

Separation of Powers: A Comparative Constitutional Study of the United States of America, India and Pakistan

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ABSTRACT

This study comparatively analyzes the doctrine of separation of powers in the United States, India, and Pakistan through the competing perspectives of formalism and functionalism. It examines how each constitutional system balances institutional independence with effective governance, highlighting the United States' formalist model of strict separation, India's functionalist approach emphasizing constitutional equilibrium, and Pakistan's evolving experience shaped by constitutional instability and executive dominance. The study argues that neither approach is sufficient in isolation and concludes that a balanced framework combining structural safeguards with functional adaptability is essential for preserving constitutional supremacy, democratic accountability, and the rule of law.

Keywords: Separation of Powers, Constitutionalism, Formalism, Functionalism,

Judicial Review, Comparative Constitutional Law, Checks and Balances, Judicial Independence, United States, India and Pakistan.

1. Introduction

The doctrine of separation of powers constitutes a foundational principle of modern constitutionalism, requiring the distribution of governmental authority among the legislative, executive, and judicial branches to prevent the concentration of power, preserve the rule of law, and protect individual liberty through institutional checks and balances.

Rooted in the political philosophy of Aristotle and John Locke and most comprehensively articulated by Montesquieu in *The Spirit of the Laws* (1748), the doctrine has profoundly influenced constitutional democracies worldwide, particularly the United States. While classical theory advocated a strict institutional division of powers, the complexities of the modern administrative state, expanding executive functions, globalization, and emergency governance have necessitated a more pragmatic approach characterized by functional overlap and interdependence. This evolution has given rise to two competing constitutional paradigms: formalism, which emphasizes rigid institutional boundaries, and functionalism, which prioritizes effective governance and constitutional objectives through cooperative institutional relationships. A comparative examination of the United States, India, and Pakistan demonstrates the diverse constitutional application of these approaches, reflecting differences in constitutional design, judicial interpretation, and political development. Ultimately, although strict separation of powers retains enduring normative importance as a safeguard against authoritarianism, contemporary constitutional governance increasingly requires a balanced framework that accommodates functional interaction while preserving institutional autonomy, democratic accountability, and constitutional supremacy.

2. Literature Review

The doctrine of separation of powers has occupied a central position in constitutional thought as a mechanism for preventing the concentration of authority and preserving political liberty. Classical scholarship traces its intellectual origins to Aristotle, who distinguished among the deliberative, executive, and judicial functions

of government as essential components of balanced governance (Everson 1996). This foundational understanding was subsequently refined by John Locke, whose distinction between legislative and executive powers sought to restrain absolutist rule and secure individual freedoms (Gencer 2010). The modern articulation of the doctrine, however, is most closely associated with Montesquieu, whose *The Spirit of the Laws* established the principle that liberty cannot survive where legislative, executive, and judicial powers are united within a single institution or individual (d Montesquieu 1989).

The influence of Montesquieu's thought is particularly evident in the constitutional architecture of the United States. The framers of the American Constitution adopted a model of institutional separation reinforced through checks and balances, thereby creating a system in which each branch possesses both autonomy and the capacity to restrain the others. Madison's writings in *The Federalist Papers*, especially Nos. 47, 48, and 51, further developed this understanding by emphasizing that institutional ambition must serve as a safeguard against the abuse of power (Carey 1978). Subsequent constitutional scholarship has consistently regarded the American model as the clearest embodiment of formal separation, although modern developments such as the administrative state have introduced elements of functional interdependence (Sharp 1935).

Contemporary constitutional theory increasingly distinguishes between formalist and functionalist approaches to the doctrine (Gerangelos 2005). Formalist scholars maintain that constitutional legitimacy depends upon clearly demarcated institutional boundaries and strict adherence to constitutionally assigned functions (Magill 2000). From this perspective, delegation and institutional overlap threaten democratic accountability and create opportunities for executive aggrandizement. Functionalist theorists, by contrast, contend that modern governance necessarily requires cooperation and overlapping responsibilities among state institutions. Hans Kelsen challenged the practical feasibility of rigid separation by arguing that legislative, executive, and adjudicative functions are often intertwined in contemporary states.(Cameron 2013) Later scholars expanded this position by emphasizing that constitutional governance should prioritize accountability,

efficiency, and the preservation of constitutional values rather than rigid institutional isolation.(Dressel 2005)

The growth of administrative agencies has further intensified this debate. Modern regulatory institutions frequently exercise quasi-legislative, executive, and adjudicative powers simultaneously, thereby complicating traditional understandings of institutional separation (Strauss 1984). Functionalist scholarship generally views such arrangements as constitutionally acceptable provided that adequate mechanisms of transparency, judicial oversight, and democratic accountability remain in place.(Pearlstein 2009) Formalist critiques, however, continue to warn that excessive institutional fusion may erode constitutional limitations and facilitate executive dominance.

