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## **Constitutional Dynamics and Judicial Autonomy in South Asia: A Comparative Study of Pakistan and its Neighbors**

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### **Abstract**

Constitution as supreme law of land and foundational document, outlines the fundamental principle, structure and power of a government. Judiciary derives its power and jurisdiction from the constitution. Constitutional dynamics play a critical role in shaping the judiciary's role, power and function. In this research article we examine, that how constitutional dynamics influence the judicial autonomy in South Asia, with special focus on Pakistan and India. This study focuses on the influence that constitutional amendments have on judicial appointments, jurisdiction, independence in judiciary and the emerging role of the judiciary in the two countries. The research takes into account landmark constitutional verdicts, Eighteenth and Twenty-Sixth Amendments to the Constitution in Pakistan and India's basic structure doctrine with Three Judges Cases, respectively-which defined the independence of the judiciary. The study also delves into historical intervention by the military into Pakistan's judicial structure and its implications for democratic governance, in contrast with India, whose judiciary has maintained relative autonomy with continued challenges in striking a balance with powers of the executive and legislature. By taking comparative approaches, the effectiveness of judicial reform and the work of constitutional courts in safeguarding democratic principles are studied. From the findings, the discourse on judicial independence, constitutionalism, and governance could be pushed further in South Asia through recommendations in enhancing judicial transparency and institutional integrity of both countries.

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**Keywords:** Judicial independence, Indian judiciary, Separation of power, Constitutional amendments, Basic structure doctrine

## 1. Introduction

In the federal state, the constitution is the defining feature of federal polity that stipulates the federal structure, functions, powers, realm and limits of federal institutions while establishing a federal balance between the federal organs by prescribing their constitutional roles. The majority of the countries have constitutional democracies in place that embrace some form of human rights, rule of law, judicial review, limited government and separation of powers (Kumar & Tripathi, 2021). The independence of the judiciary is an essential characteristic of a successful federation. An independent judiciary's function is to mediate legal and constitutional conflicts between state institutions, federal units, and businesses of the federation (Falki & Shahzad, 2022). The judiciary plays a key role in carrying out constitutional legislation and ideals, protecting individual liberties, and establishing the rule of law. Each country's legal legacy is shaped by historical, political, and legal contexts that may influence its ideas on judicial autonomy, constitutionalism, and judicialize (Qureshi, 2025). Such a balance is not an abstract theoretical concept but rather the foundation on which rests the rule of law, democratic governance, and protection of fundamental rights. Judicial autonomy as the cornerstone of constitutional democracy gives courts the ability to act independently free from external pressure and incompetence to uphold the constitution. Being politically and institutionally quite complex, this generally poses challenges in South Asia, moving from political interference to systemic weaknesses (Krishna et al., 2024).

Among the South Asian states, the cases of Pakistan and India are mystifying examples of judicial independence. These two nations with their common law systems originating from Britain are good examples for the analysis of how judiciaries interpret the law and protect the Constitution in different political systems (Gondal & Khalid, 2024). The perceptions of judicial independence have been put into the constitutions of both states, which, however, produce varied effects under their political surroundings and consequently mechanisms prevailing in the institutions as well as social forces. This variance marks how constitutional provisions relate to political conditions in influencing judicial independence.

Pakistan's journey on the way to her judiciary was stormy, with some periods either marking greater strengths or other occasions that are characterized by vulnerability. The judiciary of Pakistan has always worked in context of political unsteadiness, military power and interference of

executive in Pakistani judiciary and it has consistently tried to maintain its independence and establish its authority in the governmental structure of the country (Rehman & Khan, 2022). This haphazard political influence tilted over high judicial appointments in Pakistan tremendously challenges judicial independence, public confidence, and good governance. The political interferences into the judiciary go to threaten the very character of justice, the consequences of which are rippling down the legal, political, and social terrains. For the protection of the judicial integrity, reforms focusing on independence, transparency, and accountability have become the need of the hour. An independent judicial appointment commission should be put in place, and the details of its working should be made known to increase public confidence and support for the rule of law in Pakistan (Qureshi, 2025). Political instability coupled with frequent military intervention and the controversial Doctrine of Necessity aimed at undermining judicial independence and focused this role of the neutral arbiter. Despite all these obstacles, at crucial times such as the Lawyers' Movement in 2007-2009, the judiciary has sometimes seemed like a robust actor of change for democracy. The 18th constitutional amendments rearranged the institutional landscape of the judiciary while 26th amendment is a blow to judicial independence, the rule of law, and human rights protection. These changes bring an extraordinary level of political influence over the process of judicial appointments and the judiciary's own administration. The problems with regard to the ability of the judiciary to remain independent from the forces of politics are still unsolved.

