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The Doctrine of Separation of Powers in Pakistan: Theory, Practice, and Judicial Interpretation

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ABSTRACT

The history of Pakistan constitutionally indicates that there has always been an existent disparity between the theory and the practice of the separation of powers. The paper explores how the legislature, executive, and judiciary powers have been delimited and how they have been practiced in reality since independence in 1947 to date as defined in the law. It results that in the series of constitutions, authority was formally divided among the branches; but in fact power has been concentrated in a single branch the executive, or the military at the other cost. The historical events such as several military coups and the reign of a civilian government are evaluated and compared to major court decisions to comprehend the position of the judiciary in unconstitutional absolutism or unconstitutional disobedience. As discussed in this paper, the institutions in Pakistan have often not lived up to the principles of checks and balances as envisaged by theorists such as Montesquieu, whereby the judiciary has at times demonstrated the rule of law and at other times gone along with the executive, or necessity. New laws and constitutional amendments, which have influenced judicial authority and military powers, in recent years are important reminders that there is still tension in the attainment of a working separation of powers. The paper has conclusively found that unless significant reforms are made to the structure and the culture of constitutionalism is enhanced the separation of powers in Pakistan is not going to become a reality but rather a mere illusion because it is endangering the very process of protecting democracy and fundamental rights.

Keywords: Separation Of Powers, Pakistan, Constitution, Judiciary, Civil Military Relations, Judicial Independence

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Introduction

Separation of powers is a constitutional principle of the modern rules of governance. Originally conceived by such Enlightenment theorists as Montesquieu, it recommends that the government be separated into separate branches, usually the legislature, the executive, and the judiciary, as a way to avoid tyranny and ensure liberty. The central functions of each branch (making laws, executing laws and interpreting laws respectively) should not be interfered with by others. Simply put, separation of powers establishes a check and balances system whereby all arms of the state check each other so that no one can be able to exercise power monopoly and become abusive to the rights of the citizens. Many consider this principle as a key to the rule of law and protection of basic rights since it constrains arbitrary rule by decentralizing governance among independent centers of power.[1]

In Pakistan, the separation of powers ideal has however not been easy to put into practice regularly. The country has been characterized by frequent absence of power equilibrium within the arms of government since it got its independence in 1947. Officially, the different constitution of Pakistan in 1956, 1962 and more so the Constitution of 1973 have outlined the functions of the legislative, executive and most importantly the judicial branches, reflecting the idea that each group should work within its own realm. The Constitution of 1973, Article 175 provided an example of the gradual separation of the judicial and executive branches of government, which highlighted the desire to have the judicial branch autonomous. In reality, however, this balance on many occasions has been disrupted by political and historical forces. The executive has usually overpowered the legislature and affected the judiciary, and the strong military institution in Pakistan has been intruding extra constitutionally, taking over the executive and legislative powers by coup. These invasions have weakened the institutional autonomy and the fusion of the boundary between branches. At some points, even the judicial branch has endorsed such change of hands, in particular, through the application of the so called doctrine of necessity, which it uses to legitimize military coups. This has been translated into a polity in which the separation of powers, even as it is written in paper, is often undermined in practice.[2]

Literature Review

The application and theory of the separation of powers in Pakistan have a significant number of sources in the literature. In theory, the origins of the doctrine can be found in the works of such philosophers as Montesquieu and Locke, who believed the liberty could be ensured only in the case the governmental force is not concentrated in the hands. Combining legislative, executive and judicial authority leads to tyranny, and Montesquieu emphasized the need to separate and separate these powers and make them checks and balances to each other. This classical theory inspired the makers of numerous constitutions in the world and is the backbone of the perfect template of government where the autonomy of each arm is preserved in the best

[1] Sultana, T. (2012). Montesquieu's doctrine of separation of powers: A case study of Pakistan. *Journal of European studies*, *28*(2).
[2] Ranjah, Z. U. (2023). *Separation of State Powers in Pakistan*. Pakistan Law House.