Within South Asia, constitutional experiences demonstrate that the doctrine of separation of powers must be understood within specific historical and political contexts. India inherited the Westminster parliamentary tradition, which does not embrace strict institutional separation in the American sense (Kumarasingham 2008). Nevertheless, the Indian constitutional framework has evolved to recognize separation of powers as an essential constitutional principle. Judicial developments, particularly the emergence of the basic structure doctrine in *Kesavananda Bharati v. State of Kerala*, transformed the judiciary into a guardian of constitutional identity and institutional balance. Scholars have observed that the Indian Supreme Court's expansive use of judicial review and public interest litigation reflects a functionalist adaptation that seeks to preserve constitutional governance while responding to socio-political realities.(Shukla et al. 2025)

Pakistan presents a markedly different constitutional trajectory. Although the Constitution of Islamic Republic of Pakistan, 1973 formally distributes powers among the legislature, executive, and judiciary, repeated military interventions and executive predominance have complicated the practical realization of institutional autonomy (Begum 2025). Constitutional historians and legal scholars have highlighted how doctrines such as necessity facilitated judicial accommodation of extra-constitutional regimes, thereby weakening constitutionalism and undermining effective checks and balances (Ahamed 2025). At the same time, developments such

as *Al-Jehad Trust* and the post-Lawyers' Movement jurisprudence illustrate renewed judicial efforts to assert institutional independence and re-establish constitutional boundaries between state organs.

Comparative scholarship indicates that the effectiveness of separation of powers depends not only on constitutional design but also on political culture, judicial independence, and institutional strength. While mature democracies maintain constitutional balance through established norms and accountability mechanisms, transitional states often face challenges from executive dominance and weak institutions. Existing literature rarely offers a comprehensive comparison of the United States, India, and Pakistan through both formalist and functionalist perspectives, creating a gap that this study addresses by examining constitutional theory, judicial developments, and institutional practices within a unified comparative framework.

3. Materials and Methods

This study adopts a qualitative, doctrinal, and comparative research methodology to examine the evolution and contemporary application of the doctrine of separation of powers in the constitutional systems of the United States, India, and Pakistan. It relies exclusively on sources, including constitutional texts, judicial decisions, scholarly literature, books, and peer-reviewed articles, which are analyzed through thematic and comparative methods. The research is theoretically grounded in the competing perspectives of formalism and functionalism, enabling an assessment of institutional autonomy, checks and balances, judicial review, and executive authority across different constitutional traditions and historical contexts.

Results and Discussion

4.1 The Evolution of the Doctrine of Separation of Powers

4.1.1 Classical Foundations: Aristotle, Locke, and Montesquieu

The doctrine of separation of powers emerged from a long intellectual tradition concerned with preventing the concentration of political authority and preserving individual liberty (Iain Stewart 2004). Although its modern formulation is commonly associated with Montesquieu, the conceptual foundations of the doctrine can be traced to classical political philosophy. Aristotle, in *Politics*, distinguished

between deliberative, executive, and judicial functions of government, recognizing that balanced governance required the distribution of public authority among different institutions (B. Jowett 1885). While Aristotle did not advocate a rigid institutional separation, his analysis provided an early framework for understanding the differentiated functions of the state.

The doctrine developed further in the writings of John Locke, who emphasized the necessity of separating legislative and executive powers to prevent arbitrary government. Writing in the aftermath of the English constitutional struggles of the seventeenth century, John Locke regarded legislative authority as supreme but nevertheless subject to constitutional limitations and public accountability (David Jenkins, 2011). His theory reflected a broader commitment to limited government and the protection of natural rights, principles that would later influence liberal constitutional traditions across the world.

Montesquieu provided the most influential and systematic articulation of the doctrine in *The Spirit of the Laws* (1748). Observing what he perceived to be the constitutional balance within England, he argued that political liberty could only be preserved where legislative, executive, and judicial powers were exercised by separate institutions (Fozilov Mirashraf Azamatovich, 2025). Montesquieu argued that concentrating legislative, executive, and judicial powers in one authority leads to tyranny, making separation of powers a cornerstone of modern constitutionalism (De Montesquieu et al. 1945). His doctrine was widely adopted, especially in the United States, but evolved flexibly to suit different constitutional and political systems.

4.1.2 The Emergence of Formalist Constitutionalism

The formalist understanding of separation of powers emphasizes clear institutional boundaries and strict adherence to constitutionally assigned functions. Under this approach, legislative, executive, and judicial powers are regarded as distinct categories that should remain insulated from one another to preserve constitutional integrity and democratic accountability (Manning 1999). Formalists maintain that institutional overlap creates opportunities for executive expansion, weakens representative government, and undermines individual liberty.

