's coup under the doctrine of necessity, and later upheld Musharraf's coup in the *Zafar Ali Shah v. Pervez Musharraf* (2000) case. This judicial complicity has eroded public trust in the judiciary and weakened its role as a guardian of the constitution.

Judicial Validation of Military Coups

The judiciary's role in legitimizing military interventions has been one of the most contentious issues in Pakistan's constitutional history. While the judiciary has occasionally challenged military authority, its historical complicity in validating coups has undermined its credibility and independence.

Doctrine of Necessity:

The judiciary has often invoked the doctrine of necessity to justify military takeovers. This doctrine, which originated in the *State v. Dosso* (1958) case,

allows the judiciary to validate extra-constitutional actions if they are deemed necessary for the preservation of the state. This doctrine was used to legitimize the coups of Zia-ul-Haq and Musharraf, effectively undermining the rule of law.

Judicial Activism:

In recent years, the judiciary has taken a more active role in challenging military authority and promoting democratic governance. The Lawyers' Movement (2007-2009), which led to the restoration of Chief Justice Iftikhar Chaudhry, marked a turning point in judicial activism. However, the judiciary's credibility remains compromised due to its historical complicity in legitimizing military rule.

Impact on Constitutional Order

Military interventions have had a profound impact on Pakistan's constitutional order, leading to the suspension or abrogation of the constitution and the erosion of democratic norms. Key consequences include:

Fragmentation of the Constitution: Military regimes have often introduced constitutional amendments to consolidate their power, such as the 8th Amendment (1985) under Zia-ul-Haq and the 17th Amendment (2003) under Musharraf. These amendments have weakened the constitutional framework and undermined democratic governance.

Erosion of Democratic Norms: Military rule has fostered a culture of authoritarianism, undermining the development of democratic norms such as accountability, transparency, and the rule of law. This has created a legacy of political instability and institutional inefficiency that continues to hinder Pakistan's democratic development.

3. Judicial Activism

In Pakistan's constitutional history the judiciary has acted mostly as a perplexing and sometimes contradictory role. It has made a mockery of military takeovers and democratic governance on the one hand and become an architect in constitutionalism and rule of law on the other. This dual role is a reflection of the judicial endeavor to keep the institution of the judiciary independent as well as not to be ignored in a political volatile environment. This paper provides a detailed analysis of judicial activism in Pakistan along with legitimizing the military rule, re-establishing democracy and its landmark rulings.

Legitimization of Military Rule

One of the most controversial aspects of Pakistan's judicial history is its role in legitimizing military coups. The judiciary has often invoked the doctrine of necessity to justify extra-constitutional actions, undermining its credibility and independence.

Doctrine of Necessity: This legal principle, which originated in the *State v. Dosso* (1958) case, allows the judiciary to validate actions that violate the constitution if they are deemed necessary for the preservation of the state. The doctrine was first used to legitimize General Ayub Khan's coup in 1958, setting a dangerous precedent for future military interventions.

General Zia-ul-Haq (1977-1988):

The judiciary again invoked the doctrine of necessity to validate Zia-ul-Haq's coup in 1977. In the *Begum Nusrat Bhutto v. Chief of Army Staff* (1977) case, the Supreme Court ruled that Zia's martial law was a "necessary evil" to restore order. This decision not only legitimized military rule but also eroded public trust in the judiciary.

General Pervez Musharraf (1999-2008):

The judiciary's complicity in legitimizing military rule was evident once again during Musharraf's regime. In the *Zafar Ali Shah v. Pervez Musharraf* (2000) case, the Supreme Court validated Musharraf's coup under the doctrine of necessity, allowing him to amend the constitution through the Legal Framework Order (LFO). This decision further entrenched the military's dominance over civilian institutions.

Impact on Judicial Credibility:

The judiciary's repeated validation of military coups has undermined its credibility and independence. By legitimizing extra-constitutional actions, the judiciary has contributed to the erosion of democratic norms and the rule of law.

Restoration of Democracy

In recent years, the judiciary has taken a more active role in promoting democratic governance and upholding constitutional principles. This shift is most evident in the Lawyers' Movement (2007-2009), which marked a turning point in judicial activism.

