

CONSTITUTIONAL GUARANTEES OF JUDICIAL INDEPENDENCE: LESSONS FROM COMMON LAW JURISDICTIONS

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ABSTRACT

Judicial independence is a cornerstone of constitutional government because rights to constitutional protection and limits on public power rely on judicial power that is free from undue political influences in deciding matters. In common law countries, there are various constitutional provisions for achieving this independence. The United Kingdom is heavily dependent on the statutory guarantees and the constitutional conventions, while in Canada it is both textual and structural protections which are entrenched; in Australia it is the textual separation of the judicial powers, backed up by a raft of judicial doctrines and conventions; in India, it is a range of statutory and judicial doctrines on the independence of institutions and appointments; in South Africa, it is judicial independence entrenched in a transformative constitutional framework; and in Pakistan, it is a dense constitutional architecture whose efficacy is not guaranteed. This article looks at these jurisdictions' main constitutional safeguards for the independence of the judiciary in a comparative manner. It addresses issues of security of tenure, compensation, judicial nominations, administrative independence, institutional distance, disciplinary systems and constitutional review. The article concludes that it is impossible to provide complete protection for the independence of the judiciary. Instead, the successful independence of all political institutions requires multiple reinforcing protections against their dominance or control over judicial appointments, tenure, funding, administration and discipline. The experience of the other countries examined also shows that although there is formal constitutional protection, there can also be considerable de facto vulnerability. The article concludes that the common law jurisdictions offer a valuable, but incomplete institutional model, with judicial independence most likely to be durable when constitutional guarantees are complemented by clear appointments procedures, secure tenure, adequate financial protection, judicial governance that is internally autonomous, and judicial governance that is accountable.

Keywords: Judicial Independence; Constitutional Guarantees; Common Law; Separation of Powers; Judicial Appointments; Security of Tenure; Rule of Law; Constitutional Democracy.

1. INTRODUCTION

Judicial independence is a special and unique aspect of constitutional democracy. Even if the judgments of the court affect a Government, a legislature, a political party, a public officer or a strong private interest, it is expected that the court will act in accordance with law in adjudicating the dispute between the parties. The legitimacy of judicial power thus depends on the perception and reality of judges to be able to rule on cases without fear, favour, political directives and without any institutional backlash. Thus, it is not possible to simply defend the independence of judges as there is a constitutional instrument to guarantee the rule of law (Hassan et al., 2023a).

Today, the concept of judicial independence has come to transcend the more traditional concept which equates independence with the absence of any direct interference by the executive branch of the government. The modern understanding of the concept of independence recognizes a variety of aspects of independence: independence of decision, independence of the institution, financial independence, independence of administration and independence of other judges or internal judicial authorities. The difference is significant because there can be a judiciary that is insulated from outside pressures but not from in-house pressures (Burchardt, 2025).

Common law jurisdictions offer especially rich comparative fodder in the sense that they have historical parallels on matters of judicial precedent, professional legal culture, the separation of adjudication and executive administration, and judicial review. But there are significant disparities in their constitutional systems. The United Kingdom has no single document of written constitution and there are means of protecting judicial independence in the form of law, convention, institutional practice and political constitutionalism. Canada has a set of constitutional principles and doctrine on question of tenure, financial security and administrative independence. The structural separation of the judicial power provided by Chapter III of the Constitution is an important element in Australia's protection. A unique system has been evolved in India in which there is strong linkage

between judicial independence and other constitutional features such as the doctrine of basic structure and judicial control over appointments. The independence of the judiciary is constitutionally guaranteed in South Africa's post-apartheid Constitution. Although Pakistan has inherited the tradition of the common law, it has been plagued by conflicts between judicial independence, executive power, military force, parliamentary supremacy and judicial accountability (Shafiq et al., 2022a).