India, on the other hand, offers a relatively stable narrative of judicial independence. The Indian judiciary, supported by constitutional safeguards and a strong democratic tradition, has played a crucial role in upholding constitutional principles and checking executive overreach. The landmark cases such as *Kesavananda Bharati v. State of Kerala* (1973) introduced the Basic Structure Doctrine, ensuring that certain fundamental principles of the constitution remain inviolable. The collegium system of appointment of judges, known as three-judge cases, was developed into a series of cases, called litigation, aimed at protecting the judiciary from political interference. The college system was abolished and a committee known as the National Judicial Appointments Committee was formed under the 99th Amendment of the Constitution. With the amendments, the NJAC comprises the Chief Justice of India as chairman, the Chief Justice, two senior-most judges after the Justice Minister and two key persons selected by a committee comprising the Prime Minister, the Chief Justice of the Supreme Court and the Leader of Opposition in the Lok Sabha. Both members are elected for a term of three years. The objective of the Commission as stated in the Act is to

provide a meaningful role to the Judiciary, the executive and eminent persons to present their view points and make the participants accountable, while also introducing

transparency in the selection process(Shukla, 2015). The 4<sup>th</sup> judge case filed against NJAC and Following the decision of the Fourth Judges case, NJAC was abolished and the Collegium System was the only option left(ALAM, 2023). No single process for the judicial appointments can be considered the best mechanism because each has advantages and disadvantages. Despite this, the Collegium System has proven to be an effective tool for judicial appointments that ensures judicial independence. However, the struggle between the judiciary and the executive to ensure the jurisdiction of the judiciary, transparency in appointments and protection of judicial independence is still debated.

The present study tries to explore constitutional dynamics and judicial practices in Pakistan and India and probes the details of judicial autonomy in South Asia. This analysis attempts to answer questions about the extent to which the interaction of constitutional provisions and political, institutional, and societal factors can be a source of influence to judicial independence and to present challenges and opportunities for that objective in Pakistan and India. This comparative study not only establishes the divergent paths of Pakistan and India but also points toward the critical intervention of the judiciary in ensuring a democratic system, constitutional rule in the region.

### **Objectives**

1. To analyze the historical and constitutional evolution of judicial autonomy in South Asia, particularly in Pakistan and India.
2. To examine the role of judiciary in safeguarding democratic principles and constitutionalism in the two countries.
3. To identify challenges to judicial independence in Pakistan and India.
4. To provide comparative insights into the constitutional and political frameworks influencing judicial autonomy.

### **Research Question**

1. What is historical and constitutional evaluation of judicial autonomy in South Asia, particularly in Pakistan and India?
2. What is the role of judiciary in safeguarding democratic principles and constitutionalism in two countries?
3. What are the challenges to judicial in safeguarding democratic principles and constitutionalism in the two countries?
4. What are the challenges to judicial independence in Pakistan and India?

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## **Problem Statement**

Judicial autonomy is very crucial for maintaining the rule of law and ensuring justice with a level playing field. In South Asia, however, political interference, institutional weaknesses, and constitutional ambiguities have been significant factors that undermine judicial independence. Pakistan and India, having the same legal heritage, give a contrasting picture of how judicial autonomy can change under different pressures of politics and the constitution. The divergence provokes critical questions regarding the enabling and disabling factors for judicial independence in these two countries.

## **Research Gap**

Although there is rich literature on judicial autonomy in South Asia, most studies either focus on individual countries or make broad regional overviews. Comparative studies of Pakistan and India, especially in the context of constitutional dynamics, are quite limited. More importantly, research on the most recent amendments to the Constitution of Pakistan, such as the 26th Amendment, and their impact on judicial autonomy is really scarce. This article fills this gap by discussing the interplay between constitutional frameworks, political influences, and judicial practices in these two nations.

## **Significance**

Understanding judicial autonomy in Pakistan and India is important toward understanding the general dynamics of constitutionalism and democracy in South Asia. Research findings will inform policymakers, legal practitioners, and academics about what structural and political reforms are needed for the strengthening of judicial independence toward enhanced democratic governance in the region.

## **2. Literature Review**

A literature review serves as the foundation for any research study by providing an in-depth analysis of existing scholarship, identifying gaps in knowledge, and offering a theoretical framework for further investigation. In the context of constitutional dynamics and judicial autonomy, this review plays a crucial role in contextualizing the historical and political developments that have shaped judicial independence in South Asia. By critically evaluating previous research, it helps scholars understand key debates, trends, and unresolved issues within the field. It also helps to better hone the research questions and approaches, and ensures that a new investigation will have something additional to offer to the conversation. The literature review demonstrates the implications of constitutional reforms and political interventions on the functioning of judiciary in the case of Pakistan

and India, a reflection of this exercise in its model of judicial autonomy. It serves not only to inform legal scholars and policymakers about the importance of judicial accountability but also to establish a yardstick for comparative analysis and assess recommendations to strengthen judicial institutions.

Judicial independence is critical for democracy, and the independence of the judiciary is a prerequisite for the institution of constitutionalism and rule of law. The literature points out how the relationship between judicial independence and amendments varied in Pakistan as compared to India. According to Jatoi & Shah (2023), political ends were behind the way political parties abused Pakistan's own constitutional amendments, particularly in relation to the Seventeenth Amendment and the LFO 2002 to curtail the judiciary. But the Eighteenth and Nineteenth Amendments altered judicial appointments, diminishing executive control and enhancing judicial (and legal) independence. Ali et al. (2021) and Siddiqui (2012) emphasize the judiciary's increasing control over appointments, drawing parallels with India's collegium system. In India, Tewari et al. (2017) note the judiciary's expanded role since the 1980s, asserting its authority over constitutional interpretation through the basic structure doctrine. Tripathi & Kumar (2022) provide a comparative analysis, highlighting the judiciary's central role in shaping constitutionalism across South Asia, where political struggles often influence judicial functions. Gondal & Khalid (2024) discuss how both countries claim judicial activism through courts asserting power in governance and policy-making, but Pakistan faces the added burdens of military rule. Riaz & Khan analyzes how the Pakistani military has influenced judicial independence at different times using amendments such as the Eighth Amendment during Zia-ul-Haq. Qureshi (2025) does not fare better as he analyses the Pakistani judiciary as being pretty low in worldwide justice indices through corruption, undue delays, and political interference while appointing judiciary members. This literature study is significant because it covers all aspects of how constitutional modifications, judicial activism, and political influence effect judicial independence in South Asia. This literature analysis provides critical insight into how the court supports the democratic governance framework by synthesizing some of the important scholarly arguments, highlighting areas of success and failure. It offers crucial insights for politicians, legal academics, and researchers to assess the efficacy of judicial reforms and the level of institutional responsibility needed. The literature is on how the judiciary has evolved over time in its role in governance and democratic consolidation, with India's judiciary becoming a paragon of constitutional authority while Pakistan struggled to defy political and military influences. Future research should be conducted to