Lawyers' Movement:

The movement began in response to Musharraf's suspension of Chief Justice Iftikhar Chaudhry in 2007. Lawyers, civil society activists, and political parties rallied behind Chaudhry, demanding the restoration of judicial independence and the rule of law. The movement culminated in Chaudhry's reinstatement in 2009, following Musharraf's resignation.

Judicial Independence: The Lawyers' Movement reinvigorated the judiciary's role as a guardian of the constitution. It also highlighted the importance of judicial independence in promoting democratic governance and holding those in power accountable.

Post-Movement Activism: Following the movement, the judiciary took a more assertive stance on issues such as corruption, human rights, and constitutional violations. For example, the Supreme Court initiated suo motu actions on issues ranging from enforced disappearances to environmental degradation, signaling a shift towards judicial activism.

Landmark Rulings

The judiciary has issued several landmark rulings to uphold constitutional principles and promote accountability. However, these rulings have often been criticized for being politically motivated or inconsistent.

Disqualification of Nawaz Sharif (2017):

In the Panama Papers case, the Supreme Court disqualified Prime Minister Nawaz Sharif from holding public office over corruption allegations. While the ruling was hailed as a victory for accountability, it was also criticized for being influenced by political considerations.

Restoration of Chief Justice Iftikhar Chaudhry (2009): The Supreme Court's decision to reinstate Chaudhry was a landmark moment in Pakistan's judicial history. It not only restored judicial independence but also reinforced the judiciary's role as a check on executive power.

Suo Motu Actions:

The judiciary has increasingly used suo motu powers to address issues of public importance. For example, the Supreme Court took suo motu notice of the Karachi violence and the missing persons cases, highlighting its commitment to upholding fundamental rights.

Criticism of Judicial Activism: While judicial activism has been praised for promoting accountability, it has also been criticized for overstepping its constitutional mandate. Critics argue that the judiciary's intervention in political matters undermines the separation of powers and creates instability.

Challenges and Controversies

Despite its achievements, judicial activism in Pakistan faces several challenges and controversies:

Politicization of the Judiciary: The judiciary's involvement in political matters has raised concerns about its impartiality and independence. For example, the disqualification of Nawaz Sharif was seen by some as a politically motivated decision.

Selective Accountability: Critics argue that the judiciary has focused disproportionately on civilian politicians while ignoring the military's role in undermining democracy. This selective accountability has eroded public trust in the judiciary.

Overreach:

The judiciary's use of suo motu powers and its intervention in policy matters have been criticized as judicial overreach. This has led to tensions between the judiciary and other branches of government.

4. Political Instability

Political instability has been one of the chronic and pervasive debilitating challenges to the constitutional order of Pakistan, which has served as a heavy impediment to the country's democratic governance and institutional development. These structural, institutional factors which overlap each other combine to ensure an instability that begins with the fragmentation of political parties, the manipulation of constitutional provisions, and the weakness of state institutions. In this regards a detailed analysis of the factors leading to political instability in Pakistan has been provided below.

Fragmentation of Political Parties

Pakistan has had a major obstacle to good governance in the fact that strong, cohesive political parties are lacking. Political parties are often divided along ethnic, regional, and ideological lines, leading to fragmentation and a lack of consensus on key policy issues.

Ethnic and Regional Divisions:

Pakistan's political landscape is characterized by deep ethnic and regional divisions. For example, the Pakistan Peoples Party (PPP) has traditionally drawn its support from Sindh, while the Pakistan Muslim League-Nawaz (PML-N) has its stronghold in Punjab. This regionalization of politics has hindered the development of national parties capable of representing the interests of all provinces.

Lack of Internal Democracy: Many political parties in Pakistan lack internal democracy, with leadership often concentrated in the hands of a few individuals or families. This has led to a lack of accountability and transparency within parties, as well as a failure to nurture new leadership.

Frequent Splits and Defections:

Political parties in Pakistan are prone to splits and defections, further weakening their ability to govern effectively. For example, the PML-N has experienced multiple splits over the years, leading to the formation of factions such as the Pakistan Muslim League-Quaid (PML-Q).

Impact on Governance:

The fragmentation of political parties has contributed to frequent changes in government and a lack of continuity in policy-making. This has undermined the effectiveness of governance and eroded public trust in political institutions.