In recent years, the relative significance of these has grown, as judicial independence is one of the key themes of the discussion on democratic backsliding. The attempts in today's world to diminish the role of courts do not necessarily involve overtly seeking to abolish judicial autonomy. Most often, they function by altering of appointment methods, judicial councils, court composition, disciplinary systems, administrative models or constitutional amendments. The danger is that a constitutional system can have the trappings of judicial independence and change the institutional context in which it is exercised (Martinico & Galera, 2024a). The latter is a general issue, which is well brought out by the research conducted on Pakistan recently. Judicial independence can be a constitutional reality or it can be an institutional assertion for the courts to expand its powers. The challenge is to maintain a level of judicial autonomy and the compatibility of judicial power to constitutional democracy and institutional accountability (Martinico & Galera, 2024a).

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This article will investigate these matters by comparison of the common law jurisdictions. It contends that constitutional guarantees are most effective, if they are not just isolated legal guarantees, but rather an integrated institutional

framework. While the independence of judges needs to be safeguarded against political interference, there should also be accountable governance of the institutions.

2. Constitutional Meaning and Dimensions of Judicial Independence

The notions of the independence of judges are often stated in general terms in the Constitution but have more complex meaning in legal terms. It is about judges ruling on cases based on the law and not on the whims of a government, political parties, private interests, media hype and other factors. This freedom of decision, in turn, is guaranteed by the constitution (Berggren & Gutmann, 2020).

There are two dimensions which are of particular importance: individual independence and institutional independence. Independence of the individual judge relates to the individual circumstances. It has elements of security of tenure, freedom from arbitrary removal, reasonable compensation and freedom from unreasonable interference. Independence of the institutions is related to independence of the judiciary as an organ of government. It includes the institutional capacity of courts to exercise their constitutional function, judicial administration, allocation of cases, court management, disciplinary systems and appointments of judges (Gisbert, 2022).

There is a further analytical tool, that of the difference between *de jure* independence and *de facto* independence. *De jure* independence is formal, constitutional and statutory. The *de facto* concept of independence is one of the actual freedom of judges as guaranteed by those protections. The two dimensions can go disagree. A constitution can provide for security of holding or financial security and maintain a high level of political (actor) influence in appointments or promotions. On the other hand, a jurisdiction could have quite modest textually guaranteed judicial independence but strong conventions and professional norms that support this independence (Hayo & Voigt, 2023).

The United Kingdom is an example of this difference. Historically, judicial independence was

safeguarded by means of such things as security of judicial salaries and tenure during good behavior. Judicial independence was later put into law with the passage of the Constitutional Reform Act 2005, which not only separated the Supreme Court but also changed the relationship between the judiciary and the executive, and created a Judicial Appointments Commission. However, the British system of government remains the one of parliamentary supremacy and not constitutional supremacy of courts (Delaney, 2016).

Australia is a unique example of an alternative model. The independence of judges is closely related to the separation of the judicial power in the constitution. Structural implications of Chapter III of the Australian Constitution have arisen in terms of the institutional role of the courts, and how legislatures and executives can interfere with those courts. Recent work in the scholarship has focused on how this structural protection may not exclusively be a separation of powers, and may also help to secure individual liberty (Lacey, 2003).

Another unique Canadian recipe is offered. Judicial independence is recognized in Canadian constitutional law in a number of ways, most importantly by three guarantees: security of tenure, financial security and institutional independence. These guarantees are aimed at keeping judges away from politics as well as holding them accountable using constitutional mechanisms and public arguments (Verma & Devi, 2025).

These examples show that there is no judicial supremacy, just judicial independence. An independent judiciary is not necessarily unlimited by the constitution, cannot necessarily be appealed from, is not necessarily disciplined by peers, and cannot necessarily be held accountable by the public. The whole point is not to give judges rule above the constitution, but to make sure that other branches will not be coercive upon adjudication.

Thus, the most convincing view is of a constitutionally secure independence, but one which is accountable to institutions. The adjudicative function - independence, the

legitimacy of judicial power - accountability. Don't think of the two principles as being mutually exclusive.

