



THE ROLE OF THE JUDICIARY IN CONSTITUTIONAL INTERPRETATION IN PAKISTAN

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Abstract

This study examines the evolving role of the judiciary in Pakistan in interpreting the Constitution, exploring how the courts have come to terms with their position as the primary interpreters of the Constitution. The problem with Pakistan is that the judiciary has a two-fold role in a democracy: protecting constitutional supremacy, Basic rights, and preserving the balance of power between the various centres of state. The paper provides a historical overview, starting with the historical context that initially justified the use of a military coup under the doctrine of necessity, and continuing to the contemporary history of judicial activism, as evident in major court cases such as the Panama Papers Case (2017). It presents a critical analysis of the conflict between judicial review and parliamentary supremacy, highlighting the main cases, including the Maulvi Tamizuddin Khan Case (1955) and Asma Jilani v. The Government of Punjab (1972), which influenced judicial attitudes towards executive activities. Judicial problems, such as political and military interventions, slow justice delivery, and increasing judicial activism, are also addressed in the study. The analysis has shown that the consequences of judicial activism on the enhancement of constitutional governance have been accompanied by concerns about judicial intrusion, particularly in policy areas. The appropriate balance is needed, and judicial independence is to be saved without cancelling democracy and parliamentary sovereignty. The study concludes that the constitutional stability and democratic integrity of Pakistan rely on judicial restraints, as well as greater judicial independence.

Keywords: Judicial Interpretation, Judicial Activism, Parliamentary Supremacy, Basic Structure Doctrine, Judicial Independence.

1. Introduction

The courts of Pakistan are the highest authority and the primary interpreters of the Constitution of Pakistan (1973), and their interpretation is crucial in asserting constitutional supremacy, safeguarding fundamental rights, and maintaining checks and balances among the institutions of the state of Pakistan (Aziz et al., 2023). The superior judiciary, represented by the Supreme Court and High Courts as the third pillar of the state, has the authority of its judicial review vested in it, This authority enables it to review and check the constitutionality of legislative and executive actions, thereby contributing to Pakistan's constitutional jurisprudence (Bashir et al., 2025).

The judicial history of Pakistan contains indicators of an evolving environment and a shifting structure between judicial restraint and judicial activism methods of constitutional review. The Supreme Court has developed doctrines such as the doctrine of necessity, a doctrine previously used to justify military coups, and the implied beneficial basic structure doctrine, which was recently employed to prevent changes to fundamental elements of the constitution (Shah et al., 2025). District Bar Association v. Sindh Titles Cases. In 2015, the Federation of Pakistan demonstrated its judicial readiness to eliminate constitutional amendments that impair the independence of judges and implement significant changes towards high constitutional protection (Gul et al., 2025).



Article 184(3) of the Constitution is a significant tool of judicial activism, granting the Supreme Court original jurisdiction over cases of public importance related to fundamental rights. Through this provision,, one can find broad judicial activism, as seen in *Shehla Zia v. Information about WAPDA* (1994), where the Court acknowledged the right to a healthy environment through Article 9 (right to life), and the *Panama Papers Case* (2017), resulting in the disqualification of Prime Minister Minister Nawaz Sharif (Khalid, 2012). Nevertheless, excessive judicial activity is often subject to discussions of judicial overreach, especially about the constitutional guidelines of the Supreme Court regarding its power to act suo motu and its role in encroaching on the parliamentary domain, as noted by Chief Justice Qazi Faez Isa (2023) (Ali Shah et al., 2024).

2. The Role of the Judiciary in Constitutional Interpretation in Pakistan

The Constitution of Pakistan vests the central powers and security in the judiciary, thus defining the judiciary as the custodian of the Constitution and fundamental rights. It is graphically reflected in the preamble of the Constitution of 1973 that states; the independence of the judiciary shall be fully secured, which depicts that the founder of the Constitution had understood that only an independent judiciary can ensure the rule of law, interpret the Constitution authoritatively and enforce the rights of the citizens (Constitution of Pakistan, 1973, Preamble). Superior court judges also enhance this pledge by taking an oath stating that they will preserve, protect, and defend the Constitution (Constitution of Pakistan, 1973, Third Schedule). These four major provisions, namely Article 175, Article 184(3), Article 199, and Article 190, enhance the power of the judiciary to take decisive measures against unconstitutional acts, in addition to providing constitutional protection for fundamental rights (Imran, 2024).

a. Article 175: independent judiciary Article 175

The foundation of Pakistan's independent judicial system is outlined in Article 175 of the Constitution. It requires the independence of the judiciary, which is separated from the executive branch, with the Supreme Court of Pakistan at the top and High Courts in individual provinces and the Islamabad Capital Territory (Constitution of Pakistan, 1973, Art. 175(1)). More importantly, Article 175(3) states that Judiciary must be progressively separated within fourteen years of the commencement of the Constitution of the Judiciary and the executive, thereby, making the separation of the two pillars of the state a statutory commitment that the judges should be able to exercise their authority without interference by the executive (Constitution of Pakistan, 1973, Art. 175(3)). This is influenced in part by the decision of the Supreme Court in *Al-Jehad Trust v. This was once again reinstated in Federation* (PLD 1996 SC 324), where it was stressed that judicial independence is an essential aspect of the rule of law. *Federation*, 1996) (Jatoi & Shah, 2023).

The appurtenance of Article 175(2) further avows that no court shall have jurisdiction except to the extent that the Constitution confers it thereon or by an act of Parliament (Constitution of Pakistan, 1973, Art. 175(2)). This provision would prohibit the establishment of extrajudicial tribunals and ensure that only constitutionally empowered institutions perform judicial work. These protections were increased when the Eighteenth Amendment (Constitution (Eighteenth Amendment) Act, 2010) added article 175-A, which has created both a Judicial Commission and a Parliamentary Committee whose role is to appoint judges to the superior courts and which thereby reduces the executive discretion and increases the independence of the judiciary (Constitution (Eighteenth Amendment) Act, 2010) (A. Khan et al., 2025).

b. Article 184 (3): Original jurisdiction of the Supreme Court regarding Fundamental Rights

Article 184(3) vests original jurisdiction upon the Supreme Court to pass directions on the fundamental right issues of public concern. It gives that in the event the Court thinks that a matter of public concern on the interpretation of any of the Fundamental Rights is in play, it may make any of the orders, direction that a High Court may make in terms of Article 199 (Constitution of Pakistan, 1973, Art. 184(3)). Such a superpower also gives the Supreme Court the right to entertain petitions on a first-instance basis, rather than under appeal, in major public-interest matters (Nadeem et al., 2023).

