



Pakistan between Parliamentaryism and Federalism: A Judicial Activism Perspective

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ABSTRACT

The compatibility of state structure and model of governance have contributed to the consolidation of democracies in various societies. However, the case of Pakistan is different where the state organization and form of governance incompatibility have weakened the growth of democracy. This research article answers the question: How does parliamentary system of governance work under the federal state structure in Pakistan? The question has been discussed in light of AV Dicey's parliamentary governance under the unitary state. Interpretive approach under qualitative research method has been adopted for the data collected. Interviews have been conducted with various persons belonging to different fields. The manuscript argues that model of governance and state organization unlike the developed and some of the under-developed countries have been one of the obstacles in the way of successful parliamentary democracy in Pakistan. It further argues that the higher judiciary, the cornerstone of federalism, complicates parliamentaryism in Pakistan.



Introduction

The Westminster model of parliamentary governance has thrived in England for over two centuries, largely due to the unique features of its unitary system, where all powers are centralized in the government at 10 Downing Street. The Parliament, particularly the House of Commons, holds supreme legislative authority in England. Key factors such as the absence of judicial review, unwritten nature of the constitution, and unitary state structure contribute to the success of the British parliamentary system (Dicey, 1960).

On the other hand, the United States operates under a federal presidential system, which stands as another successful governance model globally. In the United States, authority is constitutionally distributed between the federal government and the individual states, creating a balance of power that ensures both national cohesion and regional autonomy. The president appoints cabinet ministers in a manner that carefully balances regional demands. Through the principle of federalism, the US system effectively counterbalances centrifugal tendencies, ensuring stability and cohesion.

In this vein, India represents a unique example of a federal-parliamentary system, where the state structure is founded on the principle of federalism, yet the governance model follows the Westminster tradition. The designers of the Indian Constitution understood the necessity of a federal structure to accommodate the country's vast diversity, encompassing multiple ethnicities, cultures, languages, and religions. Federalism is particularly well-suited for such societies, as it helps mitigate centrifugal tendencies that could threaten the state's unity. Indeed, while the Indian Constitution establishes a federal structure, it leans toward a stronger central government relative to the states. In essence, the Indian Constitution allocates certain powers that strengthen the central authority, often at the expense of the states. Scholars have described this arrangement as a "centralized federation" or a system that is federal in theory but unitary in practice (Mahajan, 2010). Therefore, I argue that a parliamentary system thrives in a unitary state like the UK, while a presidential system is better suited for a federal polity such as the United States (Haq, 1998). The argument best qualifies the case of Pakistan which goes against the above-mentioned cases of UK, the US and India.

The Case of Pakistan

Christophe Jaffrelot identified three paradoxes within Pakistan's political system: the tension between a centralizing government and centrifugal forces, the conflict between authoritarianism and democracy, and the struggle between Islamists and secular-liberal forces. I argue that there is a fourth paradox as well. By design, Pakistan is a federal state, which implies a division of powers between the federal and its units. However, its governance model follows the Westminster parliamentary system, which demands a sovereign and supreme parliament. This creates a contradiction, as federalism inherently limits the central legislature's authority. Beyond this, several other factors contribute to the weakness of Pakistan's parliament. These include the absence of true parliamentarianism within political parties, a lack of mass support (Choudhury, 1988) and public trust in elected institutions (Hussain), a dominant civil-military oligarchy, an overreaching higher judiciary, elite capture, and non-inclusive political institutions. These elements collectively undermine the supremacy of parliament in Pakistan.

Nevertheless, the state inherent structural and organizational divisions, and negotiated and shared powers between the provinces and central government in Pakistan significantly weakens the parliament in its bid of legislation. Besides, judiciary in a federal state is the custodian of the constitution, paradoxically an overambitious judiciary in the federal republic of Pakistan weakens supremacy of the parliament. Below is a discussion on the impacts of judiciary on parliamentary politics in Pakistan.