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interest of the majority. Meanwhile, comparative scholarship has acknowledged that no democratic regime practices an absolute division; parliamentary systems (such as that of Britain) permit a mixture between the executive and legislature, which is maintained by conventions and the independence of elementary courts. The constitutional system of Pakistan was based on the British egalitarian system, so the judicial system is formally independent, but the legislature is connected with the executive (the Prime Minister and the cabinet being members of the Parliament). This has caused commentators to observe that the system of the Pakistan integration combines both separation and fusion of powers, and that the system needs to have internal protection as opposed to structural isolation of the branches.[3]

Possibly, one of the most scholarly and legal interpretations of the political history of Pakistan is the permeation of the doctrine of separation of powers by the civil military power relations. An example is MT Mahmud who through his publication criticized the Pakistani superior judiciary as giving legitimacy to constitutional breaches, as per him by legalizing such doctrines as the law of necessity, the courts helped to undermine democratic rule. Between the 1950s and the 1980s, a variety of Supreme Court decisions were made in a series of cases, including Moulvi Tamizuddin Khan (1955), State v. The examples of Dosso (1958), and Nusrat Bhutto (1977) are mentioned as the cases when the judges endorsed the dissolution of assemblies or military coup under extralegal grounds. Scholars have interpreted these rulings as a sign of a judiciary that was mostly subservient to executive or military dominance in the initial decades of Pakistan.[4]

Conversely, comparatively different scholars and jurists accentuate instances of judicial assertion that strengthen separation of powers. As an example, the historic AlJehad Trust case (1996) of the Supreme Court stated that every organ of state should not exceed the constitutional limitations, especially stating that the judiciary was independent in appointments and the executive was not able to interfere with its independence. Likewise, the 2007-2009 lawyers movement in Pakistan and the 2009-2013 tenure of Chief Justice Iftikhar Chaudhry have been examined as a point of departure as the judiciary, which gained more popular legitimacy, became both activist and attempted to hold the executive to account and veto actions perceived to be against the principles of the constitution. This was a time of so called judicialization of politics and has elicited discussions as to whether or not judicial activism was essential to operationalize the rule of law or it disrupted the institutional balance. In such literature, the benefits of judicial independence are usually balanced with the risks that courts that encroach on policymaking will destabilize the separation of powers themselves.[5]

Moreover, researchers have studied the separation of powers in Pakistan associated with the basic rights and the constitutional design. It is noted that the independent

[3] Begum, R. (2025). Separation of Powers: A Case Study of Pakistan (1947 to Present). *Social Science Review Archives*, *3*(3), 1861-1872.
[4] Mahmood, M. T. (2021). Doctrine of Political Question, Separation of Political and Legal Questions and Superior Judiciary of Pakistan. *Issue 6 Int'l JL Mgmt. & Human.*, *4*, 956.
[5] Bashir, M. H., Abdullah, M., Abbas, N., & Billah, M. (2025). The Role of the Judiciary in the Interpretation of the Constitution of Pakistan. *Dialogue Social Science Review (DSSR)*, *3*(5), 601-609.

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judiciary and separation of powers is essential towards the protection of the rights of citizens. The Islamic ideological context of Pakistan is also viewed by some scholars who have a general finding that the principles of justice and accountability in the Islamic thought can be considered to coexist with the constitutional separation of powers. Overall, the literature unites around the idea that the constitutionalism of Pakistan cannot be achieved without a strong separation of powers adjusted to the parliamentary system of the country. There is still an argument as to the most effective means of doing so in practice, considering the historical peculiarities of the country, and some feel that the only way would be to institute greater institutional protection, and to ensure that no branch of government asserts itself on the others. This study is based on these reflections, and it brings historical and doctrinal perspectives to fill the gap between theoretical approaches and the constitutional experience that Pakistan underwent.

Methodology

The study follows a qualitative, doctrinal approach to research based on legal and historical research. It is also based on a critical study of the primary sources such as constitutional texts, statutes and various landmark judicial judgments and secondary scholarly commentary to follow how the separation of powers doctrine in Pakistan has developed. Through research into the origin and development of the concept, how it has been put into practice in the governance of Pakistan and the forces that have hindered its complete achievement (including military interventions), the study constructs a full story.