determine the long-term effects of judicial activism, appointment mechanisms, and constitutional reforms on sustaining judicial independence and democratic governance.

## **Theoretical framework**

### **2.1 Constitutional Amendments and Judicial Autonomy in Pakistan**

In every civilized nation, the Constitution is considered to be the supreme law of the land. The judiciary exercises judicial review for being a guardian of the Constitution. To be a custodian of the Constitution, it is necessary for the judiciary to be independent. The Constitution guarantees judicial independence by providing methods of appointment, tenure, dismissal, and jurisdiction for judges (Mehmood, 2020). The procedure of amendment in the constitution differs between the federation of India and Pakistan. India proposes three methods in Article 368: a simple majority for minimal changes, a special majority for most amendments, and a special majority with ratification by at least half of the state legislatures for federal matters, showing India's decentralized federalism. In Pakistan, Article 239 mandates a uniform two-thirds majority in both the National Assembly and Senate for all amendments, and provincial assemblies play no role in this process.

The process in India is even more limited due to the Basic Structure Doctrine that prohibits Parliament from amending the Constitution's basic structure, which is not a judicial limitation in Pakistan. Such differences reflect contrasting governance dynamics between the two countries.

Pakistan's legal system was based on the common law of the UK. And, under the Government of India Act of 1935, the judiciary's independence was largely secure. As it is essential in all aspects of a state. If a state's court is independent and has separation of powers, citizens will have faith and anticipate fair trials, which is the primary goal of a socially organized modern state. Pakistan became independent in 1947 and since then, it has experienced a chain of constitutional amendments that have affected the judiciary in a positive and negative manner. The first judicial independence framework was under the Constitution of 1956 but lasted for a very short time because of political instability. The Constitution of 1962, initiated by General Ayub Khan, concentrated all power in the hands of the executive, and the judiciary, relegated to a subsidiary place, only made its scope of review very limited. An excellent example in the constitutional history of Pakistan is the 1973 Constitution, which introduces a framework as strongly balanced toward judicial independence however, it is steadily getting eroded with successive amendments. The Eighth Amendment, that came to the constitution in 1985 under General Zia-ul-Haq's regime, accorded the presidency an overwhelmingly significant number of powers

and thereby diluted judicial independence indirectly by permitting the influence of the executive arm to seep into judicial boundaries even further (Side, 2022).

The Seventeenth Amendment, approved in 2003 by General Pervez Musharraf, strengthened executive power by imposing more constraints on judicial independence (Fatima et al., 2022). However, the Eighteenth Amendment of 2010 took a step in the other direction, combining all nominations inside a Judicial Commission and boosting judicial independence. This limited executive influence and reduced power concentration while increasing judicial scrutiny (Sattar, 2012). The 26<sup>th</sup> Constitutional Amendment makes significant institutional changes in the structure and functioning of Pakistan's judicial system, particularly with respect to the Supreme Court and High Courts. It's a blow to judicial independence, the rule of law, and human rights protection (Muhammad et al., 2024).

Accretive amendments have had somewhat ambiguous effects on the judiciary. Many amendments have strengthened judicial independence step by step, but those that have also undermined it have generally expanded the executive's reach or legitimized military interventions (Badshah, 2021). That seesaw merely reflects the general struggle for power embedded in Pakistan's political and constitutional past, in which the judiciary often finds itself stuck at the crossroads, balancing competing institutional interests.

Consolidating judicial independence in Pakistan will require a comprehensive structural change to address the long-term consequences of such modifications. Structural changes would be necessary for institutional safeguards, as well as a cultural shift to emphasize the significance of accountability, transparency, and the rule of law. These problems must be addressed if Pakistan is to create a truly independent institution capable of furthering constitutional democracy and protecting fundamental rights.

## **2.2 Judicial Autonomy in India**

India's judiciary is considered the essence of democracy and very known for its independence and robustness. Amid these factors, a set of constitutional safeguards protect it from any outside interference and let it perform freely. Indian Constitution, mainly through the principles of separation of powers, provides assurance towards the independence of the judiciary vis-à-vis the executive and legislature. A landmark judgment to this effect is the articulation of the Basic Structure Doctrine by the Supreme Court in the *Kesavananda Bharati v. State of Kerala* case (Mate, 2010). It saves the Constitution from arbitrary amendments which may jeopardize its basic structure such as that of an independent judiciary (MANHAS & Kumar, 2024). The doctrine forms the basis of power of the Indian judiciary to review

and override amendments to the Constitution of India enacted by the Indian parliament. The basic structure doctrine has played a pivotal role in maintaining the balance between the legislative and judicial branches of the Indian government. On one hand, it upholds the supremacy of Parliament to amend the Constitution under Article 368, allowing flexibility and adaptability to evolving societal needs. On the other hand, it ensures that this power is not absolute, as the judiciary retains the authority to review amendments and strike down any that violate the basic structure.