Judiciary and Parliamentary Democracy in Pakistan

One of the defining characteristics of a federal state is the presence of an autonomous and independent judiciary capable of interpreting the law and constitution. Such autonomy is essential because conflicts between the central government and federating units are inevitable in a federal

structure. Pakistan's case, however, is unique. While its federal structure necessitates an independent judiciary to adjudicate disputes between the center and provinces, on the other hand parliamentary system demands a sovereign parliament. This creates a paradox that significantly impacts democracy in Pakistan.

The judiciary in Pakistan has increasingly asserted its role within the state's power structure, particularly after the lawyers' movement in 2007 (Zaidi, 2014). This assertiveness of the judiciary also poses challenges for Pakistan's nascent parliamentary democracy. An overly active judiciary can sometimes encroach on the legislative domain, creating friction between the judiciary and parliament. This tension complicates the democratic process, as the balance of power between these institutions remains contested. While judicial independence is crucial, its assertive role can sometimes hinder the functioning of parliamentary sovereignty, reflecting the complex interplay between these pillars of governance in Pakistan.

Rising to fame and praise, the courts emerged as a formidable power rival, challenging the authority of the assembly and decision-making bodies following the lawyers' movement in 2007 (Walsh, 2013). "In a country where distinguished soldierly officers are naturally seen as illegally untouchable, the picture of ex-military leader being held accountable in a citizen court is a striking and unprecedented development" (Zaidi, 2014, p. 51).

The superior judiciary has issued numerous rulings that demonstrate their growing power and assertiveness within Pakistan's political system.

Elected government and the federal judiciary

Muhammad Wasim says that in the aftermath of March 2009, the Supreme Court of Pakistan (SCP) resumed its proactive and interventionist stance by confronting the executive and reversing popular verdicts of the Majlis-e-shoora. The court mandated a reduction in oil prices. Similarly, the Judicial code of conduct was amended to include provision mandating judges to resist any attempt to seize power unconstitutionally. Also, the contentious National reconciliation Ordinance (NRO) was declared illegal, and approximately 8,000 cases, dropped during the Musharraf's tenure, were reopened on the orders of the court. Additionally, the court's scrutiny of sensitive cases put the government on defensive, particularly, with regard to the disputing mining contracts, the National Insurance company Limited's significant losses, and contentious mining agreements.

According to Mushtaq, a scholar, the Supreme court of Pakistan (SCP) played a significant role in keeping the issue of missing persons in the spotlight. One of the interviewees added that the court stepped in to mediate a severe crisis between the military and the political leadership. The revelation that Hussain Haqqani, Pakistan ambassador to the USA, had sought assistance from the US administration against the military of Pakistan added sparked the crisis. Tensions increased further when the PML-N leadership filed a court petition challenging the ambassador's actions, seeking to capitalize on issue for political gain. The judiciary ultimately held the ambassador accountable, culminating in his dismissal and the start of treason proceedings, thereby placating the military. Nevertheless, the ambassador was permitted to stay in the USA, effectively balancing the demands of justice and political pragmatism.

Furthermore, Yousaf Raza Gilani, the reigning prime minister at the time, faced judicial scrutiny for declining to pen a letter to Swiss authorities to revisit the corruption cases against the co-chairman of the PPP, Asif Ali Zardari. Consequently, the charges of court's contempt against him led to his disqualification from holding public office, on 26 April 2012. Meanwhile, by chief

justice Iftikhar Chaudry retirement in 2013, the Supreme Court had, as Kalhan has observed, solidified its reputation as a vigorous and institutionally-responsible body.

Imad, one of the interviewees, referred to another event in this regard. He noted that it was August 2016 when the Sandeman Civil Hospital in Quetta was struck by a suicide bomber's explosion. Shortly thereafter, a commission was appointed by the Supreme Court of Pakistan to probe into the incident. The commission was also directed to submit a report on the government's performance in combating terrorism and extremism. The report of the commission dealt a devastating blow to the government's assertion that it was collaborating with the military to combat extremism and terrorism. The commission's report revealed that, aside from a minor exception, the National Action Plan that was formulated following the ruthless Army Public School attack had not achieved any significant progress in combating extremism and terrorism.