Important cases in the constitutional jurisprudence of Pakistan are used as case studies, and they help to understand how cases perceived the balance of powers within crucial times. Such case studies are historicized against the background of historical events (e.g. parliamentary dissolutions, coups, constitutional amendments) in order to learn how legal doctrine and political practice interact. The method is largely analytical: the role of each branch is analyzed based on the provisions of the constitution and the way these provisions have been honored or violated throughout the years. There is no quantitative data analysis, but the analysis is descriptive and evaluative and is expected to establish links between theoretical frameworks and real life results. Comparative approaches (formalist vs. functionalist theories of separation of powers) are included so as to view whether the experience of Pakistan is in line with the general trends or whether it is an exception. By being aware of possible constraints, the research by itself recognizes that certain aspects of institutional power relations (such as informal political influences) might not be well represented in the legal documents. Nonetheless, the triangulation of legal documents, historical accounts, and previous studies provides the methodology with a solid foundation of the findings. Such an approach will enable the research to comprehensively test the separation of powers in Pakistan situation and make informed conclusions and recommendations based on a good evidentiary basis.

Research Findings

The seat of the legislature of Pakistan is Pakistani parliament House in Islamabad. Although the legislative, executive, and judicial branches are formally independent, in

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the political history of the country, one of the branches prevails in another most of the time. In this section, there is a historical overview of the role played by the separation of powers doctrine in practice, with some of the important constitutional events and judicial decisions noted.[6]

Early Constitutional Framework (1947-1958):

During the early years after 1947, Pakistan was governed by provisional structures borrowed in British India, and a Constituent Assembly was charged with the responsibility of coming up with a constitution. The Objectives Resolution of 1949 established some guidelines such as the concept of authority being wielded by the elected representatives of the populace, an implicit promotion of a division of functions amongst state organs. But the power at this time tended to be concentrated in the hands of the Governor General (the body representative of the Crown and in fact head of the executive). In 1954, a great constitutional crisis was witnessed when the Constituent Assembly, which was about to adopt a constitution, was dissolved by Governor General Ghulam Muhammad. This dissolution was appealed in court by the Assembly President Maulvi Tamizuddin Khan.[7] The Sindh Chief Court declared the action of the Governor General unlawful, but on appeal, Pakistan Federal Court (led by Chief Justice Muhammad Munir) made a famous decision in support of the executive on a technicality, and therefore, justifying the dissolution[18]. This established a precedent of judicial subordination to executive power to the detriment of legislative supremacy. It was not until 1956 when the first Constitution of Pakistan was finally put into practice that it created a parliamentary type of government with a President as head of state and a Prime Minister as the head of government. Its 1956 Constitution was theoretically separation of powers i.e. an legislature, an executive consisting of an executive that was responsible to legislature and independent judiciary but this was not effective as it lasted less than three years. The first coup d'état took place in Pakistan in October of 1958 when the military led by General Ayub Khan abrogated the Constitution. The Supreme Court instead of opposing this extralegal conquest proved its legitimacy in State vs. Dosso (1958) by the doctrine of revolutionary legality, that a successful coup was a source of law in itself. This decision terminated the 1956 constitutional order and depicted how the judicial system was then ready to accept the realities of power at huge expense to the constitutional separation of powers.[8]

Constitutional Developments and Judicial Responses (1958-1971):

The regime of Ayub Khan, who came into power in 1962, changed the constitution in 1962 turning the system of Pakistan into a presidential system. With the 1962 Constitution, the President had immense power, with head of state and government

[6] Mahmood, M. T. (2021). Doctrine of Political Question, Separation of Political and Legal Questions and Superior Judiciary of Pakistan. *Issue 6 Int'l JL Mgmt. & Human.*, *4*, 956.
[7] Ali Shah, S. M., Bukhari, F., Muhammad, S., Ain, U., & Noor, K. (2024). Effect of Power Unification and Simultaneous Interpretation by Superior Courts: A Critical Analysis. *JL & Soc. Pol'y*, 62.
[8] Khan, M. I., & Muhammad, A. (2020). An Evaluation of Separation of Powers: A Case Study of Pakistan (2007-2013). *South Asian Studies*, *31*(1).