Article 184(3) jurisdiction requires two things: the matter must have “public importance” and the question asked must establish any constitutional fundamental right (Constitution of Pakistan, 1973, Art. 184(3)). It is essential to note that the provision has an opening: without prejudice to the provisions of Article 199, it implies that the jurisdiction can be exercised simultaneously by the High Courts. The locus standi and



alternative remedy as strict rules do not apply in the original jurisdiction of the Supreme Court, which under 184(3) exists concerning Article 199, but whose origin is based upon an alternative remedy. In the case of *Benazir Bhutto v. The Supreme Court in Federation of Pakistan* (PLD 1988 SC 416) determined that the doctrine of standing cannot be applied to Article 184(3) under the Constitution, which has opened the window of opportunity to every citizen to file a petition on behalf of the other individuals whose rights have been infringed (*Benazir Bhutto v. Federation*, 1988). Article 184(3) has been applied in path-breaking examples, including Musharraf's emergency (2007) and recent cases involving corruption and environmental issues, as well as the exercise of suo motu notices against the arbitrary actions of the executive (M. M. Khan, 2021). However, the Constitution lays no special reference to suo motu powers nevertheless, the Court in *Darshan Masih v. The right of Province of Punjab* (PLD 1990 SC 332) to move on its motion was affirmed and the practice of public interest litigation was entrenched in Pakistan (*Darshan Masih v. In province of Punjab*, 1990)(Lee, 2020).

c. Article 199: The writ jurisdiction of High Courts

Article 199 also grants universal writ jurisdiction to the provincial High Courts to exercise their power in enforcing fundamental rights and to prohibit unlawful acts. Article 199(1) of the Constitution of Pakistan, 1973, seeks to provide to a High Court the capability of delivering directions, orders, or writs; habeas corpus, mandamus, prohibition to any person, or authority in the territorial jurisdiction of the High Court, and only after this to enforce fundamental rights, or to forestall lawless actions (Constitution of Pakistan, 1973, Art. 199(1)). This section establishes the provincial level of judicial review as constitutional, thereby ensuring that citizens are given a chance for direct access to justice against the abuse of power by the executive arm (ibn Munir, 2024).

High Courts have specifically been empowered under clause (1) (c) to grant orders, including any order that may be appropriate to ensure the enforcement of any of the Fundamental Rights under Art. 199(1) (c) on the application of any aggrieved person (Constitution of Pakistan, 1973). Through this power, High Courts have been able to do a lot in the situation of illegal detentions, enforced disappearances, environmental degradation and discrimination (Y. R. Khan & Bashir, 2022). Although standing is a formal requirement, the courts have, in some cases, taken a loose interpretation of the requirement by allowing public interest litigation, which enables NGOs and interested persons to litigate on behalf of vulnerable groups (Qureshi et al., 2023). The writ jurisdiction contains Article 199, which has limitations: the High Court can exercise such jurisdiction only when it finds that no other equally effective remedy is available, and it cannot of its motion exercise such jurisdiction (Constitution of Pakistan, 1973, Art. 199(1), (1A)). Matters related to the armed forces in terms of service are off limits (Constitution of Pakistan, 1973, Art. 199(3)). Nonetheless, Article 199 is a powerful tool at the disposal of the judiciary aimed at decentralising and centralising constitutional guardianship and granting the provinces the ability to supervise the actions of the executive (Chattopadhyay, 2023).

d. Article 190-Judicial Duty of the Executive to Support the Court

Article 190 supports the binding character of the judicial judgment, as it requires the entire executive and judicial system to serve the Supreme Court in all the proceedings (Constitution of Pakistan, 1973, Art. 190). It is based on this clause that arms of government are, at the very least, constitutionally obligated to cooperate in the implementation of any judgment/order passed by the Supreme Court. A deliberate non-adherence will amount to a violation of the Constitution. Article 190 has in the past been used in underlining the supremacy of judicial imperatives (Zoldan, 2020). An example of an action setting the milestone on Article 190 is the confrontation in 1997, when Chief Justice Sajjad Ali Shah attempted to seek the military's help in defending the court premises (Anleu & Mack, 2021). Most recently, the Court has made it clear to the executive in high-profile cases that it will invoke Article I, as necessary, in the event of a possible need. Article 190, in conjunction with Article 189, which stipulates that the judgments of the Supreme Court are binding on all courts, constitutes the complete constitutional arrangement for effectively enforcing judicial pronouncements (Constitution of Pakistan, 1973, Art. 189) (Brudney & Leib, 2019).

3. Judicial Doctrines in Constitutional Interpretation

Over the decades of its existence, the Pakistani judiciary has struggled with the turbulent political



environment that dominates the country by formulating some of the most important doctrines of constitutional interpretation. Three of these have been of particular significance in terms of their significant leverage in the corrective relationship between legality and legitimacy, as well as between legitimacy and rights: the doctrine of necessity, the implicit basic-structure doctrine, and the extension of judicial activism via the Article 184(3) public-interest litigation process (Ali Shah et al., 2024). When combined, these doctrines indicate a court seeking to balance the needs of extra-constitutional exigency, political sovereignty in the form of a parliament and the entrenchment of fundamental rights.

a. doctrine of necessity

Intellectually, the doctrine of necessity can be traced to Hans Kelsen's theory of revolutionary legality, which posits that a successful revolution establishes a new legal order in cases where the population consents to this new order (Baig et al., 2024). This concept was adopted in Pakistan, as determined in *State v Dosso* (1958), following a bloodless coup by General Ayub Khan in October 1958. Under Justice Munir, the Supreme Court declared that the 1956 Constitution had been abrogated, as no express opposition to the military coup had been raised, and martial law became the new legal order. Although the takeover was extra-constitutional, it was legitimised retroactively (*State v Dosso*, 1958). This move effectively legalised the idea that, in the event of a severe constitutional emergency, force may be enacted as the law of the land ("Judicial Independence in Pakistan," 2017).

