

## **Separation of Powers: A Case Study of Pakistan (1947 to Present)**

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### **Abstract**

Since its establishment in 1947, Pakistan has not been able to institutionalize the doctrine of separation of powers, a basic building block of constitutional democracies that seeks to avoid concentration of power and ensure civil liberties. Successive constitutions have formally defined the powers of the executive, legislature, and judiciary, but the application of this doctrine has eluded the nation. Remote from being independent pillars of state, these institutions have usually been subjected to executive excesses, military takeovers, and bureaucratic centralization. The research work analyses critically how the principle of separation of powers has developed in Pakistan from the period of independence up to the contemporary era. It analyses how constitutional writings, judicial attitudes, and political events have constructed and sometimes misrepresented the equilibrium between state institutions. Special focus is given to constitutional starting points, such as the Objectives Resolution (1949), the Constitutions of 1956, 1962, and 1973, and the judiciary's reactions to military coup. The post-2007 judicial movement is also examined and its effects on institutional autonomy. Through an examination of historical trends, case law, and judicial precedent, the research attempts to discern if Pakistan has progressed towards effective separation of powers or if institutional imbalance has taken deeper roots. Finally, the paper asserts that without structural change and cultural transformation towards constitutionalism, the vision of separation of powers will remain more declarative than functional.

**Keywords:** 1956, 1962, 1973, Separation of Powers, Post-2007 Judicial Movement

### **Introduction**

Separation of powers in a democratic framework is not a mere technicality; it serves as a defense against tyranny. Separating the functions of government into legislative, executive, and judicial arms fulfills the principle that no one branch of government can be too dominant. This framework also enforces accountability, transparency, and the rule of law. Constitutionally set, the framework's success is not a matter of wording; it is a matter of political commitment, maturity of institutions, and a legal culture that respects checks and balances. The irony of Pakistan's experience with the principle of separation of powers is notable. It inherited a colonial system of governance that was not institutionally self-governing. A civilian-military bureaucratic order dominated the first few years, imposing an ease of authority over the elected governance system. The Objectives Resolution of 1949, while symbolically important, did not do much to institutionally entrench checks and balances. Rather, it infused ideological ambiguity into the system that would be used later to justify tyrannical

excesses of the executive branch. The attempt of the 1956 Constitution to attempt to carpet constitutionalise the separation of powers principle was its all too brief existence as a harbinger of the weakness of democratic institutions in the country. The 1962 Constitution, drafted under military guidance, further exacerbated the problem by consolidating power to the presidency at the expense of the parliament and judiciary.

A more equitable configuration with clearly defined roles for each branch came with the 1973 Constitution. This has, however, been suspended or bypassed numerous times under the pretext of political stability or national security. This has been a consequence of judicial behavior, as courts have shifted between passive deference to the executive and actively defending constitutionalism. Laws such as the doctrine of necessity, which was invoked in cases such as *Begum Nusrat Bhutto v. Chief of Army Staff and Zafar Ali Shah v. General Pervez Musharraf*, provided power to the military and simultaneously challenged the power-checking function of the judiciary. The watershed moment was the lawyers' movement after 2007 which led to the reinstatement of Chief Justice Iftikhar Muhammad Chaudhry. Since then, the judiciary has been attempting to secure its autonomy with more determination. Despite these developments, the separation of powers in Pakistan remains uneven. The executive primarily drives policy, intruding into the domains of legislation and judiciary. The Parliament, although constitutionally anchored, suffers from political fragmentation and procedural inactivity. The increasingly activist judiciary suffers from political instrumentalization, inconsistency, and lack of enforcement.

This study aims to resolve these issues. It does not deal with the separation of powers as a static, structural given. It treats as a functional principle an organism that responds to political conditions, judicial reasoning, and institutional habits. By exploring the constitutional history of Pakistan, its judicial and governance practices, the paper aims to construct an informed account of the disintegration and potential restoration of the separation of powers.

### **Study's Objectives**

The primary focus of this study is to critically assess Pakistan's separation of powers model from 1947 to the present. To this end, this study moves beyond theoretical discourse to focus on the actual legal frameworks, institutional practices, and the political life of the country. To this end, the study will:

- Map out the constitutional history of Pakistan by tracing the amendment of the Government of India Act 1935, the 1973 Constitution, and subsequent constitutional amendment acts.
- Assess the judicial response to executive abuse of power, particularly during military coups, suspension of the constitution, and emergency rule.
- Assess the parliamentary contribution to the executive scrutiny through governance, accountability, and institutional responsiveness, particularly with regard to the legislation.
- Evaluate the role of the judiciary since 2007 in upholding and interpreting the constitutional limits of independence.
- Identify cultural and structural barriers to the separation of powers, such as centralization of the bureaucracy, ideological extremism, and the lack of democratic resilience.