3. Security of Tenure and Financial Independence

Security of tenure is one of the ancient constitutional guarantees of independence of the judiciary. This is simply because judges often are not able to render fair and impartial decisions when it is possible for a government to take them off the bench simply because they don't like what they have to say. Security of tenure thus not only ensures the safety of the judges but also the litigants, constitutional rights and the integrity of adjudication.

This principle has generally been acknowledged in the common law jurisdictions in various constitutional ways. The judiciary of superior courts in Canada is sufficiently secure, and can only be removed by processes under constitutional safeguards. The concept is related to the general understanding that judicial independence can only be protected from arbitrary government interference (Hassan et al., 2023b).

There are close links between financial security and tenure. For a government which cannot dismiss judges directly, it might still "dismiss" them through other means, such as salary, pension, resources of the courts, or other administrative spending. Financial independence is therefore a secondary form of decisional independence protection. Financial security is one of the key elements in the judicial independence as per the Canadian constitutional framework (Shafiq et al., 2022b).

The case of Australia is another example. The structural safeguard of judicial authority in Chapter III has ramifications on how a judge exercises his/her constitutional role. The institutional insulation of the judicial power is a barrier to Parliament and the executive turning the courts into government administration tools (Gerangelos, 2002a).

The UK has more of a reliance on statutory protection and constitutional practice. The historical evolution of judicial tenure and the subsequent Constitutional Reform Act 2005,

shows how judges' power has gradually shifted from being linked to executive and legislative offices to one that is clearly distinguished from them. That said, much current British literature places stress on the fact that the independence of the judiciary is within a constitutional structure in which parliament is sovereign (Graham, 2024).

There must be judicial accountability to balance this security of tenure. The complete unaccountability of tenure could allow for serious misdeeds to go unchecked! This means that the right constitutional remedy is neither immunity nor protected tenure, but protected tenure and independent disciplinary systems. Resources for removal should include clear justifications, safeguards against partisan retribution and due process.

This is the same with regard to remuneration. A reduction in the salary of judges in particular or of judges in general, due to unpopular decisions, is not compatible with the independence of the judge. While general fiscal measures taken in connection with the public service may be constitutionally acceptable, it is a different situation if fiscal pressure is specifically directed at the financial pressures.

The comparative lesson is, thus, that the protection of tenure and remuneration needs to be secured by constitutional or quasi-constitutional mechanisms, which are not easily at the disposal of a transitory party in power. Such protections, if largely left to the ordinary political discretion, render the independence of judges especially vulnerable.

4. Judicial Appointments as a Constitutional Guarantee

If there are institutional mechanisms that are more politically sensitive than others which impinge on judicial independence, judicial appointments may be among the more sensitive ones. The power to make appointments gives a potential power to shape the future makeup of the judiciary. Consequently, there are three competing aims that a constitutional system must balance: independence of the judges, democratic legitimacy and competence.

The United Kingdom is an important step towards institutionalized appointments. With the passing of the Constitutional Reform Act 2005, the number of discretionary powers of the Lord Chancellor was significantly curtailed and a new body, the Judicial Appointments Commission for England and Wales, was set up. It prioritizes merit and professional qualifications, and includes institutional mechanisms to limit the direct influence of politics (Rosa, 2023).

The relationship between Canada and its advisors is an 'advisory model' in which the executive has an appointment role, but the process has seen a growing number of independent assessment mechanisms. In the Supreme Court, the appointment process involves the following: Eligibility criteria, Advisory participation, and Structured assessment. However, the Canadian example shows that political engagement in appointments does not necessarily compromise independence as long as there are clear procedures and criteria of appointments and that appointments are based on professional qualifications (Shafiq et al., 2022c).