Twenty years later, in *Begum Nusrat Bhutto v Chief of Army Staff and Federation of Pakistan* (1977), the Court reiterated the necessity to justify the coup of General Zia-ul-Haq on July 5, 1977. The defence of petitioners was accused of violating the suspended constitution, which had detained political leaders; however, the court did not agree, but stated that since the constitution had been automatically set aside, its protection was no longer constitutional. Thus, the Court's jurisdiction was based on the new military dispensation, not on the superseded constitutional order. Therefore, the detentions under the new dispensation were lawful (*Begum Nusrat Bhutto v Chief of Army Staff and Federation of Pakistan*, 1977). It has been criticised as a doctrine that, in practical terms, incentivises extra-constitutional interventionism; to act with impunity, extra-constitutional actors can be assured of the post facto legal sanctioning of those who succeed (Muhammad et al., 2024).

The Obama Administration had to wait until the turn of the millennium before seeing an improvement in how the Court was approaching necessity. In *Syed Zafar Ali Shah v. President of Pakistan & Ors* (2000), the Supreme Court reaffirmed the coup led by General Pervez Musharraf in October 1999. Still, compared to previous instances, the Court applied certain express requirements: the renewal of civilian legislative bodies within a fixed time limit, respect for fundamental rights, and acceptance of an electoral schedule (*Syed Zafar Ali Shah v President of Pakistan & Ors*, 2000). This conditional legitimisation was significant in that necessity could only confer legitimacy to extra-constitutional change on the condition that measures were included to ensure the return to democratic rule and the observance of the rule of law. According to one scholar, such conditions amount to a judicial decision that fetters the sovereign (J. Nazir et al., 2024; Qadim, 1993).

b. Basic Structure Doctrine

Unlike the doctrine of necessity, which determines the validity of extra-constitutional action, the basic-structure doctrine places a limit on parliamentary authority. It is based on a doctrine created by Indian Jurisprudence, which holds that certain aspects of a constitution, such as democracy, separation of powers, and independence of the judiciary, are so fundamental that they cannot be amended (*Kesavananda Bharati v State of Kerala*, 1973). The Supreme Court has taken a similar approach, albeit by implication, as a prohibition against unfettered amendment, even though the basic structure clause is not expressly stated in Pakistani Constitutional law (Badshah, 2021).

In the case of *District Bar Association (Rawalpindi) v Federation of Pakistan* (2015), a nine-judge bench brought down articles of the Twenty-First Amendment and the Pakistan Army (Amendment) Act 2015. It was such laws that aimed at instituting special military tribunals to deal with terrorists. These cases established judicial independence as part of the Constitution's basic structure and not subject to overriding even by a super-majority of the Parliament (*Civil Court of District of Rawalpindi (District Bar Association, Rawalpindi) v Federation of Pakistan*, 2015). In this way, the Court stated that even though the Parliament has



extensive amending authority under Article 239, this authority cannot be applied to the fundamental nature of the Constitution (Mufti, 2023).

The judgment laid stress on the fact that various aspects like the independence of the judiciary form part of the retention of the rule of law and democracy; any succession trying to make the court submissive to the executive will violate the basic structure (District Bar Association (Rawalpindi) v Federation of Pakistan, 2015). Imposing, even tacitly, the concept of basic structure, the Supreme Court also strengthened constitutionalism vis-à-vis the impulses of majoritarianism and reminded all parties of the separation of powers as a non-encroachable value (I. U. Khan & Khan, 2023).

c. Public interest litigation and judicial activism

In consonance with these doctrines, since the 1990s, the Supreme Court has adopted a judicial activism approach by extensively interpreting Article 184(3) and granting it vast original jurisdiction in cases of national importance and involving fundamental rights. This has led to the emergence of Public Interest Litigation (PIL) in Pakistan, where the Court takes petitions filed by either an individual or a group of people on behalf of dispossessed or marginalised citizens, thus increasing veritable access to justice through judicial oversight (Nasir & ur Rehman, 2024).

Shehla Zia v Water and Power Development Authority (1994) is one of the first and most important PIL cases. Living in Islamabad's Margalla Hills, the people raised questions about the placement of high-voltage transmission lines in residential areas and accused them of posing health hazards due to electromagnetic radiation. The Court explained that the right to life, as provided in Article 9, has implications for the right to a healthy environment and human dignity (Shehla Zia v Water and Power Development Authority, 1994). It established an expert commission to evaluate the dangers and ordered WAPDA to relocate the lines or implement protection measures. This verdict successfully recognised environmental rights as a basic right and became a precedent in succeeding environmental law (Abbas, 2021).

Even earlier, in *Miss Benazir Bhutto v Federation of Pakistan* (1988), the Court was presented with the executive usurping too much power, when President Zia-ul-Haq had proclaimed non-party general elections. Benazir Bhutto opposed the order, as it was against democratic principles. In applying Article 184(3), the Supreme Court declared that only a free and fair election would permit participation by political parties, negating the use of a non-party foundation for conducting elections (*Miss Benazir Bhutto v Federation of Pakistan*, 1988). This strengthened the principle of representative democracy and reduced the executive's ability to act arbitrarily (Hashmi, 2018).

Ever since these landmark judgements, the PIL docket in the Court has grown to cover police brutality, rights of prisoners, child labour, corruption and custodial torture. In both cases, the Court has exercised its writ jurisdiction by issuing binding directions to various executive agencies to promote good governance and accountability. Critics blame the Court for breaching the separation of powers (B. Ali, 2020), but proponents argue that PIL has addressed institutional deficits that other arms of government have not resolved, thereby combating systemic wrongs.

d. Dialectic and Criticism

The three doctrines of necessity, basic structure and activism of PIL contradict each other. On the one hand, the Court has justified coups by the doctrine of necessity, and on the other, has jealously guarded constitutional identity and natural rights, barring any usurpations by the legislature and executive. It has been noted that necessity cases tend to emerge shortly after unconstitutional takeovers, where the court seeks to maintain legal continuity (Aftab & Akram, 2019). However, the interplay between basic-structure and PIL interventions is observed to emerge during periods of democracy, indicating the judicial desire to enforce independence.

