

Judicial Activism and Pakistan's Democratic Evolution



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Note to readers

The 'Judicial Activism and Pakistan's Democratic Evolution' report examines judicial activism in Pakistan by tracing its history, significance, contestations, and impact on the country's political, legal and constitutional arenas. The judiciary has historically limited its participation in the arena of contentious politics. While the judiciary serves as the arm of the rule of law and political liberalism in most democratic states, the courts traditionally deferred to the military authority by engaging in the doctrine of necessity in Pakistan.

However, these dynamics changed during the 2007 lawyers' movement when then President and Chief of Army Staff General Pervez Musharraf suspended Iftikhar Chaudhry as the chief justice. The street activism by lawyers that sought to challenge the legality of Musharraf's decision presented a unique opportunity for political reform in Pakistan. The landmark verdict by the Supreme Court which annulled the presidential order to reinstate the former chief justice was an unprecedented ruling that directly confronted the actions of the most powerful institution in Pakistan. It represented a symbol of judicial empowerment. The mobilisation of public perceptions in support of the movement contributed to the apex court's decision to nullify the presidential order. The most consequential outcome of the lawyers' movement was the disruption in the judicial-military alliance. While economic crises tend to provide the impetus to challenge the executive's excesses and the centralisation of power, the crisis of governability in Pakistan emerged in the legal and judicial arenas.

The movement enabled the judiciary to move away from its traditional principle of doctrine of necessity towards upholding the rule of law and protection of fundamental rights. It also provided an opportunity for the courts to strengthen their own institutional power. However, this new-found empowerment faced a setback when the judiciary restored the principle of necessity by co-opting with military to facilitate former Prime Minister Imran Khan's accession to power in 2018.

This timely and analytical report traces these key developments in Pakistan's judicial history, judicial-military relations, constitutional reforms, politics of change and politics of confrontation. This publication is an important contribution where it informs readers how courts seek to change the structure of the state to strengthen institutional independence and protect citizen's rights.

The report is also thematically important for the Rule of Law Programme Asia, KAS that actively engages in projects to examine the intersections of the rule of law with human rights, democratic governance and constitutionalism in South Asia. In November 2022, we partnered with the Institute of South Asian Studies (ISAS), National University of Singapore and hosted a closed-door hybrid workshop on the constitutional, legal and political dimensions of the ongoing economic crisis in Sri Lanka. The main takeaways of the workshop have been published in a Special Report titled, 'Sri Lanka's Evolving Crisis: Implications on Rule of Law and Constitutional Democracy' and an edited volume will be published in 2026.

We also partnered with National Law University Delhi (NLUD), Brac University and LIRNEAsia for a joint report on platform regulation, cybersecurity, data protection, trends of securitisation and the rule of law in the jurisdictions of India, Bangladesh and Sri Lanka. The report was launched in all three countries to engage with key partners, organisations and individuals.

For us at KAS, the 'Judicial Activism and Pakistan's Democratic Evolution' report is a significant one which makes a key contribution to the fields of judicial activism, democracy, the rule of law and separation of powers. Pakistan's history of judicial activism offers important lessons for countries that are experiencing similar political and institutional challenges particularly at a time when democratic backsliding, erosion of checks and balances and centralisation of power are emerging in new forms even in the most liberal societies. These erosions are occurring through ordinary lawmaking or political practices that cause less alarm than constitutional reforms which are harder to implement. These emerging

patterns are also challenging the legitimacy of the liberal democratic model championing fundamental freedoms, civil liberties, the rule of law and democratic governance.

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Abstract

Since the 2007 lawyers' movement, which ensued after former President and the Chief of Army Staff General Pervez Musharraf dismissed the then-Chief Justice of the Supreme Court, Iftikhar Muhammad Chaudhry, the judiciary emerged as a central actor in Pakistan's turbulent political landscape. Chaudhry's reinstatement in 2009 marked the beginning of an era of judicial activism, significantly influencing the rule of law, civil-military relations, democratic stability, and institutional balance in Pakistan.