Australia offers an alternative scenario as a contrast. The appointments of judges to federal courts have a vestige of executive authority. This system has raised the issue over and over again whether the system in which the executive has a wide discretion in appointments is free from politics. As the Australian experience demonstrates, not all judges appoint judges, but how judges are appointed can be a telling indicator of whether they will have the confidence of the public that they are being appointed for legal skills and judicial suitability and not because of partisan loyalty (Kiefel, 2023).

Perhaps no other common law model is as unique as the one in India. The collegium system markedly boosts the power of judges in relation to the selection of judges to the upper judiciary. It is justified on the basis of protection of independence of Judiciary from interference by the executive. However, the system has come under criticism for its lack of transparency, lack of accountability and potential for institutional self-reproduction. The discussion is not just about judicial and executive control, but about balancing

the institutions so that they are independent and legitimate (Sarma, 2025a).

There is another model from the south of Africa. In the countries with a transformative constitutional framework, the appointment of judges is done through a commission, which includes various constituencies in the constitution. The study of the institutions in Southern Africa indicates that, in recent years, the judicial appointment commissions have been more influenced and determined by the need for 'accountability, representation and transparency', as opposed to independence alone (Brett, 2023).

The experience of Pakistan shows the challenges of balancing all the above considerations. The Eighteenth and Nineteenth Amendments to the Constitution brought the constitutional changes to the system of appointments of judges, which included greater role of institutions and the establishment of the Judicial Commission of Pakistan. However, the history of the Constitution shows that conflicts over appointments may escalate into a general conflict over institutional power between Parliament and the judiciary (Ali, 2021).

What is clear from the comparisons is that there is no perfect solution either with exclusive executive control or with exclusive judicial control. Plural participation, clarity on who can participate, professional screening, reasoned recommendations and protection from one-sided political domination are needed for a more resilient model.

5. Administrative Autonomy, Judicial Councils, and Internal Independence

Judicial independence from the executive and legislature is just one aspect of judicial autonomy. The Judiciary can start off formally independent, but high internal power is vested in a chief justice, a judicial council, a judicial appointments committee or a court administration. Internal judicial independence is thus increasingly seen as a unique institutional issue within the constitutional analysis of the present day.

The internal independence means that individual judges are shielded from "inappropriate" influences of other judges or other judicial

administrators. Case assignments, bench composition, case transfers, promotions, disciplinary actions, and other administrative assignments can impact judicial decisions. The independence of Judges could be undermined if these issues are subject to arbitrary exercise of discretion (Rafiq, 2022).

This is especially a problem in a hierarchical judiciary. Senior judges can have a lot of administrative power and it can be concentrated into a handful of hands which can lead to inducing lower court judges to align with institutional preferences. Constitutional guarantees should therefore not only cover the relationship between the judiciary and the political branches, but also the distribution of powers of the judiciary.

Judicial councils can serve as a mechanism for the administration, discipline, appointments and requirements of professional conduct. However, the comparative literature warns about the possibility of taking independence for granted in judicial councils. They're very important in terms of their makeup. The danger of a council dominated by the executive is that of political control; the danger of a council that is led only by judges is that it might become less accountable; and the danger of a council that is dominated by political parties is that it becomes a partisan game of judicial governance (Adjolohoun, 2023).

As seen in the Canadian model, governance in the judiciary plays an important role. The Canadian Judicial Council has an important role in the administration of justice, the education of judges and professional standards. Today's institutional practice underscores the need for both judicial independence and public accountability to work hand-in-hand and not as conflicting goals (Devlin et al., n.d.).

There is a parallel learning point in New Zealand. It has constitutional structures that promote judicial independence, and provides for complaints about judicial conduct and for public accountability. The key is that accountability mechanisms must be free from political reprisals and focus on professional behavior and not on the judges' opinions (Contini & Mohr, 2007).

The adjudicative function is further protected by the Australian constitutional structure which prevents legislative interference with it. Recent scholarship has been directed towards situations where Parliament seeks to influence the processes of law in pending cases, and the autonomy of decision-making as part of the separation of powers (Gerangelos, 2002b).