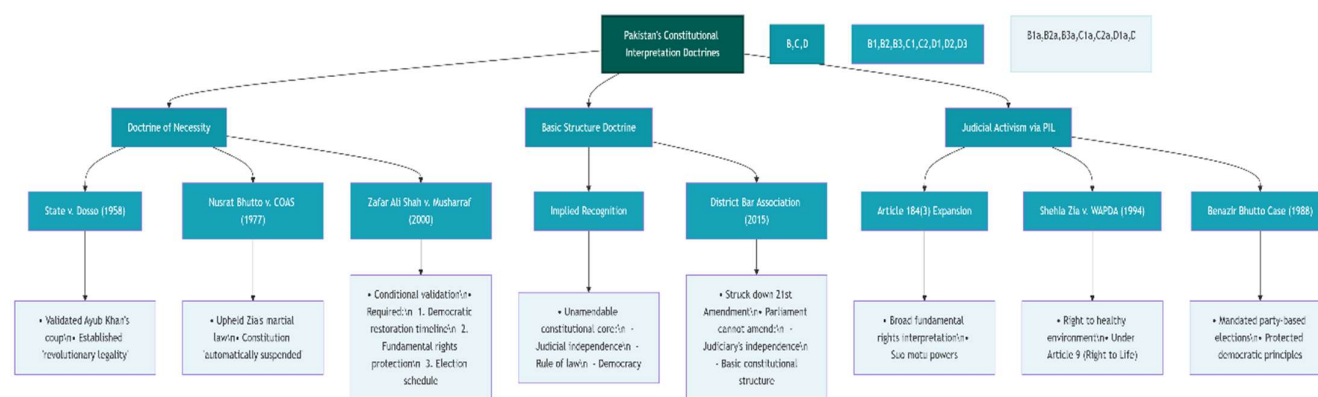
There are hints of a developing judicial awareness in the conditional formalities of Syed Zafar Ali Shah, which give official entitlement to non-constitutionalised regimes only after a clear pronouncement of the re-institution of democracy (*Syed Zafar Ali Shah v President of Pakistan & Ors*, 2000). Likewise, the implicit adoption of a basic-structure doctrine also evinces the Court's stance against amending a written and unwritten constitutional core through a majoritarian process (*District Bar Association (Rawalpindi) v Federation of Pakistan*, 2015) (Azeem, 2023).



The opponents of this doctrine argue that such an approach to the doctrine of necessity defeats constitutionalism by rewarding militarism (S. Nazir & Hayat, 2020). Nonetheless, supporters argue that it is practically necessary to maintain stability through necessity, as there is no explicit constitutional procedure in place to handle a coup d'état. Tat cases (P Junejo, 2024). In contrast, judicial activism is being lamented as judicial imperialism that infringes on policies, but it is being hailed as a necessary counterweight to executive and legislative stagnation in the protection of rights.

Figure 1

Description of the Constitutional Interpretation Doctrines of Pakistan



The Figure 1 is a description of the Constitutional Interpretation Doctrines of Pakistan. It follows different constitutional principles established in Pakistan's judicial history, such as the Doctrine of Necessity, the Basic Structure Doctrine, and Judicial Activism. The chart (pictorial description) illustrates how these doctrines have been developed and utilised in some major cases. State v. became the origin of the Doctrine of Necessity. Dosso (1958) approved of the military coup of Ayub Khan. It subsequently guided other cases, such as Nawaz Sharif v. COAS (1997) and Zafar Ali Shah v. Musharraf (2000). The Basic Structure Doctrine was developed to safeguard the democratic system in Pakistan, the independence of the judiciary, and the framework of the constitution, as seen in cases such as District Bar Association (2015). The problem of Judicial Activism can be observed in cases such as Shehla Zia v. The power of the judiciary increased in WAPDA (1994), where fundamental rights and environmental issues were interpreted. Such a diagram will provide a clear guideline of the passage of these teachings over time through the prism of judicial rulings, thus changing the face of the constitution in Pakistan.

4. Landmark Cases in Constitutional Interpretation

Interpretation of the constitution is an important aspect in the politics of any country. Both in its connection to the Constitution and in its actions, the judiciary has played a pivotal role in Pakistan, often dominating events during times of political turmoil (Nawaz & Bexci, 2024). In some cases, the judicial system has demonstrated remarkable independence, while in other instances, it has been coerced into subservience to the executive power. The following dynamic is illustrated in landmark cases in Pakistan's constitutional history, which reveals the nation's politically dynamic atmosphere and the role the judiciary has played in safeguarding constitutional democracy amid a changing political landscape. There are four important cases such as Maulvi Tamizuddin Khan Case (1955), Asma Jilani v. The story of the Govt of Punjab (1972), the Lawyers Movement and Restoration of Iftikhar Choudhry (2007-2009) and the Panama papers Case (2017), all these show the involvement of the judicial system with the political influence as well as the constitutional interpretation (Ashfaq et al., 2025).

a. Maulvi Tamizuddin Khan Case (1955)

Another very prominent case, entitled The Maulvi Tamizuddin Khan Case (1955), dates back to one of the early days of Pakistan's constitutional history and became a precedent, establishing a judicial reference to executive authority. The case was initiated by the dissolution of the Constituent Assembly of Pakistan by the then Governor-General, Ghulam Muhammad, in 1954. The Constituent Assembly, mandated with the



responsibility of framing the first Constitution of Pakistan, failed due to its inner turmoil and instability, prompting the Governor General to disband the Constituent Assembly. A leading member of the Assembly, Maulvi Tamizuddin Khan, moved to challenge the dissolution in the Federal Court, arguing that it was unconstitutional (Azeem, 2017).

The case raised concerns about whether the decision to dismantle the Constituent Assembly was justifiable in light of the current constitutional system. Pakistan had not yet adopted its Constitution back then and was ruled under the Government of India Act, 1935, which continued to be in use. Khan contested the idea that the Assembly's rights had been violated by their dissolution, and he sought to render the move null. However, by the directive of Chief Justice Muhammad Munir in his ruling, he supported the move to dissolve the assembly because the Governor-General had the power to dissolve the Assembly based on the 1935 Act, thus setting a precedent that would allow the judiciary to defer to the executive (Khosro, 2021).