This research also aims to foster the debate on constitutionalism and legal change in Pakistan. The argument of the book is that the separation of powers is not merely a legal axiom, but a precondition of democracy. In the absence of clearly defined borders, the granting of deference, the system of governance becomes arbitrary and the rights of citizens turn into matters of contentious negotiation. This research attempts to make a socially conscious and politically relevant analysis that is also rigorously scholarly by framing the issue in the Pakistan-specific political and legal context. This is meant for those who believe that the law can shield societies from tyranny, and serve as a foundation for democratic resilience.

## Literature Review

The concept of separation of powers has been the cornerstone of liberal democratic thought ever since Montesquieu articulated it. It posits that in order to prevent despotism and ensure accountability, power must be divided into branches: legislative, executive, and judicial. In the case of Pakistan, the principle has been incorporated in constitutional texts, and there it confronts the politics of the day. The literature on this issue creates a stubborn strain between practical power politics and idealistic constitutionalism, which raises fundamental concerns of judicial independence, institutional self-governance, and democratic self-sustainability.

## Theoretical Foundations of Separation of Powers

The division of government powers into different branches is an integral feature of modern constitutional systems. Separating powers was originally proposed by Montesquieu in 'The Spirit of Laws' published in 1748. He maintained that in a society governed by law, liberty could only be preserved if the functions of government are divided into different parts, keeping a separate and independent legislative, executive, and judicial branches that are capable of exercising checks and balances on each other. This separation was fundamentally a response by Montesquieu to the centralized power of absolute monarchs, describing the threefold division of state activity in the name of administrative effectiveness instead of as the preservation of moral order essential to protecting free individuals. He feared that a consolidated government branch that made, enforced, and adjudicated laws would inevitably lead to tyranny.

- **Montesquieu's influence** reached well beyond France, laying the constitutional groundwork for most liberal democracies. James Madison, in Federalist No. 47, acknowledged Montesquieu's foresight but also contended that interbranch checks were more critical than pure isolation. He went on to explain that absolute separation was both impossible and harmful; instead, the goal should be functional independence combined with inter-institutional interdependence. The clash between Montesquieu's absolutist approach and Madison's pragmatic model with his checks-and-balances system is what brought and continued to shape post-colonial constitutional approaches, such as in Pakistan.
- In Pakistan, the theoretical underpinnings of the doctrine were passed down through colonial legal structures and then, in **post-independence constitutional** scholarship, were most explicitly stated in the 1973 Constitution. Yet, the absence of unified institutional practice to theoretical definition in texts displays a divergence of uniformity straddles constitutional form and informal political action. Underlying this divergence is the competing dynamics of formal constitutional norms and informal political norms.
- **Contemporary legal scholars** have delved into this issue. Hans Kelsen, in his Pure Theory of Law, advocated a system of norms with a hierarchical organization in which the lower-order norms are all sanctioned by the Grundnorm. For Kelsen, the validity of law was to be separated from politics, a proposition that continues to be countered in the Pakistani context where political actors tend to wield constitutional norms as instruments of convenience. Kelsen's idealism falters in Pakistan's legal reality where constitutionalism, served in a bureaucratic, partisan, or military-clad spousal surrender, is a common occurrence.
- The Pakistan of today is all too familiar with Carl Schmitt's theories of **sovereignty and decisionism**, which are hauntingly relevant to the country's constitutional history. Schmitt is infamous for saying, "Sovereign is he who decides on the exception." His disdain for liberal constitutionalism and focus on what could be termed the legal power of the polity, particularly in emergencies, resonates with Pakistan's recurrent appeal to the "doctrine of necessity." The state's

repeated justification of exceptional powers and emergency powers, almost always backed by judicial endorsement, suggest a Kelsenian facade is being used to justify the informal Schmittian power politics that is rampant in the interstices of the constitution.