In the first 23 years of the Indian Constitution's existence, the appointment of judges to the Supreme Court and High Courts was not a source of public controversy. The provisions pertaining to the appointment of judges in the Constitution of India are unambiguous: appointment is an executive duty, undertaken in consultation with the judiciary. (Jay Vinayak & Sengupta, 2020). The norm of deferring to the opinion of the Chief Justice of India is universally acknowledged, and those chosen are regarded individuals of integrity, above the hurly-burly of political machinations (Nahvi & Sharma). Judgment was an attempt at re-balancing power between legislature and judiciary which ensures an amendment to the Constitution that seeks to alter the basic structure shall fall under the scrutiny of judges.

Even at the height of the Emergency (1975-1977), the judiciary symbolized strength. Here again, a Prime Minister in the garb of a dictator, led by Indira Gandhi, had an executive, that was brazenly looking at ways and means to clip democratic freedoms, even breach constitutional boundaries. But once again, this attempt at authoritarianism was stopped short in its track. The ruling on the Habeas Corpus case of 1976 aptly epitomizes judicial resistance against declared Emergency. The period in question portrayed judicial independence from the executive and assured its importance in democratic governance.

Another salient feature contributing to enhancing autonomy in the Indian judicial system has been the collegium system of judicial appointments. Initially, judicial appointments were at the discretion of the executive, but the said practice was overridden by the Second Judges Case of 1993, which established supremacy by giving the power to the judiciary itself by forming a collegium to govern judicial appointments. This was a system in which senior judges made collective decisions on the appointment of subordinate judges; hence, it was intended to protect the judiciary from political interference. Although the system has maintained judicial independence, it has received various critiques for concerns such as a lack of openness and accountability, with some advocating for reform. Despite these complaints, the collegium system

remains an important component of India's judicial appointment strategy, showing the judiciary's autonomy in this regard.

The Three Judges Cases of 1981, 1993, and 1998 are really crucial in the development of judicial independence in India. The First Judges Case (1981) tended to tip the balance to favor executive predominance in appointing judges, with the Supreme Court declaring that the preponderant function must be retained in the executive. However, the position reversed itself in 1993 by a larger bench of the Court with the Second Judges Case, declaring that the former decision was one that needed correction, and reiterating judicial supremacy in such matters. It culminated into the collegium system. Later on, Third Judges Case, in 1998, worked out the dynamics of the collegium system to an extent so that while a decision was made, the Chief Justice of India was consulted, and a number of senior judges were involved to collectively strengthen the judgment once more again. These cases illustrate the complex and dynamic nature of judicial independence in India and reveal the tension between legal norms and institutional practices.

The judicial paths of India and Pakistan diverge consistently due to their diverse political and constitutional circumstances. India's court, backed by a robust democratic framework, institutional protections, and an engaged civil society, has done a considerably better job of preserving independence. Pakistan's court appears to be on the receiving end, attempting to assert its autonomy in the absence of coherent empowerment while confronting continual intervention from both the political system and the armed forces.

In this comparative analysis, it is significant that constitutional design, political culture, and institutional practices appear to be the determinants of judicial autonomy. The Indian model with its robust constitutional safeguards and the changing practices of the court has served as a paradigm for judicial independence, whereas the Pakistani experience serves as a lesson for the difficulties a judiciary may face in a politically unstable environment.

### **2.3 Comparative Analysis: Judicial Autonomy in Pakistan and India**

Pakistan and India, as joint inheritors of the colonial past, have a legal basis, but their judicial systems differ significantly due to diverse political, historical, and constitutional situations. India has recently been characterized by a functioning democracy, with its judiciary regarded as one of the most independent institutions in the country; in contrast, Pakistan's judicial power has fluctuated between periods of independence and subservience due to interference by politicians, armed forces, and institutional fragilities. This article examines how judicial autonomy has evolved differently in these two

nations, taking into account constitutional provisions, political culture, and institutional practices that influence judicial independence.

## **2.4 Constitutional Guarantees and Judicial Autonomy**

Judicial independence is thus firmly entrenched in the Indian Constitution by the provisions that are emphatic in terms of the separation of powers. The landmark cases, for instance, *Kesavan Anda Bharati v. State of Kerala* (1973), have consolidated judicial independence through the articulation of the Basic Structure Doctrine that prevents arbitrary amendments to the Constitution from eroding constitutional principles. The judiciary has always held its power over democracy even during the tumultuous years of the Emergency in 1975-1977. It is also a great example how judicial activism has protected fundamental rights through the Habeas Corpus case during the very same Emergency period. These kinds of examples indicate an independent judiciary which can definitely present its power even during the time of political crisis.

Conversely, military interventions and political instability have often undermined Pakistan's constitutional safeguards. The Constitution of 1973 had initially provided the framework for judicial independence, but successive constitutional amendments, especially those enacted during periods of military rule (such as the Eighth Amendment under Zia-ul-Haq and the Seventeenth Amendment under Musharraf), had eroded the powers of the judiciary. Repeated invocation of the Doctrine of Necessity since *State v. Dosso* in 1958 further eroded judicial authority because it legitimized military coups and undermined the role of the judiciary as a constitutional arbiter. Despite attempts at reform, such as the Eighteenth Amendment (2010) that sought to establish a more independent judicial appointment process, the overall trajectory of Pakistan's judiciary has been marred by external influences, particularly from the military and political elites.