There are several reasons why this decision is important. First, it led to the emergence of what was later termed the doctrine of necessity, which was subsequently used in cases to justify military coups and other activities outside the constitution. The court decision highlighted the possibility that the court was not inclined to question the executive's power, even in issues as important as the termination of the Constituent Assembly (Munir, 2018). This case would inform how the judicial system in the future would respond to political crises, and the courts would tend to be deferential towards the executive's decisions, even when such decisions were controversial.

b. Asma Jilani v. Government of Punjab (1972)

The Asma Jilani case involved. In the case of the Government of Punjab (1972), a landmark decision was made that significantly altered the constitutional jurisprudence of Pakistan. It happened when Pakistan was still struggling with the effects of the 1971 war and the loss of the state of East Pakistan. In 1970, General Yahya Khan, who was the military ruler at the time, imposed martial law, which was followed by the suspension of the Constitution and the dissolution of the national assembly. The case of Asma Jilani presented a challenge to the legality of Yahya Khan's actions, both in a legal and martial context (FAISAL et al., 2020).

One of the petitioners was Asma Jilani, whose challenge to the martial law declared by General Yahya Khan on the Constitution was heard by the notable others. The main question was whether the constitutional exception that the martial law regime had applied without any constitutional authorisation could be justified through a legal principle of necessity called the doctrine of necessity, which the judiciary had developed to validate military rule during times of crisis. This doctrine was employed in the Case of Maulvi Tamizuddin Khan and others to establish extra-constitutional principles (Imran, 2024).

In a landmark ruling, though, the Supreme Court, headed by Chief Justice Hamoodur Rahman, denied the "doctrine of necessity." The Court thought that the martial law imposed by Yahya Khan was neither legal nor constitutional. The decision represented a radical departure from the precedent established in previous cases, as the court asserted that it was the custodian of the Constitution. The decision also helped enforce the supremacy of the Constitution, making it clear that any act beyond its confines, such as martial law, was inconsistent with the country's basic law. The Court also focused on the role of the judicial branch, which was obliged to enforce the Constitution by confronting the acts of the military branch or the executive branch (H. Khan et al., 2025).

The interesting aspect of this case is that it marks a shift in time, from high court compliance to high court independence. The Court's ruling declaring martial law unlawful was a proud declaration of constitutional democracy, affirming that military coups were not justifiable on the pretext of the so-called doctrine of necessity. The Asma Jilani case served as a basis for subsequent cases that would go on to strengthen the role of the judiciary in upholding the constitutional order (Choudhury, 1989).

c. Lawyers Movement and Restoration of Iftikhar Chaudhry (2007-2009)

The Lawyers Movement of 2007-2009 is a turning point, a period that gave rise to the rebirth of the judiciary's independence in Pakistan after it had been the object of political influence for years. The sacking of then-President Pervez Musharraf and the subsequent removal of Chief Justice Iftikhar Chaudhry triggered the motion. The removal of Justice Chaudhry occurred when he had assumed a strong position in various high-profile cases, including the role of the military in Pakistan's politics. Musharraf, under growing pressure and



strain on his political side, and facing opposition, attempted to remove Justice Chaudhry, who had become a hallmark of independent judicial work (N. A. Khan, 2021).

The lawyers, civil society, and opposition parties lined up in favour of Justice Chaudhry, which resulted in protests and sit-ins throughout the nation. The Lawyers' Movement was widely supported, and people and authorities from both society and the legal field demanded that the independence of the judiciary be restored. The movement gained momentum with the reinstatement of Justice Chaudhry in 2009, which was considered a triumph in restoring the judiciary as an independent arm of the government, free from any political or executive interference (Cheema, 2016).

This release of Justice Chaudhry was a triumph for the legal fraternity, as well as for constitutional democracy in Pakistan. Justice, in turn, demonstrated its ability to withstand illegal activities, including those of the highest levels of authority. It was a major case as well, because it highlighted the significance of an independent judiciary as an integral part of a democratic governance system. It was demonstrated through the Lawyers' Movement that the judiciary is a crucial component in promoting constitutional rights, particularly in the face of authoritarianism (Shafqat, 2018).

d. Panama Papers Case (2017)

The Panama Papers Case (2017) was one of the decisive events in the political history of Pakistan. The case was filed following the Panama Papers leak, which revealed offshore financial transactions of various wealthy individuals worldwide, including a family associated with Prime Minister Nawaz Sharif. Opposition forces in Pakistan petitioned the Supreme Court, requesting an investigation into allegations of corruption and money laundering. The primary question in the case was whether Nawaz Sharif and his family had concealed their assets and money in offshore companies, and whether this constituted a breach of the Constitution (Chabin, 2017).

The Supreme Court, in its verdict, barred Nawaz Sharif a second time from taking part in public office on the basis that he had not revealed his wealth and revenue in the official certification. The decision made by the Court relied on the principles of accountability and transparency, affirming that elected officials must uphold exemplary standards of integrity. The case decision also highlighted the judiciary's role in promoting political accountability, particularly in the areas of corruption and holding public office (Graves & Shabbir, 2019; Trautman, 2016).

The case of the Panama Papers is critically important, as it indicates a gradual strengthening of the judiciary's role in prosecuting political elites. It indicated a trend toward judicial activism, where the Court was active in overseeing political and financial matters. The other theme highlighted by this case was the increasing role of the judiciary in matters of governance, transparency, and the rule of law. The ruling was a resounding indication that no person, regardless of their political influence, stood above the law and established a significant precedent for judicial supervision of political corruption prosecutions (Obermaier & Obermayer, 2024).