Constitutional Manipulation

Political elites in Pakistan have often manipulated constitutional provisions to consolidate power and undermine democratic governance. This manipulation has taken various forms, including the use of constitutional amendments to centralize power and the dismissal of elected governments.

8th Amendment (1985): The 8th Amendment, introduced during General Zia-ul-Haq's regime, granted the president the power to dissolve the National Assembly and dismiss elected governments. This provision was used repeatedly to destabilize democratic governments, including the dismissal of Prime Minister Benazir Bhutto's government in 1990 and Prime Minister Nawaz Sharif's government in 1993.

17th Amendment (2003):

The 17th Amendment, introduced during General Pervez Musharraf's regime, legitimized his coup and allowed him to retain dual roles as president and

army chief. It also granted the president sweeping powers, including the ability to dissolve the National Assembly.

Constitutional Crises:

The manipulation of constitutional provisions has led to frequent constitutional crises, undermining the stability of democratic governance. For example, the dismissal of Prime Minister Yousaf Raza Gillani in 2012 over contempt of court charges created a political vacuum and heightened tensions between the judiciary and the executive.

Weak Institutions

The weakness of state institutions, including the judiciary, legislature, and executive, has been a major factor contributing to political instability in Pakistan. Institutional inefficiencies, such as corruption, lack of accountability, and bureaucratic ineptitude, have undermined the effectiveness of democratic governance.

Corruption:

Corruption is pervasive in Pakistan's political and bureaucratic systems, eroding public trust in state institutions. High-profile corruption cases, such as the Panama Papers scandal involving Prime Minister Nawaz Sharif, have highlighted the extent of the problem.

Lack of Accountability:

The lack of accountability mechanisms has allowed political elites to act with impunity, further undermining the rule of law. For example, the National Accountability Bureau (NAB), which is tasked with investigating corruption, has been criticized for being selective in its prosecutions and influenced by political considerations.

Bureaucratic Inefficiency:

Pakistan's bureaucracy is often characterized by inefficiency, red tape, and a lack of transparency. This has hindered the effective implementation of policies and the delivery of public services, contributing to public dissatisfaction and political instability.

Judicial Overreach:

While the judiciary has played a key role in promoting accountability, its overreach into political matters has created tensions with other branches of government. For example, the judiciary's

intervention in the disqualification of Prime Minister Nawaz Sharif was seen by some as an overstep of its constitutional mandate.

Impact on Democratic Governance

The combination of fragmented political parties, constitutional manipulation, and weak institutions has had a profound impact on Pakistan's democratic governance. Key consequences include:

Frequent Changes in Government: Political instability has led to frequent changes in government, with no single party or coalition able to complete its term in office. This has created a lack of continuity in policy-making and hindered long-term development.

Erosion of Public Trust:

The inability of political institutions to deliver effective governance has eroded public trust in democracy. This has created a vacuum that has often been filled by non-democratic forces, such as the military.

Economic Instability:

Political instability has also contributed to economic instability, with frequent changes in government leading to inconsistent economic policies and a lack of investor confidence.

5. Democratic Resilience

Pakistan, in spite of facing enormous challenges ranging from military intervention, instability of political system and institutional incapability, had remarkably shown resilience in its democratic path. The restoration of civilian rule, the involvement of civil society, and the process of constitutional reform in place to further democratic governance, is evidence of this resilience. Conferring on Pakistan, the following section details what are the major contributing factors of Pakistan's democratic resilience.

Restoration of Civilian Rule

The second point is the transition of Pakistan from civilian rule to democratic rule in 2008 when General Pervez Musharraf stepped down as the army chief. It was a result of a mix of internal and external pressures and the resilience of democratic institutions as well as the civil society.

End of Military Rule:

Musharraf's resignation in 2008 ended nearly a decade of military rule and paved the way for the

restoration of democratic governance. This transition was facilitated by a combination of factors, including domestic political pressure, international scrutiny, and the military's recognition of the need to restore civilian rule.

2008 Elections:

The general elections held in 2008 were widely regarded as free and fair, marking a significant step towards democratic renewal. The elections resulted in the formation of a coalition government led by the Pakistan Peoples Party (PPP), which prioritized democratic reforms and the restoration of constitutional order.