Case allocation, adjudicative decision making, judicial administration and professional governance are all aspects of the business of the court and should be guaranteed as such in the constitution. The executive can only be taken out of the equation of removal of judges, but that does not mean independence can be achieved. The organization of courts needs to be based in itself on the principles of legality, transparency and reasoned discretion.

6. Constitutional Review and Judicial Independence in India and Pakistan

The connection between independence of judges and constitutional review is clearly seen in India and Pakistan. In both systems, judges have expounded strong doctrines that allow them to strike down legislative and constitutional measures. Thus, independence of judges is not only related to the protection of the rights of individuals but also to the survival of the constitutional system.

The basic structure doctrine is particularly important development in India. The doctrine allows the Supreme Court to strike down constitutional amendments which do away with the very essence of the constitutional order. Comparative work in recent years has focused on the evolution of this power in relation to other powers in other countries, such as Colombia and Malaysia, and strategic judicial behavior has played a key role in expanding constitutional review (Tommasini, 2024).

As seen in the Indian context, the independence of the Judiciary can have both protective and controversial aspects. On the other hand, judges can be a limiting factor on political majorities if they are empowered to stop such majorities from netting themselves out of office. Judicial power over constitutional amendments can be a limiting

factor on political majorities, on the one hand, and can be a factor that prevents political majorities from netting themselves out of office, on the other hand. However, a broad jurisdiction of the judiciary also calls into question the democratic legitimacy and institutional boundaries of the power of judges (Sarma, 2025b). An even more complicated case is that of Pakistan. Judicial independence has always been seen by the superior judiciary as a constitutional principle very much related to the principle of separation of powers, fundamental rights and the constitutional structure. The court has also been able to make itself heard in the last few decades to review the constitutional amendments itself. This is part of a larger trend of an increasing judicial power in Pakistan, as noted in scholarship on the country (Nelson, 2023).

The Pakistani experience is a proof that independence without accountability of judiciary is impossible. Judges have to have independence if they have the power to strike down laws and amendments to the constitution. However, the more constitutional they are, the more necessary it is to have transparent procedures, reasoned judgements, institutional restraint and mechanisms of professional accountability.

This issue is relevant especially during periods of political instability in a system. The judiciary could be asked to settle conflicts which have a direct impact on government, elections and parliamentary majorities or on constitutional changes. Their decisions can, thus, be read as being political even if judges are guided by legal reasoning. Thus, independence of judges goes beyond institutional guarantees and calls for a judicial discipline in performing its constitutional functions.

Comparative constitutional research of my own on the rights of the environment also provides examples of the importance of the courts as constitutional actors. Judicial interpretation of constitutional guarantees of environmental rights and their subsequent implementation and enforcement is often a critical step in the recognition and enforcement of environmental rights, especially when a constitutional text is not explicit in enumerating a broad environmental

right. This constitutional adjudication reflects a general link between judicial independence and constitutional rights' effective development (Bashir et al., 2025).

The key takeaway from India and Pakistan is that judicial independence is essential to any substantive constitutional review, but such constitutional review should have its roots in institutional legitimacy. A judiciary system alone with the power to strike down government actions is not enough to ensure constitutional democracy. It should exercise that power in a uniform legal approach and under a logical structure of the constitution.

7. Democratic Backsliding and the Vulnerability of Constitutional Guarantees

A major current threat to judicial independence is democratic backsliding. The classic notion of judicial capture is one of an authoritarian government having direct influence over judges. In most cases, the erosion of democracy in modern times is quite subtle. Governments can maintain constitutional text about judicial independence and evolve the institutional arrangements over time with a gradual erosion of judicial independence.

For instance, court-packing. Although a court's composition could be expanded for reasons of better adjudication, increasing the number of judges on the court with a certain intent to achieve a particular ideological and/or political result could be formally constitutional, but it is clearly constitutionally suspect. The same considerations also apply to these instances of governments' reforming judicial councils, changing the criteria for appointments, reducing the term of office or establishing new constitution courts where appointments are politically determined.