The United States Constitution represents the clearest manifestation of this formalist tradition. Articles I, II, and III establish separate constitutional foundations for Congress, the Presidency, and the federal judiciary, thereby embedding institutional independence within the constitutional structure itself (D'Ignazio 2021). The framers believed that political ambition could serve as a mechanism of constitutional control, ensuring that each branch possessed both the capacity and the incentive to resist encroachments by the others.

Judicial review further strengthened this formalist architecture. Through landmark decisions such as *Marbury v. Madison* (*Marbury v. Madison*, 5 U.S. 137 (1803), n.d.), the judiciary assumed responsibility for maintaining constitutional boundaries and invalidating actions inconsistent with the supreme law of the land. Consequently, formal separation evolved beyond mere institutional division and became an integrated system of checks and balances designed to prevent arbitrary governance.

4.1.3 Functionalism and the Modern Administrative State

Functionalist approaches to separation of powers emerged largely in response to the realities of twentieth-century governance. Rather than treating institutional boundaries as absolute, functionalists evaluate constitutional arrangements according to their capacity to promote accountability, efficiency, and the rule of law (Shah 2022). From this perspective, the legitimacy of governmental action depends less upon rigid structural divisions and more upon the existence of effective mechanisms of oversight and constitutional control.

Hans Kelsen argued that strict separation of powers is impractical because government functions often overlap (Carrozza 2019). Administrative agencies make rules, enforce them, and resolve disputes, which functionalists accept if they remain accountable and subject to judicial review. The growth of the administrative state has shifted governance toward institutional cooperation rather than strict separation. While this improves efficiency, it also raises concerns about executive dominance and accountability.

India and Pakistan illustrate a functionalist approach, where cooperation among institutions often replaces rigid separation. The success of this model depends on

strong institutions, constitutionalism, and the rule of law (Mitra 1999).

Modern constitutional theory views formalism and functionalism as complementary rather than opposing approaches. Effective governance requires balancing institutional flexibility with safeguards to ensure accountability and limited government.

4.2 The United States: A Formalist Constitutional Model

4.2.1 Constitutional Structure and Institutional Design

The constitutional system of the United States represents the most comprehensive implementation of the classical doctrine of separation of powers. Influenced profoundly by Montesquieu's political philosophy, the framers of the Constitution deliberately distributed governmental authority among three distinct branches to prevent the concentration of power and preserve individual liberty (Kelso 2011). Articles I, II, and III respectively vest legislative authority in Congress, executive power in the President, and judicial authority in the federal courts, thereby creating a constitutional structure characterized by institutional autonomy and mutual restraint (The Constitution of United States of America 1787).

Unlike parliamentary systems, the American model establishes an independently elected executive that derives its legitimacy directly from the electorate rather than from legislative confidence (Wilson 2017). Congress exercises exclusive legislative authority through a bicameral structure consisting of the Senate and the House of Representatives, while the judiciary enjoys constitutional independence through life tenure and protection against reductions in judicial compensation. These institutional safeguards reflect a formalist commitment to preserving distinct constitutional functions and preventing encroachments by competing branches of government.

The constitutional design embodies a deliberate rejection of concentrated authority. The framers recognized that liberty could only be protected where governmental powers were divided, balanced, and subjected to institutional competition (Klug 2000). Consequently, separation of powers within the United States is not merely an organizational principle but a constitutional mechanism intended to secure democratic accountability and restrain arbitrary governance.

4.2.2 Checks and Balances in Practice

The American constitutional framework extends beyond institutional separation to incorporate a sophisticated system of checks and balances. While each branch exercises distinct constitutional functions, none possesses absolute authority. Instead, every institution retains constitutional mechanisms capable of restraining the others, thereby preserving equilibrium within the political system (Shane 1995).

The President may veto legislation enacted by Congress, although such vetoes remain subject to legislative override through supermajority voting. Congress, in turn, exercises oversight over executive action through investigations, appropriations, confirmation powers, and impeachment proceedings. The Senate's authority to confirm judicial appointments and executive nominations further reinforces legislative participation in constitutional governance (Katyal 2006). Similarly, the judiciary retains the power to invalidate unconstitutional legislation and executive actions, ensuring that governmental authority remains subordinate to constitutional limitations (Pickerill 2004).

James Madison famously described this arrangement as a system in which “ambition must be made to counteract ambition.” The effectiveness of American constitutionalism therefore depends not upon institutional isolation but upon structured interaction and reciprocal accountability (Mead 1968). Checks and balances transform separation of powers into a dynamic constitutional process through which competing institutions collectively preserve democratic governance and prevent the emergence of political absolutism.