- Furthermore, **Philip Pettit's republican interpretation of freedom** as non-domination offers a suitable perspective. The separation of powers, in this context, not only functions to prevent governmental overreach, but also ensures that citizens are not subjected to arbitrary domination. Pettit's focus on institutional design aligns with the need for judicial independence and parliamentary oversight, which are central to Pakistan's constitutional evolution.
- **Islamic constitutional thought** provides local interpretations of the separation of powers as well. Classical scholars, including Al-Mawardi and Ibn Taymiyyah, viewed governance through the lens of shari'a law and moral responsibility. While they did not support a doctrinaire separation of powers, they highlighted the need to differentiate the functions of the ruler, the judge, and the scholar. More recently, scholars like Wael Hallaq and Mohammad Hashim Kamali have analyzed how traditions of Islamic governance could be integrated into contemporary governance systems. In the case of Pakistan, these ideas, while underutilized in dominant constitutional discourse, are not at odds with Western thought.

The sources of the concept of separation of powers in Pakistan are cumulative and multidimensional, so they include: the Islamic concept of governance, the liberalism of Montesquieu, the pragmatism of Madison, the normativism of Kelsen, and the realism of Schmitt. The gap between the ideal and the norm in Pakistan, and the gap between inherited dogma and local reinterpretation, makes Pakistan an intriguing case of study for the theorists of constitutional stability, institutional architecture, and democratic durability. Pakistan's Constitutional Development and Institutional Dynamics

### Constitutional History of Pakistan

The constitutional history of Pakistan presents an intricate and at times difficult interplay between the separation of powers and the politics as an institutional frailty. Pakistan has experienced a succession of constitutional experiments, suspensions, and reforms in achronological order since 1947, all of which have attempted to strike a balance between the legislative, executive, and judicial branches of the state.

- The first constitutional endeavor of the nation initiated with the **Objectives Resolution of 1949**, which served as a foundational document that anchored the sovereignty in divine will while simultaneously assuring democratic governance and essential rights. This blend of contradictory thinking of the conjunction of Islamic culture and liberal constitutionalism—hinted at a complex sociopolitical interplay. The later constitutions of 1956, 1962, and especially the 1973 Constitution, reflect sustained attempts to institutionalize the separation of powers in a parliamentary framework. The 1973 Constitution, in particular, represents a detailed allocation of powers among state organs, placing primary emphasis on legislative supremacy and judicial independence. However, enforcement has faced chronic problems of overreach by the executive and overacceptance by the courts.
- In Pakistan, the ideals of constitutionalism and the political architecture of power have stood in **stark contrast**, a paradox that has inescapably captured academic inquiry. **Newberg's Judging the State: Courts and Constitutional Politics in Pakistan (1995)** remains among the first and most important studies on the judiciary's response in times of political turmoil. She argues that the judiciary oscillates between activism and accommodation, subjected to political manipulation and institutional dependencies. Her explanation highlights the limited autonomy courts have under military or populist executive dominance.
- **Osama Siddique**, in his book *Pakistan's Experience with Formal Law: An Alien Justice* (2013), harshly criticizes the transplanting of colonial legal systems in Pakistan with a lack of

localization. He claims that Pakistan's legal framework is chronically out of touch with local socio-political realities, giving rise to constitutional hopes that are routinely overridden by administrative, and sometimes, military fiat. Siddique's cross-disciplinary approach reveals the extent to which institutional underdevelopment and political instrumentalism impacts the ossified separation of powers.