In this regard, recent comparative research on illiberalism reveals how international and supranational courts have the potential to help domestic courts counter such developments at times. However, there are limits to the external legal protection. Judicial independence continues to be dependent on domestic political institutions and culture of the legal profession (Martinico & Galera, 2024b).

There is an instructive example in India of a more gradual transformation. But recent scholarship challenges whether the Supreme Court has been as antagonistic as may have been believed in a number of cases even if it has not been directly "captured". Thus, even in the absence of removal and replacement of judges, judicial independence could be undermined via behavioural and institutional mechanisms (Sarma, 2025c).

An example of the same, but different, kind is available in Pakistan. In the study of judicial populism, it has been shown that the growing political activity of the superior judiciary, in the wake of the Lawyers' Movement, resulted in not only anti-authoritarianism, but also in a major judicial presence on areas that are usually linked to elected institutions. The case is a good example of how judges can be independent and how judges can expand themselves (Yam, 2025).

There have been arguments about court curbing in the United Kingdom as well. Comparative research of recent years shows that proposals being made from 2015-2024' look to restrict the common law powers of the Courts and judicial review in various ways. While some reforms were made, ultimately the extent of change was relatively modest, highlighting the strong resistance afforded by parliamentary and constitutional norms but also confirming that the independence of the judiciary cannot be taken for granted in even long-standing democratic systems (Schwartz, 2025).

The main threat is the possibility of formalization of the guarantees provided in the constitution. A constitution can still assert the independence of the judiciary and political figures can influence it by seemingly innocuous constitutional changes. It is for this reason that the contemporary concept of judicial independence should be subject to an institutional and empirical analysis and not just to a textual analysis of the Constitution.

It is not appropriate from a constitutional perspective to stop all the reform of the judiciary. There needs to be a reform, modernization, accountability and adaption of Courts. The key is that reforms need to be driven by over-arching constitutional goals and not be crafted in a way that is intended to achieve specific political results.

Hence, institutional change must be transparent, consultative, professional and reviewable by the constitution.

8. Comparative Lessons for Common Law Constitutional Design

As the comparison shows, the common law jurisdictions have found various institutional solutions; there are however some common principles.

Firstly, there is a need for constitutional protection of the independence of the judiciary. The extent of protection might be different based on the constitutional system, but ordinary political wishes shouldn't dictate the judges' adjudicative power. Canada and Australia offer especially good examples of constitutional protection and the United Kingdom of constitutional and statutory protection and constitutional convention.

Second, appointments of judges should be pluralistic and transparent. The comparative evidence does not bear out either of the extremes of complete political control or complete self-selection of judges. The likelihood of capture can be minimized through appointment commissions, independent screening procedures, professional standards and the involvement of a variety of constitutional actors. Meanwhile, the structures of appointment bodies need to be structured to prevent them being tools for professional self-interest (Larsson et al., 2023).

Third, there is no security of tenure or financial security. The judges should not be afraid of any removal, demotion or financial punishment in case of their decisions displeasing political authorities. These should be so well established that a temporary change of government has no easy way of changing them.

Fourth, more should be said in the constitution about the independence of internal judges. The current discussion has shifted from the interference by the executive power. Judicial behaviour can be determined to a large extent by case allocation, the formation of benches, transfers, promotion and administrative power. Therefore, the discretion of the institutions must be regulated by laid down rules and not be vested in a single office for unlimited time.

Fifth, judicial accountability must go hand in hand with the independence of the judiciary. Misconduct, conflicts of interest, incapacity and ethics violations need to be addressed by the courts. These should be independent, transparent and fair processes. From the perspective of accountability for judicial misbehavior, political retaliation for unpopular judgments and accountability are distinct concepts.