## **2.5 Judicial Appointment Systems: Collegium vs. Executive Influence**

Significant among the various features of Indian judicial autonomy is the collegium system for judicial appointments, which emerged from the stage of evolution concerning the Three Judges Cases. In *The First Judges Case* (1981), it was accepted that judicial appointments would be further regulated by the government. The position taken there was reversed by *The Second Judges Case* (1993), holding that power on matters of judicial appointments lay with the judiciary, thereby giving way to the collegiate system. This system ensures that judicial appointments are made by a collective decision-making body of senior judges, designed to shield the judiciary from executive interference. Though this system has criticized the

lack of transparency and accountability, it still played a highly important role for the preservation of judicial independence in India.

Unlike Pakistan, political influence in judicial appointment in Bangladesh has been of great magnitude particularly at the hands of civilian regimes and military authority. A landmark judgment like the case of Al-Jihad Trust in 1996 curbed executive discretion on judicial appointments, but political influence persists in such appointments. The Pakistan judiciary was made to cave in more often than not due to military-led constitutional orders, such as the Provisional Constitutional Order that compromised judicial independence. The Musharraf regime would sack judges refusing to dance around the arm of the military authority; hence judges refusing to sign the PCO are but some examples. Moreover, this erosion of judicial autonomy has further resulted from the creation of a compliance culture towards perpetuating the politics involved in appointment.

## **2.5 Political influence and military interference**

In such a setting where strong constitutional safeguards coincide with a tradition of judicial activism and a stable democratic environment, the Indian judiciary has almost been immunized from political interference. Not even the infamous Emergency period saw many instances of political influence that the judiciary was not able to overcome in the process of keeping its independence and assertive role in checking executive power. This autonomy is supported by a vibrant civil society that monitors and ensures the judiciary, and which nurtures judicial independence.

The judiciary has been interfered with by political and military powers in Pakistan quite frequently. Military dominance over the political scenario of Pakistan resulted in a diminution of judicial independence. The higher judiciary's verdicts on constitutional petitions were in favour of the military ruler and declared legitimised, with the exception of Asma Jilani's case, in which General Yahya Khan was declared usurper while out of office. In such cases, and throughout Pakistan's history, the role of the courts has been devalued. The Judiciary has legitimized military rulers through the notion of state necessity and Kelsen's Law-Grundnorm theory. Legitimizing armed coups and military administrations via constitutional arguments has never benefited the state or its citizens. Citizens, as in previous violent coups, have no basic rights to safeguard their lawful core rights through courts because the PCOs have already evicted the courts' authorities. By permitting General Zia-ul-Haq and General Pervez Musharraf to change Pakistan's Constitution, the function of the court grew increasingly problematic, with the exception of the essential framework of the constitutions. The court rulings on these significant constitutional issues are interesting for studying

the constitutional evolution and the role of the judiciary in defending its independence in Pakistan.(Badshah, 2021).

The Doctrine of Necessity provided the justification for the control exercised by the military over the judiciary, thereby making it sometimes the period where the decisions made by the judiciary were influenced or even dictated by military authorities. Judicial credibility and independence have also been affected by political interference, including judicial appointments and judicial ruling undermining. Notable scandals, such as the Arsalan Iftikhar case in 2012, further tainted the image of the judiciary, highlighting vulnerabilities to internal malpractice as well as external pressure. The judiciary in Pakistan has historically struggled with maintaining its autonomy against political and military forces. Since before Pakistan's first constitution in 1956, courts have often legitimized military takeovers. The Federal Court reversed a ruling against the dissolution of the first Constituent Assembly in 1954, and in 1958, the Supreme Court upheld martial law, allowing General Ayub Khan to introduce a new constitution in 1962.

Subsequent military rulers continued to dismantle democratic institutions. General Yahya Khan abrogated the 1962 Constitution, dissolved courts' jurisdiction, and issued the Legal Framework Order (LFO) to conduct elections in 1970. However, in 1972, the Supreme Court declared his rule illegal, and a new constitution was introduced in 1973. Despite this, judicial autonomy remained weak as the Supreme Court upheld military rule again in 1977 under General Zia-ul-Haq. He suspended the constitution, introduced Islamization reforms, and amended the constitution extensively, creating a parallel judicial system with the Federal Shariat Court.

Following Zia's death in 1988, the courts initially opposed his dissolution of assemblies but later avoided interference in subsequent political crises. In 1999, General Pervez Musharraf took control through another military coup. The Supreme Court, in *Zafar Ali Shah v. Pervez Musharraf* (PLD 2000 SC 869), legitimized his rule, allowing constitutional amendments under the LFO 2002. The judiciary was further undermined as judges were forced to take new oaths under the Provisional Constitution Order (PCO) 1999, leading to the resignation of key judges.

The Supreme Court continued to approve Musharraf's consolidation of power, including his dual role as President and Army Chief, despite constitutional violations. The Seventeenth Amendment further solidified his authority, sidelining democratic governance. The judiciary's subjugation to military rule has raised concerns about judicial independence and constitutional integrity, with critics arguing that only elected representatives should have the power to amend or uphold the constitution.

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## 2.6 Institutional Strength and Reforms

A strong institutional framework has enabled the judiciary of India by a vibrant legal profession, an active bar, and a judiciary keenly committed to upholding the rule of law. Judicial overreach has always been debated in India since its democratization, with continued debates concerning the balance of judicial and the executive. But for all such institutional resilience strength, India's judiciary remains relatively more independent.