5. Challenges in Constitutional Interpretation

Interpretation of the Constitution is crucial in defining the boundaries and scope of the Constitution, as well as in determining how it should be applied when governing the state's organs and protecting fundamental rights. The judiciary of Pakistan has faced numerous challenges related to the interpretation and enforcement of constitutional provisions. These issues have evolved and continue to influence the judicial process. These include judicial activism and judicial restraint, as well as political and military influence, and the problems of post-conviction delay and case backlog, among the most significant difficulties. All these aspects threaten the independence and performance of the judiciary in various ways, and significant concerns regarding the courts' position within the Pakistani constitutional system will raise numerous questions (Kanwel et al., 2020).

a. Judicial Overreach and Judicial Restraint

The issue of judicial activism and its boundaries has been one of the largest discussions in the sphere of constitutional interpretation in Pakistan. Judicial activism refers to the situation in which the judiciary goes a step further in influencing policies, interpreting laws broadly, and at times even intersecting with its well-established function of adjudication. This usually includes taking actions within the scope of what is perceived



to be either the democratically elected legislature or the politically accountable executive, whether it involves economic policies, governance concerns, or aspects of national security.

Critics claim that in Pakistan, judicial activism, particularly in cases where the courts have made suo motu decisions without a petition, is considered overreaching (Hiralal, 2025). The most notable instance of judicial system activation was the suo motu actions of the Supreme Court, particularly during the tenure of Chief Justice Iftikhar Chaudhry (2005-2013). His activism, particularly in instances such as his suo motu action on the case of missing persons and the National Reconciliation Ordinance (NRO) case, elicited fears that the judiciary had crossed the constitutional path (PILDAT, 2010). Judicial overreach in these matters has been criticised because it violates the separation of powers, a pillar of the Pakistani Constitution. Critics argue that judicial interference in political affairs reduces the power of both the legislature and the executive, potentially destabilising the balance of power in a parliamentary form of democracy. For instance, the Panama Papers case (2016-2017), in which the Prime Minister of Pakistan, Nawaz Sharif, was disqualified, was viewed by some as an interference by the judiciary in the political arena. This may create the impression that the courts belong to all governments, particularly those that overlap and compete through elected governors, thereby undermining the supremacy of the legislature (Jatoi & Shah, 2023).

Conversely, advocates of judicial activism contend that the judiciary should defend the Constitution, hold political elites accountable, and protect basic rights. They argue that the intervention of the judiciary is critical when cases require it, as other arms of government may not serve the interests of the populace when the case demands it. Nevertheless, the most important task is to find a balance, so that the judiciary performs its constitutional role without overstepping the boundaries between its powers and those of the executive and legislature. The opposite of the notion of judicial activism is judicial restraint, which proposes that courts should proceed more cautiously and with less regard to issues that involve policy matters. This strategy requires that the courts refrain from intervening in areas where their involvement would be inappropriate, such as economic or national security matters. The controversy between judicial activism and judicial restraint in the interpretation of the Constitution persists, and every time a case falls under judicial interpretation, debate arises on how far it can extend into the boundary of judicial powers (Husain, 2018).

b. Political Interference and Influence of the Military

Political interference especially that influenced by the military, has been another major pitfall under the interpretation of the constitution in Pakistan. Since its independence, the army has had enormous power in determining the development of Pakistani politics. Pakistan has undergone various military coups, and whenever the coups have happened, the judiciary has been tasked to justify the activities of military rulers. This has brought about some sense of the independence of the judiciary and the capacity to interpret the Constitution without some external influence (Rahman & Shurong, 2021). The first significant political intervention occurred during the tenure of ex-General Ayub Khan in 1958. Chief Justice Munir approves the usurpation of power by Ayub in a case of the state versus itself. The Dosso case applied the so-called doctrine of necessity. This piece of law enabled the military government to assume a constitutional mandate, and this became a precedent in the future, where the judiciary would justify military coups (Aslam et al., 2023). Such judicial abdication of military rule was repeated in subsequent years with other military dictators, such as General Zia-ul-Haq and General Pervez Musharraf.

Specifically, the Zafar Ali Shah v. Pervez Musharraf case (2000) illustrates how the judicial system has been manipulated into justifying the actions of a military dictator. The 1999 coup by Musharraf faced significant challenges to its legality, but the Supreme Court, under Chief Justice Irshad Hassan Khan, ruled that the coup was valid according to the doctrine of necessity and that Musharraf was justified in acting on it (Soomro et al., 2025). These kinds of verdicts raised questions about the autonomy of the judiciary and its capacity to defend the Constitution when pressured by the army. Such a historical trend of political intrusion, especially by the military, has eroded the judiciary's position as an independent arbiter of constitutional matters. The intervention of the military in politics has sometimes compelled the judiciary to either acquiesce to or be subservient to the military regime, thereby depreciating its position as the final bastion defender of the Constitution. The tendency of the judiciary in Pakistan to assist in the establishment of military control on several occasions has discouraged the growth of a strong democratic structure within the region, as the court



system was unprepared to oppose military control through confrontation. Although the judiciary has made progress in asserting its independence, most recently in association with the Lawyers Movement of 2007-2009, which reinstated the Chief Justice Iftikhar Chaudhry, the most prominent issue of grave concern is political interference in judicial matters. The role of the military in politics remains an issue that has been used to influence political and legal decisions in a complex manner, which makes the judiciary unable to interpret the Constitution without bias (AZEEZ, 2024).

c. Slowed Justice and Case Logjam

Delayed justice and backlog of cases are one of the most nagging problems that the Pakistan judiciary has been facing. The judicial system is severely congested with numerous cases awaiting trial, both at the lower courts and at the higher courts. This backlog delays the hearing of constitutional cases, frustrating citizens, ultimately defeating and undermining the rule of law. Case backlogs, especially in constitutional adjudication, pose a significant challenge, as delays in resolving crucial constitutional issues can have a profound impact. Case in point, constitutional petitions related to electoral disputes, the division of federal resources, or human rights issues can take years to be resolved. This constitutional delay in the judicial system erodes citizens' faith in the system, as they may perceive that their constitutional rights are not being upheld or addressed promptly (Saeed, 2020).