While this activism permanently buried the doctrine of necessity, curbing the pattern of judicial endorsements of military coups, it also undermined democratic processes, as reflected in the respective dismissals of two former elected prime ministers — Yusuf Raza Gillani in 2012 and Mian Muhammad Nawaz Sharif in 2017 — and the judiciary's controversial role in disputes following the 2024 elections. The consequences of judicial activism and the judiciary's evolving relationship with the military and civilian governments, have had far-reaching political, economic and institutional consequences for Pakistan's democracy.

Introduction

In Pakistan's checkered political history, the military has directly ruled the country directly for 33 years.¹ General Muhammad Ayub Khan was the first army chief to stage a coup that lasted from 1958 to 1969 followed by General Muhammad Yahya Khan's brief military rule (1969-1971), General Muhammad Zia-ul-Haq's dictatorship (1977-1988) and General Pervez Musharraf's military regime (1999-2008).²

The Pakistani military's proclivity to abrogate the constitution under the pretext of saving the country from corrupt and incompetent civilian rulers has not only undermined civilian institutions, but also transformed the country into a security or a garrison state.³ Beyond devising and executing the country's security policy, the military has also dictated its foreign policy.⁴ Even during periods of civilian rule, the military continued to exert considerable influence from behind the scenes.

Consequently, civil-military relations in Pakistan have remained perpetually prone to conflict and political tensions, with no prime minister completing a full constitutional term of five-years.⁵ Over the past decade, the military has also taken over the economic affairs under the hybrid regime model

¹ K Alan Kronstadt, "Pakistan's Domestic Political Setting," Congressional Research Service, 24 September 2024, <https://crsreports.congress.gov/product/pdf/IF/IF10359#:~:text=The%20military%20has%20directly%20governed,of%20generally%20weak%20civilian%20governance>; Chaitram Singh, "Military Coups in Pakistan and the Corporate Interests Hypothesis," *Journal of Third World Studies*, Vol. 28, No. 1 (Spring 2011), pp. 47-59, <https://www.jstor.org/stable/45194760>.

² Hasan-Askari Rizvi, "The Civilianization of Military Rule in Pakistan," *Asian Survey*, Vol. 26, No. 10 (October 1986), pp. 1067-1081, <https://doi.org/10.2307/2644257>; Ashok K. Behuria, "How Military Dominates the Political Space in Pakistan: A Study of Musharraf's Rule (1999-2008)," *Journal of Peace Studies*, Vol. 16, Issue 1-2 (January-June 2009), pp. 45-85.

³ Ishtiaq Ahmed, *The Pakistan Garrison State: Origins, Evolution, Consequences 1947-2011* (New York: Oxford University Press, 2013), pp. 340-345.

⁴ Ejaz Hussain, "The Military and Foreign Policy in Pakistan," in *Pakistan's Foreign Policy: Contemporary Developments and Dynamics*, ed., Ghulam Ali, (London: Routledge, 2022), pp. 63-80.

⁵ Reuters, "No Pakistani prime minister has completed a full term in office," *Al-Jazeera*, 9 April 2022, <https://www.aljazeera.com/news/2022/4/9/factbox-no-pakistani-prime-minister-has-completed-a-full-tenure>.

involving a combination of civilian and military rule where the latter wields disproportionate influence in civil affairs.⁶

Although Pakistan has not experienced a military coup in nearly two decades and power has been transferred from one civilian government to another through the electoral process, elections have been marred by allegations of rigging and massive fraud weakening the country's democracy and rule of law.⁷ Amid Pakistan's unbalanced civil-military relations, the judiciary once played a subservient role to the military by legitimising its interventions under the so-called doctrine of necessity.⁸ In 1954, former Pakistani Chief Justice Muhammad Munir invoked this doctrine by validating the dissolution of assemblies through a controversial judgment.⁹ Four years later, in 1958, when Ayub Khan suspended the constitution and imposed martial law, Munir again delivered a leading judgment endorsing the military coup. The pattern persisted: in 1977 and 1999, Pakistan's apex judiciary gave judgments approving military coups carried out by Zia-ul-Haq and Musharraf respectively.¹⁰ Over the decades, the powerful military establishment has co-opted the judiciary, along with the industrial elite, landed aristocracy comprising feudal lords, industrialists, and bureaucracy to consolidate its hold on power.¹¹