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functions, and the legislature was a unicameral weak entity in comparison with parliament. Even though it created a separation of powers in theory (having the President, the National Assembly and the courts with their clearly defined roles), in reality the setup was skewed towards the executive in a very strong way. The politics system under the control of Ayub Khan such as a wellmanaged legislature, which was indirectly elected through a system of indirectly elected Basic Democracies, implied that checks and balances were not high. The Ayub judiciary did not pose a significant challenge to the regime; the high courts were very limited into hearing routine cases and were also not afraid to face the executive on issues that pertained directly to politics. Political unrest in 1969 forced Ayub Khan to step down giving way to another Army Chief General Yahya Khan who once more assumed martial law. The initial approach by the courts to the extraconstitutional rule of Yahya was that it was an extension of state necessity. Here, (many years later, when Yahya fell) the Supreme Court in Asma Jilani (1972) would make the martial law of 1969 unlawful, a postfacto judicial reproof that only acknowledged previous acquiescence as having been erroneous.) By 1971, Pakistan had already become a victim of a crippling national trauma with the loss of its eastern wing (the birth of Bangladesh), the result of which highlighted the dismal implications of repeated constitutional failures. In this storm, there was a feeling of necessity to have a renewed constitutional order with more distinction of powers.[9]

The 1973 Constitution and the Martial Law (1970s):

In 1973 a new constitution drafted by a democratic legislature was adopted in Pakistan as the new foundation of law in the country. The new Constitution restated a parliamentary order of things a bicameral legislature, a Prime Minister to head government and a President to head state and explicitly guaranteed judicial independence (such as Article 175 of the Constitution required the separation of the judiciary and the executive, and established courts like a Supreme Judicial Council to guarantee the security of tenure of the judges). This system ensured that there was a clear separation of powers and a check and balance. These ideals were however put to the test shortly by the political climate.[10] On July 1977, the military under the leadership of General ZiaulHaq overthrew the elected government of Prime Minister Zulfikar Ali Bhutto, and imposed the third martial law in Pakistan. Again, the courts were called on to adjudicate on the validity of a takeover. In Begum Nusrat Bhutto v. Suing on the doctrine of state necessity, the Supreme Court (1977) upheld the martial law by General ZiaulHaq though it gave him the power to change the Constitution in the transitional period. The decision of the Court legitimized the military rule and established the tendency of judicial compliance with the autocratic executive authority. In the following years (1977-1985), General Zia presided by decree and Parliament was dissolved an effectual fused power and lack of a legislative branch

[9] Amir, F., Muhammad, A., & Jan, J. (2022). Judicial Activism At the Cost of Separation of Power in Pakistan: a Comparison of Justice Iftikhar Chaudhry and Justice Saqib Nisar'S Era. *Pakistan Journal of Social Research*, *4*(03), 589-598.

[10] R., Aparna Padmakavi. (2022). Balancing Judicial Interpretation and the Doctrine of Separation of Powers. *Issue 2 Indian JL & Legal Rsch.*, *4*, 1.

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and a subdued judiciary. Zia at length recovered a subjugated legislature in the middle of 1980s and under the Eighth Amendment of 1985, which overturned the 1973 Constitution, legitimized his actions in retrospect. Among the notable ones was the granting of a discretionary power to the (nonelected) President to dissolve the National Assembly (Article 58(2)(b)) to shift towards the presidency the balance existing between the executive and legislative branches of power. This constitutional provision would give a long shadow to the civilian regimes even after the formal democracy was restored following the death of Zia in 1988.[11]

Democratic Period and Judicial Activism (1988-1999):