According to the Pakistan Law Commission, numerous pending cases existed within the higher courts, and thousands of constitutional cases remained unresolved (Pakistan Law Commission, 2016). Slow justice not only impairs the effective performance of the judiciary but also provides a platform through which the executive may feel compelled to bypass the courts' judgment and further erode the rule of law. Any delays in justice can also be attributed to the understaffed and under-resourced nature of the judiciary. Although the Pakistani judiciary has attempted to modernise and streamline the judicial process through the introduction of e-courts and a case management system, these attempts have not been implemented quickly or evenly (Kaleem et al., 2020). A shortage of resources and inadequate infrastructure in the lower courts is one major drawback to the efficient administration of justice. In addition, most cases have a backlog, which is often complicated by the absence of judicial training and capacity building, particularly in constitutional cases. Restoring people's faith in the judiciary depends on the need to have a better judicial system that is capable of addressing the rising number of constitutional cases and adjudicating cases on time (Asrafuzzaman & Hasan, 2021).

6. Comparative Analysis: Pakistan and India

Table 1

Comparative Analysis: Pakistan and India

Aspect	India	Pakistan
Basic Structure Doctrine	The 'Basic Structure Doctrine' was explicitly adopted in <i>*Kesavananda Bharati v. State of Kerala*</i> (1973), where the Supreme Court held that certain core principles of the Constitution cannot be altered by Parliament through amendments.	Pakistan's judiciary has implied the basic structure doctrine through various rulings, notably in <i>*Zafar Ali Shah v. Pervez Musharraf*</i> (2000) and the <i>*District Bar Association*</i> (2015) case. However, there is no explicit adoption of the doctrine as seen in India.
Judicial Review & Parliamentary Supremacy	India's judiciary has maintained the authority to review constitutional amendments and legislative actions, especially through the 'basic structure' doctrine. Courts regularly assert judicial review even when it challenges parliamentary sovereignty.	Pakistan's judiciary has also engaged in judicial review but has been more cautious in confronting parliamentary supremacy. Key cases include the "Panama Papers case" (2017), where the judiciary intervened in matters involving the Prime Minister.
Judicial Intervention in Political Matters	Indian courts have been proactive in political matters, especially in ensuring constitutional principles such as democracy, the rule of law, and	Judicial intervention in political matters has been controversial, particularly during the tenure of Chief Justice Iftikhar Chaudhry, when the court took suo motu actions on



Aspect	India	Pakistan
	fundamental rights are upheld. Notable examples include the <i>*Minerva Mills*</i> case (1980) and the <i>*Kesavananda*</i> case.	political issues, such as the <i>*National Reconciliation Ordinance (NRO) case*</i> (2009).
Military Influence & Judicial Independence	While India has experienced military coups in the past, the judiciary has largely maintained its independence and resisted legitimizing military takeovers, especially after the introduction of the 'basic structure doctrine'.	Pakistan's judiciary has historically been under significant pressure from the military, particularly during military regimes. The courts have sometimes validated military takeovers, such as in <i>*State v. Dosso*</i> (1958), but there have been efforts in more recent years to assert judicial independence.

The role of the judiciary in the constitutions of Pakistan and India is of pivotal concern, as both countries have different efficacies towards constitutional interpretation. Although the two nations share a similar history of colonialism and legal principles, their justice systems differ significantly, especially in their interpretation of their respective constitutions. One aspect of comparison between the two is their relationship to the issues of judicial review and parliamentary supremacy. This has been a key focus of the constitutional debate in the two countries, primarily on the aspect of the court's involvement in legislative actions and the balance of power between the branches of government (Usmani et al., 2025).

This is a comparative analysis of two vital aspects of constitutional interpretation in both states: the adoption of the doctrine of the basic structure and the conflicts between judicial review and parliamentary supremacy. Although India has explicitly adopted the doctrine, especially in the landmark *Kesavananda Bharati* case (1973), the Pakistani judiciary has taken a wary approach to it and has thus applied analogous principles, albeit with implied recognition, rather than adhering to the doctrine itself.

a. Basic Structure Doctrine: India Vs. Pakistan

The basic structure doctrine is one of the legal principles that proposes that certain fundamental characteristics of the Constitution cannot be changed or eliminated through amendments by the legislature, even though the constitutional amendment process may be otherwise a valid act. The doctrine was initially clearly outlined in India in the case of *Kesavananda Bharati v. Kerala* case (1973) in which the Supreme Court of India asserted that the Parliament, although conferred with authority to amend the Constitution under Article 368, could not do so to the Constitution to provide a fundamental change to it in the sense of its basic structure (S. Ali & Hassan, 2022). The ruling was a seminal moment in Indian constitutional jurisprudence, as it left the powers of Parliament to make amendments to the Constitution circumscribed and imposed a restriction on the legislature's powers through the judiciary.

In the *Kesavananda* case, certain features were identified, and it was held that these attributes formed part of the basic structure, including democracy, the rule of law, secularism, and the independence of the judiciary. Such principles were interpreted as part of the constitutional machine, and an amendment to the same would be considered unconstitutional, irrespective of the amendment process described under Article 368. Notably, the *Kesavananda Bharati* decision of the Court is regarded as one of the strongest statements of judicial supremacy in defending the Constitution against potential infringements by the executive and legislative branches of the government. Since that day, the basic structure principle has continued to be explored and applied to various issues, with the Indian court system preventing the amendment of the Constitution, as perceived as posing a threat to the country's democratic system (Kaleem et al., 2020; Saeed, 2020).

Pakistan, on the contrary, does not see the judicial system in Pakistan following such a direct approach. In cases such as *Zafar Ali Shah v.*, it can be argued that some of the details contained in the doctrine have been implied in situations. The Pakistani judiciary has been more cautious in adopting the doctrine as an explicit constitutional rule, as demonstrated by Pervez Musharraf (2000) and the District Bar Association (2015)(Hussain et al., 2024). The Supreme Court of Pakistan, however, has realised the need to uphold the



fundamental values of the Constitution, such as democracy, judicial independence, and federalism. The basic principles of the Constitution, as embedded in the Constitution, such as the separation of powers and the supremacy of the legislature, were reaffirmed by the Court in the case of Zafar Ali Shah. The Court added that the abrogation of the Constitution would be unconstitutional. The decision of the Court implied that the nature of the Constitution was to preserve its major essentials, but it did not state it in the true sense of the basic structure doctrine, as seen in India (Khokhar, 2022).