4.2.3 Judicial Review and Constitutional Guardianship

The judiciary occupies a uniquely significant position within the American constitutional order. Through the doctrine of judicial review, the Supreme Court functions as the ultimate interpreter of constitutional meaning and the guardian of institutional boundaries (White 2007). The landmark decision in *Marbury v. Madison* established that laws inconsistent with the Constitution are void, thereby affirming the judiciary's authority to review legislative and executive actions (*Marbury v. Madison*, 5 U.S. 137 (1803)).

Subsequent constitutional jurisprudence expanded this supervisory role. In *United*

States v. Nixon, the Supreme Court rejected claims of absolute executive privilege and emphasized that even the President remains subject to judicial authority and constitutional accountability (*United States v. Nixon is 418 U.S. 683 (1974)*). The decision reaffirmed the foundational principle that no individual or institution exists above the law. Likewise, in *Hamdan v. Rumsfeld*, the Court invalidated military commissions established without congressional authorization, reinforcing the constitutional requirement that executive actions must operate within legislative and judicial constraints (*Hamdan v. Rumsfeld is 548 U.S. 557 (2006)*).

These judicial interventions illustrate the central role of courts in preserving constitutional equilibrium. Judicial review functions not merely as a legal mechanism but as an institutional safeguard that protects democratic principles and prevents the excessive accumulation of power within any single branch of government. The American experience demonstrates that effective separation of powers depends substantially upon an independent judiciary capable of enforcing constitutional limitations against both legislative and executive encroachments.

4.2.4 Contemporary Challenges to Institutional Separation

The American model faces modern challenges as administrative agencies combine legislative, executive, and judicial functions, sparking debates between formalists, who view this as a threat to accountability, and functionalists, who consider it necessary for effective governance. Presidential powers have also expanded through executive orders and emergency actions, increasing the importance of judicial oversight.

Despite these developments, the United States continues to preserve separation of powers through checks and balances, judicial independence, and constitutional supremacy, demonstrating that a formalist system can adapt while maintaining limited government and the rule of law.

4.3 India: Functional Adaptation within Parliamentary Constitutionalism

4.3.1 Constitutional Framework and Parliamentary Governance

The Indian constitutional system reflects a distinctive adaptation of the doctrine of separation of powers within a parliamentary framework (Acharya and Hanspal, 2025). Unlike the rigid institutional arrangement's characteristic of the United

States, the Indian Constitution incorporates a functional distribution of authority that permits a degree of institutional overlap while preserving constitutional accountability. The executive is drawn from and remains accountable to Parliament, thereby creating an inherent fusion between legislative and executive functions. Nevertheless, the Constitution establishes an independent judiciary and recognizes institutional limitations designed to prevent the excessive concentration of power.

Article 50 of the Constitution of India expressly directs the State to separate the judiciary from the executive within public services, demonstrating a constitutional commitment to judicial independence (The Constitution of India 1950). Similarly, Articles 32 and 226 empower the superior courts to enforce fundamental rights and exercise constitutional review, thereby strengthening the judiciary's position as a guardian of constitutional governance. Although the parliamentary model necessitates cooperation between governmental branches, constitutional arrangements ensure that such cooperation does not undermine institutional autonomy or democratic accountability.

The Indian structure illustrates that separation of powers need not require absolute institutional isolation. Rather, constitutional effectiveness may be achieved through a balanced allocation of functions supported by judicial oversight, political conventions, and constitutional limitations. This functional approach has enabled Indian democracy to accommodate social, political, and economic transformations without abandoning its commitment to constitutional governance.

4.3.2 The Basic Structure Doctrine and Judicial Innovation

One of the most significant constitutional developments in India has been the emergence of the basic structure doctrine. In *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that although Parliament possesses broad authority to amend the Constitution, it cannot alter its fundamental features, including judicial independence, constitutional supremacy, democracy, and the separation of powers (*Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461*). This doctrine fundamentally transformed Indian constitutionalism by placing substantive limitations upon legislative authority.

The judgment established the judiciary as the ultimate protector of constitutional

identity and institutional balance. Separation of powers consequently evolved beyond a structural principle and became an essential component of the Constitution's immutable character. The Court's reasoning reflected a functional understanding of constitutional governance, recognizing that institutional flexibility must remain subordinate to foundational constitutional values.

The doctrine was further reinforced in *Minerva Mills v. Union of India*, where the Supreme Court invalidated constitutional amendments that sought to curtail judicial review and expand parliamentary supremacy (*Minerva Mills v. Union of India*, AIR 1980 SC 1789). The Court emphasized that harmony among the legislature, executive, and judiciary constitutes an indispensable feature of constitutional governance. Excessive concentration of authority within any institution, even through constitutional amendment, was therefore deemed incompatible with the constitutional order.

These judicial innovations demonstrate the distinctive role of the Indian judiciary in preserving institutional equilibrium. Rather than merely interpreting constitutional provisions, the courts have actively shaped constitutional doctrine to ensure that democratic governance remains consistent with fundamental constitutional principles.