Panama leak, as observed by Kalhan, was another manifestation of the increasing activism in the Pakistani judiciary. The Panama papers revealed that Pakistani Prime Minister, Nawas Sharif, owned luxury apartments in London, which have been established through secretive offshore companies. Resultantly, he was called upon to explain and justify these apartments. The supreme court directed that he and his family be brought to trial. On July 6, 2016, the trial reached its conclusion, resulting in guilty verdicts for Nawas Sharif, his daughter, and son-in-law on charges related to secretly having apartments in London. As a consequence, they were disqualified from participating in the 2018 elections. Hence, an adventurist judiciary block the ability of an elected government to function autonomously.

The federal judiciary and supremacy of the Parliament in Pakistan

Many scholars contend that the Pakistani Judiciary is increasingly asserting its autonomy, leading to favorable consequences for the country's politics. The Supreme Court's combination of activism and populism since 2005 has resonated with the public's desire to hold the executive accountable for its corruption, abuses of power, and incompetence. This shift marks a significant departure from the earlier periods of judicial history, where the judiciary aligned with the executive against the interests of the people. Since 2005, the judiciary's alignment with the public has strengthened its role as a check on executive power, fostering greater accountability and trust in the judicial system (Waseem, 2012).

Siraj Ahmad, argued that by offering a platform to confront, remove or disbar officials guilty of corruption, preventing military coups by mediating in times of crisis, and by stimulating public engagement and discourse to advance constitutional governance, Judiciary played an instrumental role in contributing to the decline of Musharraf's rule.

Challenging the military's previously uncontested authoritarian dominance is a bold and positive move by the judiciary. Speculations suggest that if the superior Judiciary hadn't scrutinized certain actions of the military, a potential coup might have unfolded in 2010 in Pakistan. According to Sareer Wali, the court's verdicts in multiple landmark cases, such as Asghar Khan case, Musharraf High treason and the case of the extension of the army chief, have likely served as a deterrent to future military interventions. Additionally, he noted that these decisions have sent a clear message to politicians that corruption can lead to their removal. Furthermore, by taking a firm stance, the judiciary has successfully educated citizens on the importance of their fundamental rights and reminded the executive of its primary responsibilities (Wali, 2025).

Nevertheless, the judiciary in Pakistan has yet to achieve complete transformation or true independence, despite its efforts to challenge the military's dominance. Within this framework,

Imdad, a practicing lawyer at the Peshawar High court, talks about the fractions within the judiciary. To him, pro-military and anti-military are the two factions within the judiciary of Pakistan. He adds that the pro-military judges appear to endorse a military authoritarian regime, evident in their sympathetic views towards Musharraf in his high treason case. In contrast, the anti-military group (legal-minded), such as Justice Waqar Seth, Faiz Isa, and Shaukat Siddiqui, stood firm in their dedication to justice, despite numerous attempts to harass and coerce them.

It has been observed that Pakistan has upright judges, yet the sitting government is actively creating obstacles for them. According to Hussain Ahmad, the PTI government, in conjunction with the military, had initiated political engineering. He stated 2023 general elections was their main focus. He adds that the rational and law-abiding judges are overdue for promotion to elevated position in the supreme court of Pakistan. These judges were expected to be appointed to the Supreme Court during the general elections of 2023, potentially posing a challenge to the PTI and the Military's top leadership. Therefore, for unjustified reasons, their elevation to higher judicial positions remained halted.

On the other hand, this discussion maintain that Pakistani judiciary has evolved beyond mere independence, to the extent that it has become detrimental to the country's nascent parliamentary democracy. Sami Ullah, a public sector university professor, stated that the judiciary in Pakistan wields significant influence, but lacks genuine independence.