The late 1980s and 1990s were a period of elected governments and an activist, yet erratic, judicial system. With the restored Constitution of 1973 (amendments by Zia still in place), the government of Pakistan alternated between the Pakistan Peoples Party of Benazir Bhutto and the Pakistan Muslim League of Nawaz Sharif. But these civilian governments never served a full term since Article 58(2)(b) gave the President the authority to dismiss the Prime Minister and dissolve the Assembly. One such episode was played by the Supreme Court: in 1993, Chief Justice Nasim Hasan Shah presided over a decision of the Court to reject the dissolution of the National Assembly by President Ghulam Ishaq Khan restoring the legislature and government and briefly equalizing power in favor of the elected branch. Nonetheless, the ensuing political stalemate saw the resignation of the President and Prime Minister and this highlighted the fact that the supreme authority remained beyond the constitutional system. This position of the judiciary later in the decade changed.[12] When the then president Farooq Leghari had to remove the government of Benazir Bhutto due to the alleged misrule by the government in 1996, the Supreme Court (which was presided over by a different Chief Justice) affirmed the dismissal by citing the misrule on government part as the justification. The division between the results of 1993 and 1996 demonstrated the judiciary that was torn between acting in accordance with the dictates of the political tide and maintained the independence of the separation of powers. One major structural change happened in 1997, when Parliament (in a second government led by Nawaz Sharif) enacted the Thirteenth Amendment which repealed the unilateral dissolution power of the President (the Supreme Court ruled that this was within the authority of the amendment of Parliament). The intention of this move was to bring back parliamentary supremacy and this was to avoid arbitrary executive interference into the legislature. However, in 1999, the situation changed once again and the government of Nawaz Sharif was overthrown by the military coup of General Pervez Musharraf who once again disrupted the constitutional order. In Syed Zafar Ali Shah v. At its turn, the Supreme Court confirmed one more coup on the doctrine of necessity allowing General Musharraf to rule and even reform the Constitution on a conditional basis (with the promise of holding elections in three years). The

[11] Navera, G. S. (2018). Metaphorizing martial law: Constitutional authoritarianism in Marcos's Rhetoric (1972-1985). *Philippine Studies: Historical and Ethnographic Viewpoints*, *66*(4), 417-452.

[12] Couso, J. (2003). The politics of judicial review in Chile in the era of democratic transition, 1990–2002. *Democratization*, *10*(4), 70-91.

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implication of this ruling was that even faced with an extraconstitutional force, the judiciary remained willing to comply, as opposed to resisting, undermining the separation of powers.[13]

The Lawyers Movement and Empowerment of the Judiciary (2000s):

The initial phase of the judiciary was the compliant judiciary under a Provisional Constitutional Order (PCO) wherein the judges were required to take an oath of allegiance to the new government. Those who denied the refusal were expelled and the executive judicial and military control was consolidated. However, around the mid 2000s, the judiciary started reclamation. The breakthrough was when Musharraf was challenged in the court on his dual capacity of being both the President and the Army Chief and when he suspended Chief Justice Iftikhar Muhammad Chaudhry in 2007. This backfired and created a movement of lawyers throughout the nation to defend judicial independence. The Supreme Court in an extraordinary demonstration of its determination restored Chief Justice Chaudhry to his office in July 2007, and this move was an indication that the court was no longer going to take its blind silence at the hands of the executive. The latter was seen to resist its legitimization when Musharraf finally declared a state of emergency in November 2007 and resurged the Court. Musharraf removed these judges but the time was ready when they would be restored back to their position when the political tide changed. On February 2008 elections, Musharraf resigned and the new civilian government reinstated the ousted judges in March 2009 following pressure. Supreme Court became much more aggressive in enforcing the constitutional boundaries and balancing the other branches after 2009. It instantly struck down the last extraconstitutional order (the 2007 emergency and PCO) of Musharraf and assumed high profile issues under its suo motu powers under Article 184(3) of the Constitution. To illustrate, the Supreme Court invalidated in late 2009 the National Reconciliation Ordinance (NRO), a decree of the Musharraf regime, granting amnesty to politicians and other government officials found guilty of corruption, claiming that it was unconstitutional and contravened the rule of law. The readiness of the Court to quash an act that was favoring the incumbent President (Asif Ali Zardari, who had been a beneficiary of NRO) was indicative of independence never seen before.[14] This strong judiciary position, however, also caused new forms of interbranch conflicts. The elected regime felt that the judiciary under the leadership of Chief Justice Chaudhry was encroaching its executive role and making of policies. This conflict reached its peak in 2012 when the Court directed the removal of the Prime Minister Yousaf Raza Gilani on the ground that he had disregarded its orders to cooperate with a judicial order against the President. As this was welcomed by some people as a rule of law in action, it was a