4.3.3 Public Interest Litigation and Judicial Activism

The development of Public Interest Litigation (PIL) represents another important dimension of India's functional approach to separation of powers. Through PIL, the judiciary expanded access to justice and assumed a more proactive role in addressing social inequalities, environmental concerns, administrative failures, and violations of fundamental rights (Deva 2009). This transformation significantly broadened the scope of judicial intervention within public governance.

Judicial activism has undoubtedly strengthened constitutional accountability and provided remedies where legislative and executive institutions have failed to respond effectively. Courts have frequently issued directives concerning environmental protection, prison reforms, electoral transparency, and governmental accountability, thereby reinforcing constitutional values and protecting vulnerable communities (Pleming 1998).

However, the expansion of judicial authority has sparked constitutional debate. Critics argue that judicial activism encroaches on the powers of elected institutions and weakens democratic legitimacy, while supporters view it as essential for protecting fundamental rights and addressing governance failures (Ghosh 2013). Thus, India's experience highlights the balance between judicial accountability and respect for the separation of powers.

4.3.4 Institutional Resilience and Functional Equilibrium

Despite institutional conflicts and debates over judicial activism, India's constitutional system has remained resilient. Democratic continuity, an independent judiciary, and regular elections have preserved constitutional balance, while judicial review and the Basic Structure Doctrine have prevented excessive concentration of power and strengthened democratic governance (Adv. Uma kashyap and Adv. Ayushi Chuhan 2025).

India demonstrates that separation of powers can function effectively through institutional cooperation rather than rigid division. Its constitutional framework balances flexibility with accountability, ensuring judicial independence, constitutional supremacy, and the protection of democratic values and fundamental rights.

4.4 Pakistan: Constitutional Commitment and Institutional Realities

4.4.1 Legal and Constitutional Framework

The Constitution of the Islamic Republic of Pakistan, 1973 provides the legal foundation for the doctrine of separation of powers by allocating legislative, executive, and judicial authority among distinct constitutional institutions. Although the Constitution does not adopt a rigid Montesquieuan model, it establishes a functional system of separation supported by constitutional checks and balances. Legislative authority is vested in the Majlis-e-Shoora (Parliament) under Article 50, while Articles 141 and 142, read with the Fourth Schedule, define the legislative competence of the Federation and the Provinces. Executive authority is vested in the Federal Government under Articles 90 and 91,99, with Article 97 prescribing the scope of executive authority.

Judicial power is vested in the Federal Constitutional Court, the Supreme Court, the

High Courts, and other courts under Article 175, the Federal Shariat Court under Article 203C, and the Administrative Courts and Tribunals established under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. Most importantly, Article 175(3) expressly mandates the separation of the judiciary from the executive, while the Objectives Resolution (Article 2A) guarantees that the independence of the judiciary shall be fully secured. Judicial independence is further strengthened by Articles 187, 189 and 190, which make Federal Constitutional Court Judgments binding on all court including the Supreme Court while Supreme Court judgments binding on all courts except the Federal Constitutional Court of Pakistan, and require all executive and judicial authorities to act in aid of the Court for the purpose of doing complete justice as enumerated under the Constitution, whereas Article 209 entrusts judicial accountability to the Supreme Judicial Council rather than the executive.

The Constitution also safeguards institutional autonomy through several non-interference provisions. Articles 66, 68, and 69 protect parliamentary privilege and immunize legislative proceedings from judicial interference, while Article 48(4) bars judicial inquiry into the advice tendered by the Cabinet or the Prime Minister to the President. Likewise, Article 248 grants constitutional immunity to specified executive office holders in respect of acts performed in their official capacity. At the same time, the Constitution incorporates checks and balances through Article 175A (judicial appointments), Article 47 (impeachment of the President), Article 75 (presidential assent to legislation), and Article 89, which authorizes the President to promulgate Ordinances during parliamentary recess, subject to subsequent parliamentary approval. Article 239 further regulates the constitutional amendment process; clauses (5) and (6) provide that constitutional amendments shall not be questioned in any court and affirm Parliament's power to amend the Constitution.

The constitutional autonomy of the judiciary is further reinforced through Article 191, which empowers the Federal Constitutional Court and the Supreme Court to regulate their own practice and procedure by framing rules. Exercising this authority, the Supreme Court Rules, 2025 (replacing the Supreme Court Rules, 1980) govern the Court's internal administration, constitution of benches, and procedural

framework.