However, the judicial-military relationship in Pakistan underwent a significant shift during the twilight years of Musharraf's rule.¹² The disruption began in May 2006 when the Supreme Court (SC) under ex-Chief Justice Iftikhar Muhammad Chaudhry halted the privatisation of the Pakistan Steel Mill (PSM) due to alleged corrupt practices and flagrant violation of privatisation laws.¹³ His decision sent shockwaves through the system as he emerged as the first real challenger to Musharraf's military rule.¹⁴ It is worth noting that other SC judges supported Chaudhry's decision and later played an important role in his first restoration in 2007.¹⁴ Chaudhry along with several other SC judges, including those who reinstated him, were subjected to house arrest and barred from performing their duties when Musharraf imposed emergency rule in November 2007.¹⁵ Following the imposition

⁶ Katharine Adeney, "How to understand Pakistan's hybrid regime: the importance of a multidimensional continuum," *Democratisation*, Vol. 24, No. 1 (2017), pp. 119-137, <https://www.tandfonline.com/action/showCitFormats?doi=10.1080/13510347.2015.1110574>.

⁷ Aqil Shah, "Pakistan: Voting Under Military Tutelage," *Journal of Democracy*, Vol. 30, No. 1 (January 2019), pp. 128-142, [10.1353/jod.2019.0010](https://doi.org/10.1353/jod.2019.0010).

⁸ The term was introduced by two English jurists, William Blackstone and Henry de Bracton and it refers to the judicial principle of making lawful by necessary that which is otherwise unlawful. It allows the states to legitimately act in ways that would otherwise be illegal and unconstitutional. For details see Charles S. Peirce, "The Doctrine of Necessity Examined," *The Monist*, Vol. 2, No. 3 (April 1982), pp. 321-337, <https://www.jstor.org/stable/27896963>.

⁹ Daud Munir, "Struggling for the Rule of Law," *Middle East Report* 251 (Summer 2009), <https://merip.org/2009/06/struggling-for-the-rule-of-law/>.

¹⁰ Muhammad Idrees and Naushad Khan, "A Survey of the Role of Judiciary in Validating Military and Authoritarian Regimes in Pakistan," *Sociology and Criminology*, Vol. 6, Issue 1 (January 2018), <http://dx.doi.org/10.4172/2375-4435.1000182>; Iftikhar Ahmed Chowdhury, "The Courts, the Army and the Government: The Tangled Triangle of Turmoil in Pakistan," *Institute of South Asian Studies*, 3 December 2019, <https://www.isas.nus.edu.sg/papers/the-courts-the-army-and-the-government-the-tangled-triangle-of-turmoil-in-pakistan/>.

¹¹ Grażyna Macinkowska, "Military Coups Detat in Pakistan," *Politeja*, No. 10/2 (2008), pp. 149-182, <https://www.jstor.org/stable/24919329>.

¹² IANS, "Sacking Chief Justice was a mistake: Musharraf," *The Hindu*, 17 November 2021, <https://www.thehindu.com/news/international/Sacking-Chief-Justice-was-a-mistake-Musharraf/article16882106.ece>.

¹³ Nasir Iqbal, "SC halts handover of Steel Mills," *Dawn*, 5 May 2006, <https://www.dawn.com/news/193928/sc-halts-handover-of-steel-mills>.

¹⁴ The *suo motu* powers of the Supreme Court refer to cases where the court itself takes cognisance of a matter which it deems in the public interest and starts proceedings on it. These powers rest in Article 184(3) of Pakistan's constitution. For details see, *The Constitution of the Islamic Republic of Pakistan* accessed at https://na.gov.pk/uploads/documents/1333523681_951.pdf.

¹⁵ "Pakistan: UN experts welcome reinstatement of Chief Justice," *UN Global News*, 6 August 2007, <https://news.un.org/en/story/2007/08/227422>.

¹⁶ David Rhode, "Musharraf Declares State of Emergency," *The New York Times*, 3 November 2007, <https://www.nytimes.com/2007/11/03/world/asia/04pakistan.html>.

of emergency, Musharraf succeeded in dividing the judiciary by appointing pliable judges in the SC and the High Courts under the Provisional Constitutional Order (PCO).¹⁷

However, Musharraf's popularity eroded by 2007 when he launched the Red Mosque Operation to suppress the uprising of madrassa students in the heart of Islamabad.¹⁸ Other developments, such as the assassination of former prime minister Benazir Bhutto, growing human rights violations in Balochistan and Musharraf's closeness with the US also impacted his popularity.