Although this is a note of warning, the Pakistani law courts have made similar points in some of their judgments. As an illustration, in the District Bar Association (2015), the Supreme Court nullified the 21st Amendment, which sought to create military courts to prosecute cases of terrorism. The Court then stated that this amendment conflicted with the fundamental structure of the Constitution, as it had interfered with the independence of the judiciary and the rule of law, albeit that Pakistan does not follow the doctrine of "dum-dum". The case also highlighted that the Pakistani judiciary was keen to apply judicial review in safeguarding the Constitution against amendments that could jeopardise its core values, despite such amendments being carried out by the established procedures for constitutional change (Niazi, 2022).

Therefore, although India has openly followed the basic structure doctrine as interpreted by its judiciary, Pakistan has been relying on a more tentative, indirect invocation of the same ideas. The two courts, however, have a similar obligation in upholding the key principles of their constitutions and the well-being of the amendments, without interfering with the key facets of democracy and the rule of law.

b. Tensions of Judicial Review and Parliamentary Supremacy

The second field of considerable congruence between India and Pakistan lies in the current conflict between judicial checks and parliamentary authority. In the two nations, the judiciary is empowered to interpret laws and government actions by the Constitution. Nevertheless, such power and the principle of parliamentary supremacy are sometimes contradictory; that is, the supreme power to make a law lies with the legislature, which is elected (Habib, 2020).

Judicial review has been of special concern in India, where there have been issues with amending the Constitution. Although the Constitution has granted Parliament the mandate to amend it, the Kesavananda Bharati case further led to a legal rule that legal review could be employed to evaluate whether such amendments contravened the Constitutional structure of the base. In that respect, the Indian judges have managed to strike a fine balance between obedience to parliamentary sovereignty and the reaffirmation of their jurisdiction to examine constitutional amendments and legislative acts. This dichotomy has often led to contentious debates on whether judicial interventions in political affairs are legitimate, especially when it appears that the judiciary is countering the legislature's ruling (Falki & Shahzad, 2022).

During the Minerva Mills case (1980), the Indian Supreme Court invalidated an amendment to the Constitution that would have restricted the exercise of judicial review in matters involving fundamental rights. The Court held that there must be no such limitation because the limitation amounted to a violation of the basic structure of the Constitution, which handed the judiciary a non-reviewable right to scrutinise laws enacted by Parliament. The case represents a positive example of the Indian judiciary exercising judicial review, even at the risk of contesting the legislature (Amir et al., 2022).

The relationship between judicial review and parliamentary supremacy has also been present in Pakistan, especially during periods of military rule. It has been the duty of the judiciary to either justify or strike down acts by the executive. This is particularly true in situations where the Constitution has been suspended, such as under military dictatorships. In cases such as State v. Dosso (1958) and Zafar Ali Shah (2000), the courts have been willing to defer to the executive, especially when military dictators sought to establish constitutional legitimacy. Such cases raise questions about whether political motives are compromising the rule of law in the judicial branch's interpretation of the Constitution (Naseer, 2024).

The judicial system in Pakistan has become more assertive in its exercise of the watchdog role in recent times, particularly following the reinstatement of the most powerful Chief Justice, Justice Iftikhar Chaudhry, in 2009. The vigorous activity of judicial institutions in cases such as the Panama Papers case (2017), when Prime Minister Nawaz Sharif was disqualified, illustrates the growing readiness of the Court to tread on political grounds and review the work of the executive. It was also indicated in this case that the judiciary has



the responsibility of holding people accountable, even in cases where accountability might be at odds with the elected representatives of the people. However, the current controversies surrounding the extent of judicial review in Pakistan suggest a struggle between judicial powers and legislative sovereignty, where the legislature's powers may be perceived as being challenged by a judge's actions (M. U. Khan et al., 2025).

Similarly to India, Pakistan strives to resolve the dilemma between the role of the judicial review and the supremacy of parliament. Although India has more overtly devised a mechanism of achieving this balance enshrined in the concept of the basic structure, the courts in Pakistan have also tried to balance the legislative activities and any changes to the Constitution by overseeing that such amendments or ones made by the legislative bodies do not undermine the fundamental features of the Constitution. It remains a controversial matter, and the opinion against such attempts is raised in both countries, as judicial interference may undermine the democratic process and the validity of parliamentary judgments.

7. Recommendations

- **Strengthen Judicial Independence:** Ensure transparent judicial appointments and security of tenure of judges.
- **Limit Doctrinal Ambiguity:** Clarify the scope of judicial review and the basic structure doctrine through legislation.
- **Improve Judicial Efficiency:** Reduce backlog through reforms in case management in lower and higher courts.
- **Balance Activism and Restraint:** Courts should avoid unnecessary interference in policy matters of executive.

8. Conclusion

The Pakistani judiciary has undergone a significant transformation in its role as an interpreter and guardian of the Constitution. In the past, the judiciary had also been involved in justifying military coups, especially under the so-called doctrine of necessity, under which a military regime would provide a constitutional window into its existence, even though it was not constitutionally established. This trend of indifference to military dictatorship by the Judiciary dominated the initial years of Pakistan's constitutional history and often compromised the independence of the judiciary. Nonetheless, in recent years, the judiciary has made its voice heard emphatically, especially since the reinstatement of Chief Justice Iftikhar Chaudhry in 2009 and the emergence of judicial activism. The case of judicial activism has been crucial in enhancing constitutional governance, protecting the rights entrenched in the constitution, and tackling the influence of political elites. The increasing judicial role in issues related to the political arena has been demonstrated through landmark cases, including the Panama Papers case (2017), which has strengthened the judiciary's resolve to protect the rule of law and ensure accountability, with no one being above the law. However, such activism has also raised concerns related to judicial activism, or the notion that courts can usurp powers that belong to the legislature or the executive in the formulation of policies and governance. One of the key considerations is the balance between judicial independence and upholding democratic institutions. Although the judiciary should perform some checks on the executive and legislature, too much judicial activism threatens to undermine parliamentary sovereignty and stability in democratic operations. Thus, constitutional stability in Pakistan needs to be maintained by taking a middle-road policy. Judicial restraint, coupled with a mass strengthening of independence, is required to maintain the integrity of the Constitution, while ensuring that all legislative and executive branches do not lose their functions within the framework of democracy. This is a fine balance that Pakistan needs to strike between judicial activism and the supremacy of democratic institutions in the country's constitutional future.

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