The constitutional framework is complemented by the Rules of Business, 1973, which regulate the internal functioning of the Federal Executive. These Rules operationalize executive authority by prescribing procedures relating to Cabinet responsibility, legislative proposals, presidential functions, inter-divisional coordination, and federal-provincial relations. Rule 8 requires consultation among government divisions before executive decisions affecting multiple departments are taken and establishes a mechanism for resolving inter-divisional disagreements, thereby promoting administrative coordination without disturbing the constitutional distribution of powers. The Rules also regulate executive interaction with Parliament by requiring Cabinet approval before the introduction of government legislation.

In addition, statutory law reinforces constitutional governance. Section 24A of the General Clauses Act, 1897 requires public authorities exercising statutory powers to act fairly and record reasons for their decisions, thereby strengthening the rule of law and facilitating judicial review of administrative action. Collectively, these constitutional and statutory provisions establish Pakistan's legal framework for separation of powers by balancing institutional autonomy with constitutional accountability and an effective system of checks and balances.

4.4.2 Executive Dominance and Ordinance-Making Powers

One of the most persistent challenges to the doctrine of separation of powers in Pakistan has been the expansion of executive authority. Article 89 empowers the President to promulgate ordinances when Parliament is not in session, providing an exceptional mechanism intended to address urgent legislative needs. In practice, however, successive governments have frequently relied upon ordinance-making as a substitute for ordinary parliamentary processes (Usman et al. 2022).

The repeated use of ordinances has raised important constitutional concerns regarding legislative supremacy and democratic accountability. By bypassing parliamentary deliberation and scrutiny, executive authorities have often exercised functions traditionally reserved for elected representatives (Leila Moradi et al., 2024). This tendency has weakened institutional checks and reinforced executive

predominance within the constitutional framework.

The phenomenon reflects broader structural issues within Pakistan's political system. Weak parliamentary institutions, party discipline, and periods of political instability have collectively facilitated executive expansion. Consequently, the constitutional principle of separated powers has frequently yielded to pragmatic considerations of governance and political control. While constitutional provisions formally maintain institutional distinctions, the practical balance of authority has often favored executive institutions at the expense of legislative independence.

The challenge, therefore, lies not merely in constitutional design but in cultivating democratic practices that reinforce parliamentary oversight and limit the routine exercise of extraordinary executive powers. Effective separation of powers requires that emergency mechanisms remain exceptional rather than becoming instruments of ordinary governance.

4.4.3 Judicial Transformation and Constitutional Adjudication

The Pakistani judiciary has occupied an ambivalent position within the country's constitutional history, oscillating between accommodation of executive authority and the assertion of judicial independence. Although the Constitution establishes an independent judiciary under Articles 175–184, the practical realization of judicial independence has evolved through constitutional adjudication and changing judicial philosophy. The Supreme Court has consistently recognized that the Constitution is founded upon the doctrine of trichotomy of powers, albeit not in the rigid Montesquieuan sense. In the case of *State v. Zia-ur-Rehman* (PLD 1973 SC 49), the Court observed that constitutional governance requires each organ of the State to remain within its constitutionally assigned sphere of authority so that none may encroach upon the legitimate domain of another. This constitutional understanding was further elaborated in a case title as *Federation of Pakistan v. United Sugar Mills Ltd.* (PLD 1977 SC 397), where the Supreme Court held that the Constitution does not establish an absolute separation of powers but rather a functional system based upon institutional interaction and constitutional checks and balances. Likewise, in another case titled as *Fauji Foundation v. Shamimur Rehman* (PLD 1983 SC 457), the Court reaffirmed that Pakistan's constitutional framework requires a pragmatic

relationship among the legislature, executive, and judiciary while preserving their essential constitutional functions.

Despite these constitutional principles, early constitutional jurisprudence frequently legitimized extra-constitutional interventions through the doctrine of necessity, thereby weakening constitutional supremacy and institutional separation. In the historical case of *State v. Dosso* (PLD 1958 SC 533), the Supreme Court validated the military takeover by relying upon Hans Kelsen's theory of revolutionary legality. This approach was subsequently reaffirmed in case titled as *Syed Zafar Ali Shah v. General Pervez Musharraf, Chief Executive of Pakistan* (PLD 2000 SC 869), where the Court again invoked constitutional necessity to validate military rule while permitting limited constitutional amendments. These decisions subordinated constitutional supremacy to political expediency and significantly weakened the doctrine of separation of powers by legitimizing executive dominance over constitutional institutions.

A gradual judicial transformation emerged during the 1990s and accelerated following the Lawyers' Movement. In a famous case titled as *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 324), the Supreme Court substantially curtailed executive discretion in judicial appointments and emphasized strict adherence to constitutional procedures governing the appointment of judges. The judgment strengthened judicial autonomy and reaffirmed that institutional independence constitutes an indispensable element of constitutional governance. This approach was reinforced in case *Mobashir Hassan v. Federation of Pakistan* (PLD 2010 SC 265), where the Supreme Court reiterated that the Constitution envisages a trichotomy of powers under which no constitutional organ may usurp the functions constitutionally entrusted to another. The Court emphasized that constitutional governance depends upon maintaining institutional boundaries while simultaneously preserving an effective system of checks and balances.