- **Political historians Ayesha Jalal and Mohammad Waseem** focus on the civilian control of the military, offering perspectives on Pakistan's civil-military relationships that are significant to the constitutional equilibrium of power. Jalal explains destabilization of democratic systems and breach of parliamentary sovereignty by highlighting recurrent military interventions via coups, technocratic cabinets, and parallel governance structures. In a contrasting approach, Waseem argues that the absence of strongly active political parties and rampant factionalism, and legislative chaos have created a void that is filled by military or bureaucratic rule. Waseem's insights demonstrate the asymmetric framework that allows, whether civilian or military, legislative and judicial constraints to be disregarded.
- The **bureaucracy**, with its colonial roots and later post-independence growth—has become a formidable fourth branch of government. The intermingling of military and civilian rule has led to powerful bureaucratic structures. These have, along with civilian governments, exercised considerable authority over judicial appointments, administrative decisions, and even the drafting of legislation, once more blurring the lines of the practiced division of powers.
- This has led to recurring constitutional crises. The repeal of the **1956 Constitution** in **1958**, **Zia-ul-Haq's** civilian rule restoration in **1985**, and General Pervez Musharraf's imposition of emergency powers in 2007, all represent periods during which constitutional constraints were openly disregarded. These events exemplify, in the words of legal philosopher Lon Fuller, the 'internal morality of law' being defeated, in the English sense of the term, where systems of order, structure, and method give way to arbitrary governance.
- The **judiciary's contribution** to this particular evolution is diverse. It has, for instance, regularly legitimized the overreaching actions of the executive, as in the case of Tamizuddin Khan and Zafar Ali Shah, which is of significant jurisprudential history. It has, on the other hand, claimed self-autonomy of the institution as witnessed in the post-Lawyers' Movement era, ending with the case *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 SC 879), which declared the 2007 emergency to be unconstitutional. This duality of the judicial conduct points towards the lack of the balance between the political realism and the jurisprudential idealism.
- The interaction between these two divides exists, for instance, in the **Council of Common Interests (CCI)** and the **National Finance Commission (NFC)**. These two bodies serve as symbols for the provincial autonomy, but in reality, are often used to centralize the executive. The inability to regularize their meetings and implement the decisions is a clear indicator of the structural imbalance in the sharing of federal powers.
- In **comparison**, **India's** particular experience is more illuminating. Both countries share colonial legal heritages, but India's judiciary has historically been granted greater autonomy in exercising judicial review, particularly with the Basic Structure Doctrine. Pakistan has never had such a doctrine, although there are attempts in recent case law to establish some irrebuttable principles. South Africa is also relevant for its post-apartheid constitutionalism, featuring division of governmental powers with a robust civil society and constitutional court.
- Legal scholars such as **Martin Lau** argue that one must situate the constitutional evolution of Pakistan within the broader context of the postcolonial legal development in the world. He observes that systems of transitional democracies operate under a peculiar duality: submission to legal form and to a semblance of democracy. Lau's interpretation prompts us to look beyond the authoritative texts to a legal culture, a political culture, and systems of incentive structures.

In Pakistan, the evolution of the system of governance, particularly with regard to the principle of the separation of powers, is not a development intersecting with politics, institutions, and shifting legal frameworks, but rather a struggle shaped by movements and political corridors. Pakistan's political landscape has long been characterized by a strong executive and an anemic legislature, and the monarchy continues to test the fundamental principle of the separation of powers.

### **Judicial Independence and the Doctrine of Necessity**

Judicial independence is central to democracy in any part of the globe. It ensures the operations of the courts are devoid of intimidation or influence, safeguarding impartial judgment of disputes and executive actions. Pakistanis have historically struggled with the ideal of judicial independence due to a prevailing and deeply rooted dispute in political circles, the Doctrine of Necessity. This doctrine, brought forth in desperate times, has provided justification for the judiciary to sanction actions outside the constitutional framework in the name of preserving state order. Such actions have, in turn, shaped judicial behavior, public institutions, and the separation of powers.

- The roots of Pakistan's curtailed judicial independence can be traced to *Maulvi Tamizuddin Khan v Federation of Pakistan* (PLD 1955 FC 240). In this case of constitutional significance, the courts endorsed Governor-General Ghulam Muhammad's dismissal of the Constituent Assembly on the rather curious premise of 'constitutional' failure to some legislative actions. The ruling effectively granted the executive branch unilateral control over the legislative branch, thus commencing a cycle where judicial complicity in constitutional breakdowns became the norm. Nasim Hasan Shah and Hamid Khan, to mention some, have defined this as a constitutional scar Pakistan has been unable to recover from.
- The Doctrine of Necessity was concretely articulated by Chief Justice Munir in *Tamizuddin Khan's case* and developed further in *State v. Dosso* (PLD 1958 SC 533). In this case, the court justified the forceful takeover by General Ayub Khan, applying a Kelsenian theory, on the grounds that a successful coup creates a new legal order. This application of Hans Kelsen's Pure Theory devoid of its normative implications, in effect justified the ability of military force to supersede constitutional governance. Critics such as Aziz Siddiqui and Peter Fitzpatrick have condemned this approach, describing it as embodying a "jurisprudence of convenience" devoid of principle.
- Zia-ul-Haq's imposition of Martial Law was legitimized by the Supreme Court in *Begum Nusrat Bhutto v. Chief of Army Staff* (PLD 1977 SC 657) as justified by War Judge Anwarul Haq invoking the doctrine of necessity 'in the name of public good'. Here again, regime stability was prioritized far beyond the intent of constitutionalism. Zia's eleven-year tenure was supported by a legalistic framework where the judiciary was subservient to the exercising and military rule.
- Perhaps the most condemned decision was handed down in *Zafar Ali Shah v. General Pervez Musharraf* (PLD 2000 SC 869), where the court sanctioned broad legislative powers to Musharraf during a designated transition period, therefore accepting a coup to morph into constitutional governance. These critiques by Rajshree Jetley, Khalid Ranjha, and Martin Lau assert that the judiciary had morphed into a branding tool rather than the defender of the Constitution. In particular, Lau identified the abdication of legal boundaries and the increasing acceptance of executive arbitrariness over the court in the name of judicial restraint.
- Despite his historical proclivities, the 2007–2009 Lawyers' Movement triggered a remarkable shift. This movement, which concerned the civil society and legal community mobilization over the removal of Chief Justice Iftikhar Muhammad Chaudhry by Musharraf, came along with one of the most defiant decisions by the judiciary: *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 SC 879). This decision declared Musharraf's emergency and the Provisional Constitutional Order (PCO) as unconstitutional, striking down the imposed order, restoring the