It is an undeniable fact that an empowered and independent judiciary is a fundamental prerequisite for a successful democracy. However, in a federal parliamentary system like Pakistan's, the judiciary often creates complications instead of merely interpreting laws and resolving disputes. Such judicial overreach violates the separation of powers principle, one of the basic principles of the constitution of the Pakistan, enabling the judiciary to wield excessive authority. Assertiveness of this nature, as was noted by Waseem, on the part of the superior judiciary has yielded undesirable consequences for parliamentary democracy, as through judicial activism and *Suo motu* actions, it oversteps its boundaries into the field of executive and legislature. Excessive judicial activism constitutes impingement on sphere of the cabinet and parliament. In 2010, the Commission of International Jurists visited Pakistan and suggested restraining unnecessary *Suo motu* actions. Sami Ullah observed that such undue judicial interference has significantly disrupted the routine-based functioning of the executive and judicial organs of the government. (Ullah, 2025).

Within a short span of seven years, three prime ministers, including Raja Pervaiz Ashraf (PPP), Yousaf Raza Gilani (PPP), and Nawaz Sharif (PMLN) were ousted on allegations of corruption and contempt of court. Scholars argue that although these decisions were constitutional, the young democracy of Pakistan requires stable and continuous leadership to thrive. Thus, Niaz believes that although minor penalties were an options with the court, but their dismissal has yield minimal positive outcomes for the parliamentary democracy in Pakistan.

Yousaf was of the same opinion that judicial activism undermined international agreements such Riko Diq and Rental Power Projects, resulting in a loss of foreign investment opportunities. He further stated that certain function such as collecting funds for dame, law and order, and wheat crisis which are the domain of the executive branch, and there is no need for the judiciary to get involved in such domains.

However, as Ali has stressed, during the leadership of Iftikhar Chaudry, the judiciary frequently took *Suo motu* actions on minor issues, impacting and undermining the effectiveness of Pakistan's

elected administration. Although, the constitution clearly delineates the separation of powers, yet the judiciary continues to interfere in the decisions of the elected government.

Sami Ullah, one of the respondents, identifies a crucial difference between a judiciary that is independent and one that is powerful. An independent judiciary, through its interpretations, safeguard the fundamental rights and liberties of citizens through as seen in UK, India, and Iran. In contrast, a powerful judiciary by overstepping its bounds, infringe upon the separation of power principle. He explained further that amidst this evolving authority dynamic, the civilian government—already overshadowed by the dominating military and victimized by the whimsical conduct of the political elites—has become the central focus of the judiciary’s attention. As the civilian government’s dysfunction worsens, judiciary’s intervention appears increasingly warranted. Consequently, the power and autonomy of the judiciary continue to expand with each assertive and repeated intervention.

Thus, Sami Ullah, Imdad and Siraj Ahmad believe that the post 2007 period has seen that compared to elected institution such as cabinet and Majlis-e-shoora, the judiciary has become “overdeveloped”, a term with roots in Hamza Alevi’s writings. He has used this term for describing the civil-military bureaucracy of the colonized states. Describing the judiciary’s current assertiveness as the *judicialization of politics* would not be an exaggeration.

In the pre-2007 era, Pakistan was having a judiciary that was politicized and remained beholden to the whims of executive and military. However, after 2007, the judiciary got shifted towards judicialized politics, frequently challenging the actions of both parliament and the executive. This transformation presents an intriguing paradox: before 2007, democracy weakened due to the judicial subservience to the executive and military, whereas after 2007, judicial overdevelopment—driven by assertive activism—has also undermined democratic governance in Pakistan.

Conclusion

Characterizing the assertive role of judiciary as the “judicialization of politics” would not be an overstatement. Judiciary in Pakistan was politicized in pre-2007 era. Additionally, military and executive held significant sway over the judiciary. However, after 2007, the judiciary has taken on a more dominant role, challenging the actions of both parliament and the executive. This shift presents a paradoxical situation: democracy was undermined at the expense of judicial subservience to the military before 2007, its current level of assertiveness and hyper-development also pose challenges to democratic governance in Pakistan. Again, an independent judiciary is the foremost requirement of a federal democracy where it could protect the constitution from imminent threats. By doing so, it may hamper supremacy of the parliament. Hence, parliamentary model of governance suits unitary state while presidential system suits a federal state.

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