The restoration of judicial independence reached its symbolic culmination in the case of *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 SC 879) and was further consolidated in the case titled as *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61), where

the Supreme Court declared unconstitutional the actions taken against the Chief Justice and reaffirmed judicial independence as a foundational constitutional value. These decisions reflected the judiciary's renewed commitment to resisting executive encroachments and restoring constitutional equilibrium after prolonged periods of authoritarian governance.

Subsequent constitutional jurisprudence further strengthened this understanding of institutional autonomy. In the case of *Baz Muhammad Kakar v. Federation of Pakistan* (PLD 2012 SC 923), the Supreme Court held that the legislature cannot assume judicial functions relating to the constitution of judicial benches or interfere with matters essential to judicial independence. Similarly, in another case titled as *Jurists Foundation v. Federal Government* (PLD 2020 SC 1), the Court described separation of powers as a foundational principle of Pakistan's constitutional architecture and a cornerstone of constitutional democracy, emphasizing that judicial independence is inseparable from the constitutional allocation of governmental powers.

Contemporary constitutional adjudication has continued to refine the doctrine of separation of powers in response to increasingly complex institutional disputes. In case of *Imran Ahmad Khan Niazi v. Federation of Pakistan* (PLD 2024 SC 102), the Supreme Court reaffirmed that the Constitution is founded upon the trichotomy of powers and held that Parliament cannot assume judicial functions by legislatively determining the outcome of criminal liability or pending judicial proceedings. The majority emphasized that legislative authority cannot extend to the exercise of judicial power, whereas Justice Syed Mansoor Ali Shah, in his dissenting opinion, likewise recognized separation of powers as a foundational constitutional principle while advocating judicial restraint and respect for parliamentary policymaking unless a clear constitutional violation is established beyond reasonable doubt.

The constitutional dialogue regarding institutional autonomy further evolved in the case of *Raja Amer Khan and others v. Federation of Pakistan* (PLD 2025 SC 869), concerning the constitutional validity of legislation regulating the Supreme Court's internal practice and procedure. While the majority emphasized

institutional comity and mutual constitutional respect among the branches of government, the dissenting opinions of Justices Ayesha A. Malik and Shahid Waheed considered legislative regulation of the Supreme Court's internal affairs incompatible with judicial independence and the constitutional principle of separation of powers. Justice Syed Mansoor Ali Shah further explained that the doctrine of checks and balances complements the separation of powers by ensuring that each constitutional organ remains accountable without compromising institutional independence.

The principle has likewise been applied to preserve executive authority within its constitutionally assigned sphere. In the case titled as *Ministry of Commerce v. Kashif Law Book House* (Federal Constitutional Court of Pakistan, C.P.L.A. Nos. 1505 & 1506 of 2024), the Federal Constitutional Court observed that matters relating to foreign affairs and trade policy fall within the exclusive constitutional domain of the executive under Article 90 of the Constitution. Judicial directions determining governmental trade policy would therefore constitute an impermissible encroachment upon executive authority and disturb the constitutional balance among the organs of the State.

Similarly, the Lahore High Court in recent case of *Ayesha Iftikhar and another v. Federation of Pakistan* (PLD 2026 Lahore 17; 2026 PLC (C.S.) 188) reaffirmed that executive authorities cannot disregard or reinterpret binding judicial precedent through administrative action. The Court held that such conduct constitutes an abuse of the settled constitutional principle of separation of powers because each organ of the State must exercise only those powers assigned to it by the Constitution. In the sphere of administrative law, the case of *Messrs Coca-Cola Export Corporation Pakistan Branch v. Deputy Commissioner Inland Revenue and others* (2026 PTD 1) further reinforced the doctrine by holding that reasoned administrative decision-making constitutes an essential requirement of the rule of law and serves as an important constitutional restraint upon executive discretion.

The contemporary jurisprudence therefore demonstrates that Pakistan's constitutional understanding of separation of powers has evolved from early judicial accommodation of executive supremacy towards a more robust commitment to

constitutionalism, judicial independence, and institutional accountability. Nevertheless, continuing debates concerning judicial activism, parliamentary sovereignty, executive authority, and the proper limits of constitutional adjudication indicate that the doctrine remains a dynamic and contested feature of Pakistan's constitutional order. Rather than adopting a rigid model of institutional isolation, Pakistani constitutional jurisprudence increasingly recognizes separation of powers as a functional doctrine that seeks to preserve constitutional equilibrium through mutual respect, institutional restraint, and an effective system of checks and balances.