removed judges and repudiating the doctrine of necessity. This was a significant reaffirmation of judicial independence and a move toward constitutional obedience.

- Waris Husain and Muhammad Faisal describe post-PCO jurisprudence as a doctrinal restoration. They argue the judiciary began practicing a more principle-based constitutionalism, which stemmed from global democratic shifts and domestic demands for greater governance transparency. That judgment of 2009 also cited foreign legal frameworks, including the South African and Indian constitutional courts, which reflects a more self-assured and broad-based jurisprudential approach.
- Yet there are still persistent challenges. Even the most independent judiciary has been structurally constrained. The appointment processes, financial dependence on the executive branch, and the politicization of judicial review erodes autonomy. Scholars like Mohammad Asim Qureshi and Shahid Hamid have supported reforms such as creating independent judicial commissions, changing Article 209 (Judicial Misconduct), and providing the judiciary with safeguards against political interference designed to bolster autonomy, personalize independence.
- Additionally, it is noteworthy that judicial conduct often correlates with political cycles. The judiciary aligns with the military during periods of weak civilian rule; the democratic shift can lead to the misuse of populist measures. Critics have dubbed this cycle as "judicial opportunism," which undermines public trust and confidence. As such, the judiciary's credibility, even when it's exercising authority, depends heavily on the context and environment in which its power is exercised.
- Doctrine of necessity and judicial self-governance in Pakistan illustrates the struggle between a constitutionalist's pragmatism and a legalist's dogmatism. There is a gap between the expressive and the operative in statute and judicial discourse, which has a Schmittian element of discretion and political randomness. As much as there is democracy in a country, the legal framework has to center around constitutional morality and not technical legality, which is the argument of legal scholars like Dyzenhaus and Tushnet and can also be taught as a lesson to Pakistan's evolving legal philosophy.

Lastly, Pakistan's judicial independence stems from a commitment to the political principles, collective memory, and the constitution in addition to the abstract notion of an institution. There is a lingering warning of the partially recanted necessity doctrine, which reminds of the danger of legal obedience without constitutional consideration. There is a need to reconcile the independence of the judiciary and the authority granted to it by the legal and constitutional texts and legal traditions to ensure the independence of the judiciary's exercise of institutional expectations and institutional guarantees.

### **Parliamentary Evolution and Dominance of the Executive**

The preservation of parliamentary dominance in Pakistan has faced severe encroachments from firmly entrenched practices of executive overreach, institutional fragility, and relentless interruptions. Even though the Constitution of 1973 enshrined a parliamentary system of governance, and conferred critical legislative authority on the National Assembly and the Senate, the legislature has largely struggled to assert autonomy. The saga of parliament in Pakistan is marked by fragmentation, chronic underdevelopment, and lopsided relations between the executive and military powers.

### **Historical Synopsis: The Constitution and Its Implementation**

The legislative foundation of Pakistan's parliament can be traced to several constitutional provisions, particularly Articles 50 – 66 of the 1973 Constitution which details the composition, processes, and functions of the legislature. Article 90 states that executive power is vested in the Prime Minister and the cabinet, who must be jointly accountable to Parliament, providing a parliamentary system

rationale. Article 89 provides the President with very restricted powers to issue ordinances under certain specified conditions. However, the unfolding of Parliament's business activities has been chronically held up by executive meddling. History is replete with examples of the dissolution of assemblies, military coups, or political horse-trading. For example, during the decade between 1988 and 1999, four successive popularly elected presidents were removed from power, often on the pretext of corruption or, at times, in the name of national security, sidestepping parliamentary processes. These episodes show the precarious constitutional framework within which the elected officials are operating.