During this period, Chaudhry's *suo motu* (self-initiated) notice of the Baloch missing persons (Baloch dissidents unconstitutionally picked by security institutions for allegedly assisting or participating in the separatist insurgency),¹⁹ was seen as a direct opposition to Musharraf.²⁰ These developments elevated the judiciary to become an assertive actor, challenging the military's dominance and setting the stage for the 2007 lawyers' movement, which ultimately led to Chaudhry's (second) reinstatement in 2009.

In this light, this study has adopted a historical-legal and analytical approach using newspaper reports, book chapters and journal articles to examine the evolution of Pakistan's SC, various phases of its confrontation and cooperation with the military establishment and civilian governments. The report also explores what kind of combined impact these developments have had on the rule of law in Pakistan. It examines the judicial activism that emerged in 2007 when Chaudhry refused to resign on Musharraf's pressure and launched the lawyers' movement until 2024 when SC Chief Justice Qazi Faiz Issa retired, and Yahya Afridi succeeded him.

Against this backdrop, the five sections of this report examine the different eras of judicial activism in Pakistan since Chaudhry's restoration as the chief justice and its impact on the country's democratic evolution. The first section assesses the judiciary's evolving relationship with successive civilian governments and the military, both before and after Chaudhry's retirement. Since the 2007 lawyers' movement, there were frictions between the judiciary and military till Musharraf's retirement and the restoration of Chaudhry as the chief justice.²¹

The second section examines the conflicted relationship of both institutions through the removal of former prime minister and the Pakistan Muslim League Nawaz (PMLN) chief Nawaz Sharif in 2017.²²

¹⁷ "More judges of high courts take oath," Dawn, 5 November 2007, <https://www.dawn.com/news/274429/more-judges-of-high-courts-take-oath>.

¹⁸ The Red Mosque uprising was inspired by various militant movements in the Afghanistan-Pakistan region which revolted to bring a Taliban-like Shariah system in Pakistan. Students studying in madrassas affiliated with the Red Mosque declared Sharia on their premises and started imposing strict rules in the neighbourhood markets, such as closing shops selling music CDs and asking barbers not to shave beards. Their actions inspired by the Taliban's strict governance style gained international attention when various Taliban movements in the ex-FATA region were already challenging the state's writ. The military launched a crackdown to quell the movement. However, the decision to raid a mosque had negative consequences and resulted in militancy's upsurge across Pakistan.

¹⁹ Chaudhry built his popularity and judicial activism around the issue of safeguarding and upholding the fundamental rights which became the primary base of his *suo motu* notices. Hence, taking self-notice of the Baloch people who were arbitrarily arrested by the military regime was simultaneously a move to bolster his popularity and defy Musharraf's dictatorial policies for violating the human rights in Balochistan.

²⁰ Iman Hassan, "Innocent Victims of Pakistan's War against Terrorism," DW, 10 September 2007, <https://www.dw.com/en/innocent-victims-of-pakistans-war-against-terrorism/a-5212594>; "Balochistan missing persons: CJ says evidence in some cases points to FC role," Dawn, 17 September 2013, <https://www.dawn.com/news/1043525>.

²¹ Yasser Kureshi, "Selective assertiveness and strategic deference: explaining judicial contestation of military prerogatives in Pakistan," *University of Oxford*, accessed on 11 July 2025, <https://ora.ox.ac.uk/objects/uuid:47c5843f-4e42-407d-8e68-39ee9bdc57fc/files/r44558d58d>.

²² Sune Engel Rasmussen, "Pakistani court removes PM Nawaz Sharif from office in Panama Papers case," *The Guardian*, 28 July 2017, <https://www.theguardian.com/world/2017/jul/28/pakistani-court-disqualifies-pm-nawaz-sharif-from-office>.

Thereafter, the third section explains the military-judiciary partnership in facilitating and cementing former Prime Minister Imran Khan's rise to power in 2018 up until his ouster in a parliamentary vote of no-confidence in April 2022.²³ The ensuing period witnessed intense constitutional tussle between the military and judiciary in relation to their conflicting positions towards Imran Khan.²⁴

After discussing the fluctuations in judicial-military relations, the fourth section explores the former's exercise of *suo motu* powers under Article 184(3) of Pakistan's Constitution and its encroachment into the executive's domain, leading to recurring institutional conflicts.²⁵ The final section of the report then assesses the political, economic and institutional consequences of judicial activism and considers how these dynamics have shaped Pakistan's broader democratic evolution.