Sixth, there must be institutional restraint which accompanies constitutional review. An independent judiciary is required to have the authority to strike down unconstitutional actions by the government, but it should do so in a legal way and within constitutionally understandable boundaries. Independence of the judiciary doesn't mean unlimited power of the judiciary.

Lastly, there is a constitutional culture, and it has just as important a role as the constitutional text. The judges, the lawyers, the political actors, the civil society and the public have to accept their constitutional role and thus the durability of judicial independence. Formal safeguards may over time be rendered useless if courts are perceived by political actors as 'normal' political institutions.

Networked judicial independence can thus serve as a summarizing concept for the comparative lesson. There is no single safeguard that should be relied upon for judicial autonomy. Rather, the appointment process, term of office, economic conditions, administrative independence, disciplinary measures, constitutional control and ethical standards should be mutually reinforcing. Other institutional safeguards should continue to be in place to prevent total political capture if one fails.

To the common law countries as they are going through the process of constitutional transformation, this is a valuable model. The object should not be to make a mechanical copy of the structure of the institutions in the United Kingdom, Canada, Australia, India or South Africa. The political and constitutional contexts in which each jurisdiction has developed are unique. The principles which can be borrowed are those of dispersed appointment authority, secure tenure, financial protection, transparent judicial

governance, independent discipline and meaningful constitutional review.

9. Conclusion

Constitutional guarantees of judicial independence are among the most important institutional safeguards of constitutional democracy. They are not designed to create judicial privilege but to make sure that constitutional rights, legal restraints on government and the administration of justice generally are not subject to inappropriate political interference.

Judicial independence can manifest itself in different ways in constitutional law. Statutory protection, institutional reform, constitutional convention and parliamentary norms are the key elements of the United Kingdom's protection. The combination of constitutional principles and the strong protections of tenure, financial security and institutional autonomy in Canada. Structural separation of the powers of the judiciary is a significant source of protection in Australia. India has evolved strong judicial principles safeguarding the constitution and independence of the judiciary. South Africa has in its Constitution a mixture of appointments and entrenchment in a transformative constitutional system. Pakistan is a perfect example of the precarious position and significance of judicial independence in the politically disputed constitutional framework.

Several conclusions follow. First, there must be formal constitutional guarantees but it is not enough. The actual independence of courts is conditioned upon institutional arrangements which are used for the implementation of the constitutional guarantees. Second, the appointments of judges are one of the most critical points of weakness and need to be done in a transparent and pluralistic manner. Thirdly, judges are subject to no direct or indirect political pressure thanks to security of tenure and financial independence. Fourth, there is a need for a stronger focus on the independence of individual judges, as allowing too much administrative independence can in itself affect the independence of individual judges. Fifth: Accountability and independence should not be

viewed as competing principles in the constitution.

These findings are supported by the recent study of "democratic backsliding" in the contemporary world. Judicial independence can be undermined without an actual removal of the judiciary system. A few changes to the methods of appointment, composition and disciplinary rules, administrative powers or constitutional jurisdictions can change an independent judiciary into a one subject to political control over time. The best answer is thus a constitutional structure with diffused and checks and balances of institutional power.

There is no one common law universal model of judicial independence. It has instead its main contribution in a set of principles for institutions, which have been formulated in various constitutional contexts. The key take-away is that judges should have independence from being subjected to inappropriate interference but also accountability to ensure that they remain a legitimate institution of democracy. Constitutionally protected, institutionalized and publicly accountable independence of the judiciary should thus be the constitutional goal, rather than judicial supremacy or political control. Based on the comparative experience, for Pakistan in particular, one could argue that the future of constitutional change should not only be an issue of 'who makes the appointments' but also of how. The overall institutional context of tenure, pay, bench formation and judicial administration, disciplinary measures, constitutional review etc., should be taken together. Judicial independence can only become a lasting reality if approached in this way, as a part of a comprehensive set of measures.

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