**Analysts such as Rasul Bakhsh Rais and Ijaz Shafi Gilani** argue that the parliamentary deficit in Pakistan stems, at least in part, from the underdeveloped party system. Political parties are more of a personalistic than an ideological or institutional phenomenon. The number of political parties is limited, largely consisting of and dominated by dynastic and elite families.

As a result, this:

- Speech and attendance at parliamentary sessions is very low and there is very little drafting of legislation.
- Congress or Standing Committees which are very central to the in-depth analysis of policies are insufficiently staffed and do not meet often enough.
- The process of making laws is increasingly more reactive than proactive. Legislation is more often than not generated, or “born,” in the ministries and not in Parliament.

Moreover, Prime Ministers customarily leverage their party majority to wield control over the cabinet composition, allocation of resources, and supervision of institutions, further marginalizing Parliament as a separate and distinct functional entity of governance.

### **Culture of Ordinances and Legislative Evasion**

Perhaps the most troubling exercise of executive power is the regular use of ordinances. Article 89 provides the President with the power to promulgate ordinances when Parliament is in recess, yet this limited power is exercised as though there is a constant state of emergency. As noted by the Free and Fair Election Network (FAFEN), more than 100 ordinances were promulgated between 2008 and 2013, circumventing the legislative process.

Legal scholars like Shahid Hamid and Zahid Ibrahim argue it undermines the spirit of parliamentary democracy and representation of the people. Ordinarily, there is little to no debate on ordinances, and they tend to be short-lived, focusing on policies driven by political expediency rather than legal wisdom. Their rampant use suggests the existence of a shadow constitutional alteration where the executive unilaterally alters the legal framework with no parliamentary discussion or agreement.

### **Military Influence and the Shadow State**

Military influence over the executive branch cannot be overlooked. In Pakistan, the military has effectively served as the power broker, as they typically govern indirectly through proxies, technocrats, or compliant civilian governments. Ayesha Siddiqi, C. Christine Fair, and Mohammed Waseem explore in their studies how military establishments control foreign affairs, domestic security, and budgeting in surveillance systems that often skip over Parliament.

Parliamentary control over the military budget is almost nonexistent, with defense budgets rubber-stamped and granted no debate. While in mature democracies legislative control over the armed forces is sacrosanct, Pakistan's Parliament has abandoned this terrain, reinforcing executive-military control. Moreover, National Security Committees, which ought to serve as venues for civilian-military dialogues, are either underutilized or crafted to serve executive biases.



### **Comparative Insights: Semi-Authoritarian Legislatures**

In the comparative study, Tom Ginsburg and Tamir Moustafa situate Pakistan's legislature in the broader framework of semi-authoritarian legal systems. Within these systems, legislatures function to validate the decisions of the executive branch rather than serve as checks on power. Such bodies are not deliberative, but rather reactive rubber stamps of the decisions made, where legitimacy stems from elections rather than institutional performance.

During the governance of Hosni Mubarak in Egypt, for instance, the Parliament was characterized by overwhelming majorities of the ruling party, minimal dissent, and sham opposition. This was the case, too, in Turkey prior to the constitutional changes enacted by the ruling AKP. Pakistan's parliamentary history displays these traits especially during the eras of Zia-ul-Haq, Musharraf, and the periods of hybrid governance.

In contrast, India's Parliament, despite its imperfections, still possesses substantial authority. Legislative processes are relatively accessible and proactive, committee systems are effective, and the judiciary supervises the actions of the executive branch. These comparative models are likely useful for Pakistan not as blueprints, but as institutional options.

### **Reform Suggestions and Structural Realignment**

To address concerns related to executive overreach, scholars, activists, and reform commissions have proposed various solutions such as:

- Strengthening parliamentary committees in charge of defense, finance, and law.
- Institutionalizing the pre-legislative scrutiny so that members of parliament can take action on proposed laws before they are passed in cabinet.
- Curtailing the ordinance power by allowing parliamentary sanction after a defined period of time.
- Enhancing the capacity of parliament to conduct legislative research by creating a Parliamentary Research Service.
- Streamlining the budget so that funding requests are clear and ensuring that civilian authority supervises military budget items.