4.5 Comparative Reflections on Separation of Powers

4.5.1 Formalism versus Functionalism

The experiences of the United States, India, and Pakistan show that separation of powers operates differently depending on each country's history, institutions, and political system. The comparison between formalist and functionalist approaches explains these constitutional differences. The United States follows the strongest formalist model with clear constitutional separation, checks and balances, and judicial review, although some functional overlap exists through administrative agencies.

India adopts a functional approach where the executive and legislature are linked under the parliamentary system, but constitutional balance is maintained through an independent judiciary and the Basic Structure Doctrine. Pakistan formally recognizes separation of powers, yet executive dominance, military interventions, and inconsistent judicial responses have often weakened institutional independence, reflecting political realities rather than constitutional design.

Comparative analysis shows that neither formalism nor functionalism is universally superior. Effective constitutional governance requires balancing clear institutional boundaries with practical flexibility while ensuring accountability, constitutional limits, and the rule of law.

4.5.2 Judicial Independence and Democratic Accountability

Judicial independence is the most important safeguard for maintaining separation of powers, as courts enforce constitutional limits, preserve institutional boundaries, and prevent executive or legislative excess. In the United States, judicial review and

landmark cases such as *Marbury v. Madison*, *United States v. Nixon*, and *Hamdan v. Rumsfeld* demonstrate the judiciary's role in upholding constitutional supremacy.

In India, the judiciary has strengthened constitutional governance through the Basic Structure Doctrine and judicial review, protecting constitutional identity despite concerns about judicial activism. In Pakistan, although earlier courts legitimized military interventions, the post-Lawyers' Movement era has seen greater judicial independence and accountability, despite continuing challenges of politicization.

Comparative analysis shows that effective separation of powers depends not only on constitutional design but also on an independent judiciary capable of enforcing constitutional principles. Judicial independence is therefore both a structural safeguard and a fundamental pillar of democratic constitutionalism.

4.5.3 Institutional Resilience in Established and Transitional Democracies

The effectiveness of separation of powers depends not only on constitutional provisions but also on strong institutions, constitutional culture, and democratic traditions. Established democracies like the United States benefit from stable institutions and political norms, while transitional democracies often face challenges such as executive dominance and weak institutional capacity. India has strengthened democratic governance through constitutional adaptability, judicial oversight, and functional cooperation among branches.

Pakistan, however, has experienced repeated disruptions due to military interventions, civil-military tensions, and executive dominance. Despite these challenges, constitutional reforms, judicial developments, and growing public participation indicate gradual progress toward stronger constitutional governance and institutional resilience.

Comparative analysis shows that constitutional text alone cannot ensure effective separation of powers. Its success depends on independent institutions, judicial integrity, democratic commitment, and public respect for constitutional limits. Although the doctrine is applied differently across jurisdictions, its core purpose is preventing concentration of power and protecting constitutional liberty that remains essential to democratic governance.

4.5.4 Comparative Table

Criterion	United States	India	Pakistan
System Type	Presidential	Federal Parliamentary	Federal Parliamentary (Hybrid)
Doctrinal Basis	Formalist	Functionalism with structural elements	Hybrid (formalist text, functional chaos)
Judicial Review	Strong and institutionalized	Assertive, constitutionalized (PIL)	Strengthening, historically compromised
Legislative Oversight	Declining due to polarization	Weak due to party discipline	Minimal due to executive
Executive Power	Expansive, especially post- WWII	Strong PM-led cabinet	Disproportionate, often extra- constitutional
Military Influence	Absent	Absent	Deep and systemic
Judicial Overreach	Low	High	Medium to high
Risk			
Reform Trend	Administrative deference debated	Collegium reform, accountability rising	Civilian supremacy under negotiation

5. Conclusion

The doctrine of separation of powers remains a fundamental pillar of constitutional governance, safeguarding limited government, accountability, the rule of law, and individual liberty. Although its application has evolved from a model of strict institutional separation to one emphasizing balanced cooperation, the comparative experiences of the United States, India, and Pakistan demonstrate that its effectiveness depends on each country's constitutional framework, independent institutions, judicial integrity, democratic traditions, and commitment to constitutionalism. Ultimately, neither rigid formalism nor unrestricted functionalism provides a universal solution; rather, a balanced and adaptable approach is essential

for preserving constitutional democracy and effective governance.

6. Recommendations

In light of the comparative analysis, constitutional systems should strengthen judicial independence, reinforce parliamentary oversight, limit extraordinary executive powers, establish clear legal limits on administrative delegation, promote constitutional literacy and democratic culture, prevent extra-constitutional interference, and encourage comparative constitutional learning. Collectively, these measures would enhance institutional accountability, preserve the balance among the branches of government, and ensure the more effective realization of the doctrine of separation of powers within contemporary constitutional democracies.

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