Civilian-Military Relations: The restoration of civilian rule also marked a shift in civilian-military relations, with the military adopting a more restrained role in politics. While the military continues to wield significant influence, the transition to civilian rule has created space for democratic institutions to function more effectively.

Civil Society Engagement

Civil society organizations, including the media, human rights groups, and grassroots movements, have played a crucial role in promoting democratic values and holding those in power accountable. Their activism has been instrumental in challenging authoritarianism and advocating for democratic reforms.

Lawyers' Movement (2007-2009): The Lawyers' Movement, which began in response to Musharraf's suspension of Chief Justice Iftikhar Chaudhry, was a landmark moment in Pakistan's democratic history. The movement brought together lawyers, civil society activists, and political parties in a united effort to restore judicial independence and the rule of law. The eventual reinstatement of Chaudhry in 2009 marked a significant victory for democratic forces.

Media Activism:

The media has emerged as a powerful force for democracy in Pakistan, playing a key role in exposing corruption, holding leaders accountable, and advocating for democratic reforms. Despite facing challenges such as censorship and intimidation, the media has remained a vocal advocate for transparency and accountability.

Human Rights Organizations:

Human rights organizations have been at the forefront of efforts to promote democratic values

and protect fundamental rights. Their work has included advocating for the rights of marginalized groups, challenging enforced disappearances, and promoting gender equality. These efforts have contributed to the strengthening of democratic norms and institutions.

Constitutional Reforms

Constitutional reforms have been a key driver of democratic resilience in Pakistan, addressing long-standing issues such as centralization of power, lack of provincial autonomy, and weak democratic institutions. The 18th Amendment (2010) and the 7th National Finance Commission (NFC) Award are two landmark reforms that have strengthened federalism and democratic governance.

18th Amendment (2010):

The 18th Amendment, passed unanimously by parliament, represents one of the most significant constitutional reforms in Pakistan's history. Key provisions of the amendment include:

Provincial Autonomy: The amendment devolved greater powers to the provinces, particularly in areas such as education, health, and agriculture. This has addressed long-standing demands for greater provincial autonomy and strengthened federalism.

Abolition of Concurrent List: The amendment abolished the Concurrent List, transferring all subjects on the list to the provinces. This has reduced the central government's control over provincial matters and empowered provincial governments.

Judicial Independence:

The amendment reformed the process for appointing judges, enhancing the independence of the judiciary and reducing executive influence over judicial appointments.

Transparency and Accountability: The amendment introduced measures to enhance transparency and accountability in governance, such as the establishment of the Council of Common Interests (CCI) to resolve inter-provincial disputes.

7th NFC Award (2010):

The 7th NFC Award, which was adopted concurrently with the 18th Amendment, represents a significant step towards fiscal federalism. Key features of the award include:

Resource Distribution: The award increased the share of provincial governments in federal resources, addressing long-standing grievances over resource allocation.

Inclusive Process:

The award was the result of a consensus-based process involving all provinces, reflecting a commitment to inclusive and participatory decision-making.

Impact of Reforms: The 18th Amendment and the 7th NFC Award have contributed to greater political stability, improved governance, and strengthened democratic institutions. However, their implementation has faced challenges, including resistance from federal authorities and inter-provincial coordination issues.

Democratic Resilience in Action

Pakistan's democratic resilience is also evident in its ability to withstand external and internal pressures, including political crises, economic challenges, and security threats. Key examples include:

Peaceful Transitions of Power: Since 2008, Pakistan has witnessed several peaceful transitions of power through democratic elections, including the 2013 and 2018 general elections. These transitions have reinforced the legitimacy of democratic institutions and processes.

Judicial Activism:

The judiciary has played a key role in promoting democratic resilience, particularly through its activism in cases involving corruption, human rights, and constitutional violations. For example, the Supreme Court's disqualification of Prime Minister Nawaz Sharif in 2017 over corruption allegations highlighted the judiciary's role in promoting accountability.

Civil Society Mobilization: Civil society organizations have continued to mobilize in support

of democratic values, particularly in response to challenges such as military interventions, censorship, and human rights violations. Their activism has been instrumental in safeguarding democratic norms and institutions.