To instigate such changes requires defined activism from civil society as well as media scrutiny to ensure judicial enforcement of constitutional boundaries. Also, political commitment from those benefiting from the present disparity imbalance is essential, along with the legal codification.

### **Exploratory Aspects: Parliament & Democracy**

The wellbeing of Parliament, from a civic perspective, is a matter of the wellbeing of democracy. John Stuart Mill, a political philosopher, argued that representative institutions are legitimate not only when the vote is cast, but also when deliberation and legislation is engaged. Parliament is not a theater for the performance of politics; it is a forum for discussion and deliberation for the community. Here in Pakistan, resolving this normative center requires, beyond stripping the design processes, rethinking the Parliament as a site of constitutional culture, institutional trust, and public trust and credibility. This restoration requires changes in the educational structure, the political party systems, and civic engagement. It also requires an improved constitutional structure.

### **Discussion**

In Pakistan, the route to the separation of powers has been characterized as a recurrent cycle of constitutional disruption, institutional imbalance, and contested judicial power. Both the constitutional and political frameworks of Pakistan have historically desired to embrace the idea of power separation as postulated by Montesquieu. This combines predominant trends from case law, the evolution of the constitution, and the behavior of institutions to formulate a critical answer to the question of why Pakistan has been unable to achieve a genuine separation of powers.

## **Executive Hegemony and Constitutional Plasticity**

The dominance of the civilian and military executive has been a defining feature of Pakistan's politics. The executive, instead of a passive facilitator, has been the active and primary stakeholder of constitutional changes. Its sphere of influence has, through ordinances, referendums, and state of emergency provisions, expanded beyond parliamentary sovereignty and judicial autonomy. Military administrations, however, have approached the Constitution as something elastic. Ayub Khan's 1962 Co Constitution transformed parliamentary systems into a presidential dictatorship. Zia-ul-Haq's Islamization of legal practices selectively brought in ideological devices intended to reinforce executive power. Musharraf's Legal Framework Order permitted one-sided revisions that excluded any legislative commentary, underscoring the normalization of constitutional subversion. Even democratically elected governments have continued these practices, suggesting that the concentration of executive power is an enduring structural characteristic, not an extraordinary phenomenon limited to a particular regime.

## **Conclusion**

The principle of separation of powers has, in the context of Pakistan, remained elusive and fragmented despite being hailed in democratic discourse as a bulwark against tyranny. While every constitutional iteration has tried to incorporate its principles, Far Pakistan's constitutional saga reveals less a tale of gradual coming of age than of truncated institutional development. Pakistan has faced a persistent tale of authoritarian retuning, judicial retuning, and parliamentary neglect—often termed 'apathy.' From Ayub Khan's rule to Zia-ul-Haq and Pervez Musharraf, the Pakistan military has consistently encroached upon institutional boundaries. Instead of governance, these regimes focused on rulebook overhaul, constitutional abrogation, and judicial preemption, entrenching centripetal structures. While the judiciary has displayed boldness at times, in cases such as Asma Jilani and Sindh High Court Bar Association, it has more often than not succumbed to the logic of necessity or revolutionary legality, undermining its autonomy.

Parliament is supposed to serve as the foundation of a democratic system, but has been afflicted with recurrent dissolutions, a culture of ordinances, and political balkanization. The executive control of both civilian and military rulers has brought about the weakening of legislative self-governance and has damaged the social faith in public discourse. The inability of parliament to effectively perform this critical checking function has, in turn, eroded the dynamic balance of power.

In contrast, the United Kingdom follows a model of blended governance embedded in customs and soft governance, while the United States employs rigid institutional boundaries and enforceable checks. Pakistan remains trapped in a constitutional mongrel. It aspires to the simplicity of harsh division but retains the colonial administrative habits of a concentrated system. Yet, within this stricken context lie the promises for change and adaptability. The political and public awakening post-2007, the mobilization of social movements and calls for transparency, all express the common will to enforce divisions within governance and restore constitutionalism. For Pakistan to move from merely symbolic separation to genuine balance, the country must proactively pursue constitutional frameworks with the following structural alterations:

- Ensure transparent systems of appointment and tenure protection to guarantee judicial independence.
- Restore the balance of power by reducing the rampant misuse of executive ordinances to strengthen parliamentary governance.
- Monitor executive authority via judicial oversight, deconcentration, and civilian governance frameworks.