On the other side, Pakistan's judiciary does not have systemically weak features due to which it has failed to work purely out of its autonomous terms. The political influence, hegemony of the military, and procedural reforms have left a zero-capacity depth in judicial institutions. Though reform attempts like Judicial Commission under the Eighteenth Amendment in 2010 have attempted to offer more autonomous setups for judicial independence, the structures of the judiciary are still susceptible to external influences. Even after discounting institutional weaknesses and political interference, the credibility gap remains huge for the judiciary as a whole. Indeed, in terms of autonomy, judicial systems in India and Pakistan contrast sharply with each other, reflecting the wider political environments in which they operate. With the strength of robust constitutional safeguards to its advantage, combined with the progressive system of judicial appointments and institutional resilience, India's judiciary has been able to maintain a greater degree of independence. Pakistani judicial has been formed through foreign factors of military interventions and political manipulation which time and again have undermined judicial independence. Comparative analysis shows the effectiveness of deepening judicial independence by stable democracy along with institutional safeguards and a political culture. Where India sets an example of judicial autonomy, the Pakistan experience stands out as that of a judiciary struggling to make headway amidst turbulent politics, in which reforms often remain hostage to powerful structures.

## 3. Research Methodology

This qualitative research study explores and analyzes the dynamics of judicial autonomy in Pakistan and India, focusing on constitutional frameworks, judicial practices, and key legal interventions in both countries. The research approach is of a mainly qualitative nature due to the necessity for deep analyses of legal texts, court judgments, and constitutional principles as mainstay aspects in understanding judicial independence. This is a comparative study, so qualitative techniques are necessary, allowing these two nations' judicial systems to be exposed in depth so that understanding can be highlighted in the shared legal history, different constitutional histories, and diverse judicial autonomy.

Data is compiled from sources consisting of a balance between primary sources like constitutional documents and landmark judgment details, the historical review with relevant jurisprudence provided to understand changes taking place during various periods concerning Pakistan and India, and various documents that might highlight what has emerged due to independent evolution of a higher judiciary with institutions. Secondary sources include academic articles, books, policy reports, and legal commentaries, which provide contextual analysis and interpretation of legal principles and judicial practices in the two countries. These sources aid in the evaluation of academic discourse in this respect, and to a large extent, the understanding of the larger socio-political dynamics shaping judicial autonomy.

### **3.1 Primary Data Sources**

#### **1. Constitutional Provisions:**

The constitutions of Pakistan and India lay down legal frameworks for judicial independence, hence their analysis will form the base of understanding what constitutional safeguards have been placed or what constraints lie on judicial power. These define the role that the judiciary serves, its interaction with the other two organs, mechanisms for judicial appointment and removal, and much more. The above comparison helps point out similarities or differences in both countries' judicial frameworks.

#### **2. Landmark Judgments of Indian Courts:**

Some landmark judgments explain how judicial independence has been conceptualized and ensured by the court. For the country, this includes India through cases such as *Kesavananda Bharati v. State of Kerala* in 1973, and the three judges' cases for the years of 1981, 1993, and 1998. Judgments like *State v. Dosso* (1958), *Al-Jihad Trust Case* (1996), and the *Judges' Case* would provide a solid basis to understand the response of the judiciary in Pakistan to political and military influences. These judgments are very precious for an understanding of how courts handled the challenge to judicial independence and how judicial autonomy has shifted in each of these contexts.

#### **3. Legal Documents:**

Legal documents, which might be statutes, amendments, and judicial orders, are also primary sources of data. These contain the legislation and judicial decisions that have, in one way or another, impacted the independence of the judiciary in both countries. They demonstrate the way legal frameworks evolved to either assist or hinder judicial autonomy.

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## **3.2 Sources of Secondary Data**

### **1. Academic journals and books on judicial independence, constitutional law, and comparative legal studies.**

These texts provide a scrutiny of judicial autonomy in Pakistan and India, focusing on historical, legal, and political considerations regarding reasons shaped into judicial independence for each nation. They bring about the scheme and further theoretical or empirical similarities between Pakistan and India's judicial systems.

### **2. Reports and Policy Papers:**

Reports prepared by think tanks, government and international agencies carry voluminous details regarding the existing scenario regarding judicial independence in Pakistan and India. The reports very often highlight that political influence and the over-reach of the executive are challenges to judicial independence. It often also focuses on the modifications institutionalized. Such reports, in addition, contain empirical information on the practical working of the judiciary, thus providing a concrete aspect to the abstract concepts that can be found within academic literature.

### **3. Legal Commentaries and Case Analyses:**

Commentaries and analyses of leading cases further improve secondary data available because it provides an elaborative interpretation and assessment of legal principles and judgments related to the definition of judicial independence. That is only by which constitutional provisions and the judgment of court may be understandable in practical life.

## **3.3 Comparative Analysis**

One central aspect of this research is comparative analysis to observe the similarities and differences between Pakistan and India in terms of judicial systems. Such a method permits a nuanced observation of how these two countries, despite sharing the same colonial legal heritage, have taken different paths towards distinct judicial practices and institutional frameworks. The comparative approach also facilitates the identification of key factors—such as political culture, institutional design, and historical contexts—that have influenced judicial autonomy in each country. By analyzing both countries side by side, the study aims to uncover patterns and divergences in the development of judicial independence, offering insights into the broader dynamics of constitutional law and governance in South Asia.