6. Pakistan: Amendments to the Judicial System (2024)

In Pakistan, 2024 saw several judicial reforms aimed at improving the efficiency and accessibility of the judiciary. Some key amendments included:

Judicial Appointments: A new procedure for the appointment of judges to the Supreme Court and High Courts was introduced, emphasizing merit, seniority, and transparency. The process now requires broader consultation, including input from various legal bodies, and aims to reduce political influence over judicial appointments.

Judicial Accountability Bill:

An amendment was introduced to strengthen the Judicial Accountability Bill, empowering the Judicial Commission to act against judges involved in misconduct or corruption. This move was aimed at boosting public trust in the judiciary by ensuring accountability within the system.

Digital Courts and E-Filing:

As part of the broader judicial reforms, Pakistan also passed amendments to allow digital courts for faster case hearings and e-filing to reduce the burden on physical courtrooms. This was a step toward modernizing the judiciary and making justice more accessible to the public.

In the following table, the results of the analysis of Pakistan's constitutional dynamics, political instability, military interventions, judicial activism and democratic resilience are summarized.

Theme	Key Findings	Implications
Constitutional Evolution	<ul style="list-style-type: none"> - Pakistan has experienced multiple constitutions (1956, 1962, 1973). - The 1973 Constitution is the most inclusive but has faced challenges like military interventions and controversial amendments. - The 18th Amendment (2010) strengthened federalism and provincial autonomy. 	<ul style="list-style-type: none"> - Need for a balanced constitutional framework. - Address challenges in implementing reforms like the 18th Amendment. - Ensure provincial autonomy and resource allocation.
Military Interventions	<ul style="list-style-type: none"> - Four major coups (1958, 1977, 1999, 2007) disrupted democratic governance. - Military regimes centralized power, weakened 	<ul style="list-style-type: none"> - Strengthen civilian control over the military. - Build robust democratic institutions

Theme	Key Findings	Implications
Judicial Activism	democratic institutions, and eroded the rule of law. to withstand military influence.	
	- Judiciary often legitimized coups using the "doctrine of necessity."	- Ensure judiciary independence and accountability.
	- Judiciary has played a dual role: legitimizing military rule and promoting democracy.	- Strengthen judicial independence and accountability.
	- Lawyers' Movement (2007-2009) restored judicial independence.	- Avoid judicial overreach and politicization.
Political Instability	- Landmark rulings (e.g., disqualification of Nawaz Sharif) have been both praised and criticized.	- Ensure judiciary acts as a guardian of the constitution, not a political actor.
	- Fragmentation of political parties hinders effective governance.	- Strengthen political parties and promote internal democracy.
	- Constitutional manipulation (e.g., 8th Amendment) undermines democracy.	- Reform constitutional provisions to prevent manipulation.
Democratic Resilience	- Weak institutions (corruption, lack of accountability) erode public trust.	- Build strong, transparent, and accountable institutions.
	- Restoration of civilian rule in 2008 marked a turning point.	- Support civil society engagement and media freedom.
	- Civil society (e.g., media, human rights groups) promotes democratic values.	- Continue constitutional reforms to strengthen federalism and provincial autonomy.
	- Constitutional reforms (18th Amendment, 7th NFC Award) strengthened federalism and governance.	- Ensure peaceful transitions of power and uphold democratic norms.

The table highlights the complex interplay of factors shaping Pakistan's constitutional dynamics and democratic trajectory. Addressing these challenges requires comprehensive reforms, including strengthening institutions, promoting civilian control over the military, and ensuring judicial independence. By building on its democratic resilience, Pakistan can achieve a more stable and inclusive democratic system.

Discussion

Analysis of Pakistan's constitutional dynamics, political instability, military interventions, the trend of judicial activism and democratic resilience convincingly portrays a complex interplay of historical, institutional and political factors of which have left their marks on Pakistan's form of governance and the path it could (or could not) be following towards democratic destination. The implications for Pakistan's future from this discussion about the key findings and their strengths and weaknesses for establishing a sound governance and a democratization framework are discussed.

Constitutional Evolution: A Reflection of Political Struggles The evolution of the Pakistan's constitutional is rooted in the country's struggle to strike a balance between democratic governance and demands of an often divided, diverse society. The

first attempt at a parliamentary system was made with the 1956 Constitution adoption, which, however, marked its short life and gave attention to the problem of political instability and lack of the political elites' consensus. The Constitution of 1962 during military rule centralized power in the executive but did not satisfy the demands for democratic participation. Although the 1973 Constitution included progressive provisions, it remained bedeviled by military interventions and loaded amendments.