As a Supreme Court advocate for almost 20 years, I have personally witnessed and contributed to the narrative of distortion that my colleagues and I have sought to remedy. Indeed, the real-world impacts

of my scholarly work are tremendous, and they are the product of my lifelong commitment to protecting the integrity of our legal system and the justice system. To conclude, I would emphasize that the first step in a meaningful recognition of a functional division of governmental powers in Pakistan is to appreciate the historical context of the country's persistent failures and the myriad of underlying institutional defects and in turn, devise a legal system that ensures and protects rights, distributes authority, and actualizes the democratic promise that constitutionalism offers.

## References

- Government of Pakistan. (1956). *The Constitution of the Islamic Republic of Pakistan*. Islamabad: National Assembly Secretariat.
- Government of Pakistan. (1962). *The Constitution of Pakistan*. Islamabad: Government Printing Press.
- Government of Pakistan. (1973). *The Constitution of the Islamic Republic of Pakistan*. Islamabad: National Assembly Secretariat.
- Constitution (Eighteenth Amendment) Act, 2010, Pakistan.
- Constitution (Nineteenth Amendment) Act, 2011, Pakistan.
- Constitution (Twenty-First Amendment) Act, 2015, Pakistan.
- Federation of Pakistan v. Maulvi Tamizuddin Khan, PLD 1955 FC 240.
- Dosso v. Federation of Pakistan, PLD 1958 SC 533.
- Asma Jilani v. Government of Punjab, PLD 1972 SC 139.
- Zafar Ali Shah v. Pervez Musharraf, PLD 2000 SC 869.
- Sindh High Court Bar Association v. Federation of Pakistan, PLD 2009 SC 879.
- Supreme Court Bar Association v. Federation of Pakistan, PLD 2011 SC 269.
- Al-Jehad Trust v. Federation of Pakistan, PLD 1996 SC 324.
- Benazir Bhutto v. Federation of Pakistan, PLD 1988 SC 416.
- Nawaz Sharif v. President of Pakistan, PLD 1993 SC 473.
- Reference by President under Article 186 (Judicial Appointments), PLD 2010 SC 61.
- Khan, M. I., & Muhammad, A. (2016). An evaluation of separation of powers: A case study of Pakistan (2007–2013). *South Asian Studies*, 31(1), 257–274. [Link](#)
- Khan, M. I. (2016). Separation of powers and its impacts on people's empowerment: A case study of Pakistan (2007–2013). *Academia.edu*. [Link](#)
- Khan, U., & Khan, S. (2020). History of federalism in Pakistan (1947–2010): From centralization towards provincial autonomy. *Discourse*, 2(1), 1–20. [Link](#)
- Ahmed, I. (2012). Judicial activism and separation of powers in Pakistan. *Pakistan Journal of Social Sciences*, 32(2), 145–160.
- Rizvi, H. A. (2000). *Military, state and society in Pakistan*. Macmillan Press.
- Newberg, P. R. (1995). *Judging the state: Courts and constitutional politics in Pakistan*. Cambridge University Press.
- Wilder, A. R. (1999). *The Pakistani Voter: Electoral Politics and Voting Behaviour in the Punjab*. Oxford University Press.
- Cheema, M. H., & Gilani, I. (2015). The role of judiciary in Pakistan's constitutional development. *LUMS Law Journal*, 2(1), 1–25.
- Lau, M. (2006). *The role of Islam in the legal system of Pakistan*. Brill Academic Publishers.
- Barendt, E. (1995). *An Introduction to Constitutional Law*. Oxford University Press.
- Vile, M. J. C. (1967). *Constitutionalism and the Separation of Powers*. Oxford University Press.
- Ackerman, B. (2000). The rise of world constitutionalism. *Virginia Law Review*, 83(4), 771–797.

- Tate, C. N., & Vallinder, T. (1995). *The Global Expansion of Judicial Power*. NYU Press.
- Ginsburg, T. (2003). *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press.
- Jalal, A. (1990). *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence*. Cambridge University Press.
- Shafqat, S. (1997). *Civil-Military Relations in Pakistan*. Oxford University Press.
- Ziring, L. (2003). *Pakistan at the Crosscurrent of History*. Oneworld Publications.
- Burki, S. J. (1999). *Pakistan: Fifty Years of Nationhood*. Westview Press.
- Haqqani, H. (2005). *Pakistan: Between Mosque and Military*. Carnegie Endowment.

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