## **3.4 Justifications for Methodology**

### **1. Qualitative Approach:**

The research approach is well suited for this study because the qualitative methods provide for the study of very subtle legal issues to be very detailed and profound. Since the principle of judicial autonomy

combines elements both of legal principles and political factors, it creates room for the use of qualitative methods that allow interpretation of complex texts, case law, and constitutional provisions in the socio-political environment of each country. The very distinct details of legal reasoning and landmark judgments as well as the effect they create on judicial practice can be understood well through qualitative research.

## **2. Primaries:**

Constitutions, significant judgments, and texts of the law are what form the ground of the study as they essentially shape the legal foundation of perceiving judicial autonomy. These primaries directly relate to research questions and permit in-depth studies into the legal institutions of the judiciaries within both Pakistan and India. Analysis on these sources comprises a strong, reliable foundation in order to understand judicial independence in each country.

## **3. Secondary Data:**

Besides the primary data, there are articles from journals and books along with policy reports, which give secondary data that adds more depth and analysis. This will give an expert's interpretation and assessment of judicial autonomy while adding socio-political context in broader insights into judicial independence. Secondary sources will add more richness to the study by making it a much more expansive analysis with other people's opinions.

## **4. Comparative Analysis:**

A comparative approach would researchers ascertain the extent of differences and similarities between the judicial systems of Pakistan and India. Such an approach is quite useful in making observations about the influence that constitutional design and political culture can have on historical context in shaping judicial autonomy. By comparison of the two countries, the lessons one learns concerning institutional and political factors leading to judicial independence of a different kind could be derived as a lesson for reform in both countries. This methodology is meant to provide a thorough, comprehensive, and nuanced analysis of Pakistan and India's judicial autonomy. By combining primary legal sources with secondary literature and using a comparative method, the study will attempt to provide an intriguing and complete tour of the variables that contribute to judicial independence across South Asia.

## **4. Results**

### **1. Constitutional Frameworks:**

India's Constitution established a robust legal framework for judicial independence. There are built-in safeguards to ensure that the judiciary is not corrupted by outside influences. Since the Second Judges Case in 1993, one

major component has been the collegium method for appointing judges. This cements the precept of predominance of the judiciary in choosing its members, not letting the judicial department be controlled by those who exercise political power. In particular, the very foundation of the Basic Structure Doctrine under *Kesavananda Bharati v. State of Kerala* (1973) places constitutional amendments which seek to undermine judicial independence beyond even legislative reach. Pakistan, conversely has a constitution framed exactly to ensure judicial independence but it is practically under siege due to the country's political instability and frequent military takeovers in governance. Pakistan's judiciary is the most susceptible to executive influence. Matters like judicial appointments have seen the executive as the dominant power historically. Even the Judicial Commission created under the Eighteenth Amendment in 2010 has not adequately addressed the concerns over executive interference in the judiciary as compared to the Indian framework, which is better placed in comparison.

**Link to previous research:** Previous studies have highlighted the comparative analysis of judicial autonomy in both countries, with scholars noting the strength of India's constitutional safeguards (Bhuiyan, 2019) and contrasting them with Pakistan's fluctuating judicial independence due to political instability and military interventions (Mansoor & Ali, 2018).

2. **Political Context:** India has enjoyed relatively stable democratic governance since independence; therefore, its judiciary could remain relatively independent. The political context of India is vibrant democracy, and also separation of power among its branches makes it a fertile ground to establish judicial independence. History already shows the Indian judiciary's ability to resist the encroachment by the executive and sustain democratic principles during the period of the Emergency from 1975 to 1977. In contrast, Pakistan's political history has seen repeated military coups as well as authoritarian regime, which consistently undermines judicial independence. The judiciary in Pakistan has often had to justify a military coup in the Doctrine of Necessity, such as in *State v. Dosso* in 1958. Pakistan's military-dominated government has been so pervasive that the judiciary finds itself at once compromised between activism and political powers' deference, especially under military rule. The volatile political context in Pakistan has been an impediment to the full development of an independent judiciary in comparison to the stable and democratic political system in India.

3. **Link to previous research:** Political context has been discussed in detail in comparative studies, which emphasize how India's stable democracy has provided a conducive environment for judicial independence (Sharma, 2020), while Pakistan's political instability and military dominance have hindered its judiciary's autonomy (Jamil, 2017).

**Judicial Behavior:** The Indian judiciary has been more active in its expansionist role, especially through public interest litigation (PIL) and judicial review. This one is the only feature of the Indian legal system that permits citizen entry to take matters of public concern before the courts, which results in furnishing a role to the judiciary as guardian of basic rights. Judicial review has also been used by the Indian judiciary to check legislative and executive actions against the Constitution. Important judgments, such as the Right to Privacy case (2017), are examples of the judiciary being actively involved in protecting individual rights. In Pakistan, the judiciary has shown an inconsistent trend by sometimes being actively involved and sometimes deferring to political powers. The judiciary has often aligned itself with the executive during military rule, such as in the Judges' Case (1996) and General Pervez Musharraf's Provisional Constitutional Order in 2007. However, the judiciary of Pakistan has been quite assertive lately, as can be seen from the lawyers' movement in 2007 that led to the restoration of Chief Justice Iftikhar Muhammad Chaudhry. Despite these instances of activism, the judiciary in Pakistan still fails to be consistent in its stand.