The 18th Amendment (2010) is a large step toward making federalism and the democratic governance stronger. It, however, faced resource allocation and inter-provincial coordination challenges in its implementation. All of this emphasizes the criticality for constitutional framework as well balanced as it can be, promoting different interests as long as it functions as a yardstick of good governance. Military Interventions: A Recurring Challenge Repeatedly, Military interventions have characterized Pakistan's political peripatetic with serious effect on its constitutional order and democratic governance. Under military regimes such as General Zia-ul-Haq and General Pervez Musharraf, power has concentrated in military's hands, hampering democratic institutions, which led toward authoritarian culture. Thus, the doctrine of

necessity has further eroded the credibility and independence of the judiciary by legitimizing the role in the judiciary in legitimizing military coups. Civilian rule was restored in 2008, but politics and security policies remain controlled by the military. To address this challenge will involve commitment to civilian control of the military and the development of effective democratic institutions unlikely to be subject to the external or internal pressures sufficient to undermine it.

Judicial Activism: A Double-Edged Sword In Pakistan's constitutional history, the judiciary has both legitimised the interruption of the democratic process and helped foster democracy. The Lawyers' Movement (2007–2009) was a major step toward independence of the judiciary, but its historical involvement in legitimizing military coups damaged its credibility. Some landmark rulings including that of the disqualification of Prime Minister Nawaz Sharif in 2017 have established the role of the judiciary in promoting accountability. On the other hand, however, these rulings have been criticized for being politically motivated and therefore possibly representing judicial overreach and politicization of the judiciary. To regain the public's trust and the role of the judiciary as a guardian of the constitution, it is crucial to enhance the independence and accountability of the judiciary.

Political Instability: A Persistent Obstacle The challenge of political instability has been a perennial problem for Pakistan's constitutional order resulting from the fragmentation of political parties, manipulation of the constitution and weak institutions. Political parties have also been weak, hampering effective governance, while manipulation of constitution proviso has undermined democratic norm, for example through 8th Amendment (1985). In addition, public trust in democratic governance has been further eroded by weak institutions, characterized by corruption and a lack of accountability. Comprehensive reforms are needed to address such challenges, including strengthening political parties, greater transparency and accountability, and strong institutions that can deliver good governance.

Democratic Resilience: A Beacon of Hope All these challenges have not prevented Pakistan from continuing to be resilient in its journey into democracy. However, the restoration of civilian rule in 2008, the active participation of the civil society, the implementation of the constitutional reforms through 18th Amendment and 7th NFC Award has

helped strengthening democratic governance. Media and human rights groups along with civil society organizations have been very crucial in propelling the democratic values and calling those holding power to account. Cases of corruption and human rights violations have also further boosted democratic resilience through the judiciary's activism. But that resilience cannot be sustained until political instability, institutional weaknesses and military influence are addressed.

Implications for the Future

The findings of this analysis have several implications for Pakistan's future:

1. To meet the needs of Pakistan's diverse interests without effective governance, Pakistan requires a balanced constitutional framework. It also involves addressing the issues of provincial autonomy, resource allocation and powers distribution between institutions, amongst others.
2. The democratic governance depends on the civilian control over the military. Thus, the buildings of robust democratic institutions are needed so that they can balance external and internal pressures.
3. Necessary for restoration of public trust and judgment's role as a guardian of the constitution is strengthening of judicial independence and accountability.
4. This is because the challenges of political instability and poor governance must be addressed by building strong, transparent and accountable institutions.
5. Promoting democratic values and making public powers accountable are performed by civil society organizations. Nothing is further from where the resilience of democracy is exaggerated than the measurement of participation in elections.

Conclusion

Pakistan's constitutional dynamics reflect the country's complex political, social, and economic realities. While challenges such as military interventions, political instability, and institutional weaknesses persist, the resilience of democratic institutions and the potential for constitutional reforms offer hope for the future. By addressing these challenges and building on its strengths, Pakistan can achieve a more stable, inclusive, and democratic system. The journey towards strengthening governance and democracy is fraught with challenges, but it is also filled with opportunities for renewal and progress.

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