[13] Hassnain, A. (2025). Parliamentary Democracy in Pakistan (1988-1999): Challenges and Outcomes. *The Critical Review of Social Sciences Studies*, *3*(3), 2200-2206.
[14] Woods, P. J., & Hilbink, L. (2009). Comparative sources of judicial empowerment: Ideas and interests. *Political Research Quarterly*, *62*(4), 745-752.

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cause of concern that the judiciary had virtually ousted a sitting Prime Minister without a normal parliamentary procedure.[15]

Recent Shifts and Legislative Countermoves (2010s-2025):

The 2010s were characterized by a continued redistribution of power between institutions of Pakistan. The landmark Eighteenth Amendment of 2010, which sought to strengthen democracy by stripping the President of his power to dissolve parliament (reinstating full provincial tenure), and increasing provincial autonomy was adopted by Parliament. More importantly, the Eighteenth Amendment also reformed the way judges are appointed, forming a Judicial Commission (led by the Chief Justice) and a Parliamentary Committee to provide both the judges and lawmakers with an opportunity to pick judges. This new structure (with some concern that it could usurp judicial independence) was reviewed by the Supreme Court, who eventually gave it approval with some slight modification under Nineteenth Amendment, as a result of a bargaining compromise in the power of appointment. However security issues introduced new demands: a terrorist attack in 2014 was followed in 2015 by a bill in Parliament the Twenty First Amendment, which created special military courts to try terrorism suspects (not including civilians) over a restricted period. This was seen by many as a drastic measure that was necessary, but combined both military and judicial roles.[16] The amendment itself was found to be wrong but the Supreme Court in a divided decision stood in support of the amendment a ruling that was condemned by jurists and human rights organizations as a blow to judicial independence and the separation of powers, as it permitted the military to exercise jurisdiction over civilians. Most of them accepted the authority of the Parliament to make amendments to the Constitution, but the dissenting judges warned that even the changes in the Constitution must not be made in such a way that they do not interfere with the core principles of the Constitution, including impartiality of the judiciary and the right to a fair trial. The judiciary also remained in the high level accountability cases, especially the disqualification of Prime Minister Nawaz Sharif in the 2017 Panama case case, which was a controversial case in regard to the role of judiciary in the political sphere.[17]

The tussle between a bold judiciary and an aggressive legislature/executive was taken to a new level by 20223. A new coalition administration assumed power following a controversial bid by an incumbent Prime Minister to evade a no confidence motion by dissolving Parliament in April 2022 (a move which the Supreme Court promptly ruled unconstitutional). A few months later, tensions arose between that government and

[15] Hirschl, R. (2000). The political origins of judicial empowerment through constitutionalization: Lessons from four constitutional revolutions. *Law & social inquiry*, *25*(1), 91-149.

[16] Shah, S. M. A., Bukhari, S. M. F., & Ain, K. N. U. (2025). The Burden of Dual Roles: Power Dynamics and Constitutional Interpretation in Superior Judiciary of Pakistan & AJK. *INTERNATIONAL JOURNAL OF KASHMIR STUDIES*, *6*(2).

[17] Imran, M. M. (2024). *CONSTITUTIONALISM AND LIMITS OF INTERPRETATION: AN ANALYTICAL STUDY OF CASE LAW AND JUDICIAL POLICY IN PAKISTAN* (Doctoral dissertation, Department of Law, Faculty of Shari ‘ah & Law, International Islamic University, Islamabad, Pakistan).