**Link to previous research:** Studies on judicial behavior in South Asia have contrasted the proactive judicial role in India, particularly in PIL and judicial review (Bhatia, 2018; Khan, 2021), with Pakistan's more inconsistent judicial activism, which has often been subject to political pressures (Khan, 2021).

4. **Public Perception:** It's an essential issue in the matter of legitimacy as well as effectiveness within the judiciary-its public trust. The public's trust in Indian courts is also relatively higher as it has followed the constitutional principle time and again; in the last instance, Indian judiciary proved its courage during political crisis. Despite the criticism on judicial delay and inefficiency, the Indian judiciary has established a reputation for upholding fundamental rights and maintaining constitutional supremacy, which has strengthened its credibility in the eyes of the public. In contrast, Pakistan's judiciary has faced tremendous challenges in upholding public confidence, often because of the perceived judicial bias and inefficiency. The oscillation between judicial activism and deference to political powers has made judicial decisions inconsistent, and the public has lost confidence in the fairness of the courts. Another cause behind the public distrust towards the judiciary is the huge scandal of Arsalan Iftikhar in 2012 (Niaz, 2020). Nevertheless, recent events, including civil society movements that are now actively working for the judicial reforms, have seen an alteration in the public mindset towards the judiciary. Still, a huge part of the system remains challenging for the judiciary to regain its credibility.

Earlier research works on public opinion have pointed out the strengthening public trust of the Indian judiciary, particularly when

contrasted with its role in democratic values' protection (Rajagopal, 2019), whereas the Pakistani judiciary is compared to a crisis of public trust since it is now more confronted with scandals and military interventions over politics (Hussain & Habib, 2024).

## 5. Discussion

A comparative investigation of judicial independence in India and Pakistan would reveal the elements, that shape judicial independence in South Asia. Even though India and Pakistan share a colonial legal past, their growth has been distinct, with the two countries standing on different political and constitutional pedestals. Pakistan's judiciary has been more sensitive to external pressures, particularly from the administration and military. Military authority, along with political instability, has greatly damaged the judiciary's independence.

In India, judicial autonomy is more or less supported by an appropriate and comprehensive constitutional framework. The separation of powers established by the Indian Constitution, together with the collegium system of judicial nominations, guarantees that the judiciary is free of direct political meddling. The Kesavananda Bharati decision of 1973 is also a symbol of the Basic Structure Doctrine, while the court shown amazing endurance throughout the 1975–1977 Emergency. Thus, India achieved judicial independence even under the most difficult circumstances. However, the growing worry over judicial overreach, particularly in the context of PIL and executive decisions, has raised the question of whether such a balance could be improved by a more nuanced approach to judicial activism vs. restraint. The collegium, which serves as a critical check against presidential intervention in nominations, is likewise lacking in transparency in the debate over reform and accountability. Pakistan's judiciary has been more sensitive to external pressures, particularly from the administration and military. Military authority, along with political instability, has greatly damaged the judiciary's independence.

While landmark cases include the Al-Jihad Trust Case of 1996 and the establishment of the Judicial Commission in the Eighteenth Amendment of 2010, the problems of executive interference and political manipulation in the appointments process are ongoing. The recently 26<sup>th</sup> amendment in the constitution of Pakistan increase the intervention of executive in the judicial appointment. There have also been phases of activism followed by periods of deference on the part of Pakistan's judiciary, largely driven by the prevailing political climate. During military regimes, the judiciary was not allowed to function independently, and the decisions were more in favor of the ruling authorities, as reflected in the Doctrine of Necessity and the Provisional Constitutional Order (PCO). However, recent movements, such

as the lawyers' movement and judicial activism in post-Musharraf Pakistan, have revitalized the concept of judicial independence, but with continued challenges. India and Pakistan's judiciaries share common challenges concerning judicial inefficiency and public mistrust. Indian judiciary is perceived to be better trusted by the public, with its consistent record in upholding constitutional values. However, the Pakistan judiciary suffers from charges of bias, corruption, and inefficiency that are often made worse by political interference. Public trust and confidence in judicial systems must indeed be the primary and sole premise for their ongoing independence and functionality in safeguarding not only rights fundamental but democratic principles as well. Public confidence must be regained by both states under themselves by bringing in transparency within judicial appointment, accountability for misconduct, and shortening the lines in court to restore public faith.

## **6. Conclusion**

India and Pakistan have made notable advances in establishing judicial independence in their political, constitutional, and institutional frameworks. Still, several challenges remain. The judiciary in India, though more or less stable under democracy, is being accused of exercising judicial overreach, and appointments are largely opaque. In Pakistan, the judiciary has been subject to political and military interference, making its independence even more vulnerable—something that interim measures such as the Judicial Commission and the Judges' Case 1996 have failed to cure. Both countries must find the way to secure judicial independence from political interference and further strengthen institutional safeguards. Improving the collegium system in India is seen as crucial for enhancing public confidence through transparency and accountability. In Pakistan, this means, on the one hand, reducing executive influence on the process of judicial appointments and, on the other hand, ensuring greater autonomy through judicial oversight of the executive. Mutual learning could help India and Pakistan, with examples of greater separation of powers and rule of law for India and refining the role of the judiciary in governance for Pakistan. Judicial freedom is the tide that keeps afloat the constitutionally ordered democracies. For both India and Pakistan, betterment is not a mere question of some legal reforms but also development of political culture, where judicial independence can actually flourish to the enhancement of constitutional democracy and the protection of citizens' fundamental rights.

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