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the Supreme Court particularly regarding the timing of provincial elections in 2023. When the Supreme Court demanded the provincial elections within the necessary time, the government and the Parliament responded by suggesting the judiciary exceeded its authority.[18] To limit the judiciary, Parliament in a historic act in 2023 gave the Chief Justice restricted powers, a move that the Supreme Court timely overturned, increasing the confrontation between the three arms of government. In the interim, the government increased the application of military courts to prosecute civilian protestors after the 2023 civil unrest, which rekindled the issue of military versus civilian jurisdiction. In 2024 and 2025 these tensions resulted in rapid constitutional gambit that brought fundamental changes to the court setup. The Twenty Sixth Constitutional Amendment (2024) made administrational reforms in the judicial branch, and limited the power of the Chief Justice reforms that were immediately decried by the bar, and appealed to the courts. Later, towards the end of 2025, Parliament (colluding with military supported governments) forced through the far reaching Twenty Seventh Amendment. This amendment, which was passed virtually without a public debate, established a new Federal Constitutional Court (FCC) to take the overall constitutional adjudication in place of the ultimate jurisdiction of the Supreme Court. It was to be reappointed its judges through a restructured process where the executive and its supporters controlled the process and mechanisms put in place to enable the easy transfer/removal of its judges through an executive dominated Supreme Judicial Council. These reforms go a long way to undermine the independence of the judiciary, in effect, placing the judiciary under the executive authority. The Twenty Seventh Amendment also provided special privileges to the military brass lifetime immunity against prosecution or arrest of top commanders and a new office of Chief of Defence Forces that would centralize the military command in a single hand. It was observed that the overhaul gives permanence to the military dominance in the government and consecration of supremacy of the uniform over the ballot in the constitutional order. The UN High Commissioner of Human Rights also followed this by stating that such amendments would undermine judicial independence and would be countercyclical to the separation of powers which stands as the rule of law.[19]

At the turn of 2025, the landscape of the separation of powers in Pakistan was dramatically changed: the independence of the judiciary was under threat, the legislature had already established itself but mostly following an increasingly forceful military and the executive (enhanced by the power of the military) had amassed powers to the detriment of institutional checks. The key conclusion of the current research is that, despite the doctrine of separation of powers being proclaimed in the constitution of Pakistan in the past, its actualization has been subjected to the vicissitudes of the political forces, and that, most frequently, the principle has been undermined in the face of the needs of those who possess the real power.

[18] Gilani, S. R. S., Ullah, Z., & Zahoor, S. (2023). Democracy, Economic Development, and the Separation of Powers in the 1973 Constitution Pakistan: A Critical Analysis. *Qlantic Journal of Social Sciences and Humanities*, *4*(3), 150-158.

[19] Redding, J. A. (2003). Constitutionalizing Islam: Theory and Pakistan. *Va. J. Int'l L.*, *44*, 759.

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Discussions

The historical dynamics that could be identified based on the findings depict the historical reoccurrence of the lack of connection between the constitutional design of Pakistan and political reality. Ideally, the architecture of the constitutions of 1956 and 1973 made it clear that they separated the legislative, executives and the judicial spheres. But in reality, power in Pakistan has been subjected to individualization or to usurpation by a particular institution that could exert domination; in this case, most of the times it is the military or a strong executive at the cost of institutional checks. One of the most important contributions was made by the judiciary, which has at times promoted the concentration of power (such as in the legitimization of coups) and in other parts of the world has served as the literal guardian of constitutional limits (such as in the 20072009 judicial movement or some rulings on unconstitutional acts). The army has continued to upset the balance required to get a real separation of powers. Even the civilian rule had the weight of authoritarian clauses (such as the former presidential power of dissolving) and political brinkmanship tending to shift the balance towards the former, leading the judiciary to swing between deference and intervention. Separation of powers in Pakistan has therefore remained a dynamic situation depending on individuals, power politics and crisis.[20]

Islamabad Supreme Court building. The use of the judiciary to define the limits of the constitution has proved to be a watershed on the balance of power amongst governmental arm. The other lesson is that the strengthening of checks and balances by constitutional amendments and legal reforms has not necessarily occurred; instead of strengthening checks and balances, in some instances it has served to cement the hegemony of a single branch. To illustrate, the recent 26th and 27th Amendments instead of safeguarding the independence of the judiciary and defining the roles have arguably politicized the judiciary and give the executive and the military unprecedented powers. Such a reversal of the separation of powers protection demonstrates how the benefits achieved during a certain period (e.g. the post2000s judicial empowerment or the 18th Amendment accepted parliamentary sovereignty gains) can be overturned in another. It shows how weak constitutionalism in Pakistan is: unless there is a unified effort of all organs of state, to ensure that they do not overstep their boundaries, then only legal doctrines cannot ensure that power does not tip off balance. The discussion, therefore, asserts that the experience of separation of powers in Pakistan is a continuous process, a process that needs not only legal but also normative change whereby the branches should regard each other with respect and any form of undemocratic usurpation of power is strictly outlawed.[21]

Recommendations

A multipronged approach is needed to go towards a real separation of powers in Pakistan. Recommendations that are important include:

[20] Abdullah, A. (2023). Declassifying theory of separation of powers and its inherent system of checks and balances: A comparative study. *Zakariya Journal of Social Science*, *2*(1), 31-41.
[21] Khan, Atta ur Rehman; Khan, Muhammad Aqeel; ur Rehman, Hidayat. (2024). The Impacts of Judicial Review over the Sovereignty of the Parliament in Pakistan. *Pakistan JL Analysis & Wisdom*, *3*, 126.

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Rebuild and protect judicial independence: Repeal or reform recent constitutional amendments which have weakened the independence of the judiciary, including the establishment of an executive based constitutional court and new forms of political interference in judicial nomination. The judiciary should not be dominated by the executive or legislature since justice should be delivered without any political interference as dictated by the rule of law.

Renew the supremacy of the Constitution and of the rule of civil men: Re enforce Article 6 of the Constitution (designing the abrogation of the Constitution high treason) by enforcing it without modification. The criminal role of civilian law should be applied to all the institutions of the state, in particular, the military. The military leadership clauses of lifetime immunity ought to be reviewed because no state actor is above the law. The defense and security issues should be further subjected to parliamentary control, making the military staff subordinated to the elected military authorities.

Create a balance between judicial activism and judicial restraint: The courts need to come up with internal rules (perhaps through Supreme court rules or judicial code of conduct) to use their suo motu and contempt powers more wisely. As much as the courts should have the authority to question executive and legislative actions that act contrary to the Constitution, they should take care to avoid making a habit of interfering with the policymaking functions of the elected bodies. By ensuring sufficient constitutional review with a culture of judicial restraint, the separation of power will be preserved and no perceptions of overreach will be created.

Establish political goodwill on institutional boundaries: The major political parties must commit themselves to cross party Charter of Governance whereby they commit not to interfere with the constitutional mandates of each branch (i.e. parliament not to override judicial independence and vice versa). Formal communication of the heads of the executive, legislature, and judiciary on regular basis would also be instrumental in avoiding conflicts.

Conclusion

Pakistan has had a sobering lesson with the doctrine of separation of powers, which has been a lesson of good constitutional theories constantly put to the test by political realities. The discussion establishes that although the separation of powers is deep rooted in the Pakistani constitutional terms, it has never been achieved practically. It is still a work in progress to ensure that each arm of government serves within its constitutional area of operation, and given the current events, which have the potential to push the scales firmly against judicial independence and democratic accountability, it has become urgent. And finally, the process of ensuring a sustainable division of powers in Pakistan will not solely be possible through legal and structural reforms, but also a cultural dedication to constitutionalism. When the leaders, institutions and the civil society in Pakistan are able to nurture that commitment by abiding by the limits of the legislature, executive and judiciary and denying any illegal usurpation of power, then the original promise of the Pakistani constitution can still be realized. Therein lies the hope that the paradigm of separation of powers can transform, at least in part, a largely idealistic ideal into a living entity that forms the basis of favorable, democratic rule in Pakistan.

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