Iftikhar Chaudhry's Judicial Activism and Musharraf's Military Rule

By taking *suo motu* notice over the issues of PSM's privatisation and the Baloch missing persons, Chaudhry pushed back against Musharraf's iron rule. The privatisation of loss-making public enterprises was a cornerstone of Musharraf's economic policies. Similarly, the issue of Balochistan's missing persons²⁶ was part of his counter-insurgency framework²⁷ against the Baloch rebel groups demanding autonomy and ownership of the province's mineral resources.

Chaudhry's willingness to challenge the military's dominance set in motion three critical developments, paving the way for the beginning of the era of judicial activism in Pakistan.²⁸ First, it buried the notorious doctrine of necessity, potentially serving as a check on the military's inclination to stage coups.²⁹ Even if an adventurist general wanted to impose martial law, it would be impossible for him to obtain an endorsement from the judiciary. The judiciary's evolving institutional ethos since

²³ "Pakistan PM Imran Khan gone after losing no-confidence vote," Al-Jazeera, 9 April 2022, <https://www.aljazeera.com/news/2022/4/9/pakistan-prime-minister-imran-khan-no-confidence-vote>.

²⁴ Asfandiyar Mir, "In Pakistan's Crisis, Judicial, Military Roles Will Be Vital," United States Institute of Peace, 11 May 2023, <https://www.usip.org/publications/2023/05/pakistans-crisis-judicial-military-roles-will-be-vital>.

²⁵ Article 184(3) of Pakistan's constitution, before the 26th Constitutional Amendment, gave the Supreme Court *suo motu* powers, i.e. original jurisdiction to take a self-notice or act on the application of a person in public interest concerning the enforcement of fundamental rights. However, after the 26th Constitutional Amendment, the *suo motu* powers of the Supreme Court have been curtailed. Now, the court cannot act in public interest without a formal application. Furthermore, within the Supreme Court and High Courts, dedicated constitutional benches have been constituted to hear *suo motu* cases. The composition of the Judicial Commission of Pakistan has also been changed which has impacted the appointment of judges to the constitutional benches. For details see, Muhammad Nadeem, Maryam Qasim and Shazia Ibrahim, "Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973," *Journal of Social Science Review*, Vol. 3 No. 2 (April-June 2023), pp. 1054-1064, <https://doi.org/10.54183/jssr.v3i2.339>; Neha Tripathi and Anubhav Kumar, "The Story of the 26th Amendment: Executive Interference and the Judiciary's Struggle for Independence in Pakistan," *Constitution Net*, 29 December 2024, <https://constitutionnet.org/news/voices/story-26th-amendment-judiciarys-struggle-independence-pakistan>.

²⁶ Missing persons in Balochistan refer to Baloch dissidents picked up by security agencies extra-judicially on suspicions of insurgency or helping the insurgency in Balochistan. They are kept in internment centres for months and years and some of them are thrown on the roadsides in the province after being killed. Though numbers greatly vary, at least 5,000 Balochs have been missing from their homes. For details see, Sammi Deen Baloch, "More than 5,000 people are missing in Balochistan. I want my father back," *The Guardian*, 6 July 2022, <https://www.theguardian.com/global-development/2022/jul/06/pakistan-5000-people-disappeared-missing-balochistan>; Samand Muhammad Shahi, "The Long History of Enforced Disappearances in Balochistan," *The Diplomat*, 4 January 2024, <https://thediplomat.com/2024/01/the-long-history-of-enforced-disappearances-in-balochistan/>.

²⁷ Ahmed Rashid, "Pakistan's Continued Failure to Adopt a Counterinsurgency Strategy," *CTC Sentinel*, Vol. 2, Issue 3 (March 2009), <https://ctc.westpoint.edu/pakistans-continued-failure-to-adopt-a-counterinsurgency-strategy/>.

²⁸ According to the Britannica thesaurus, judicial activism describes a judicial decision of philosophy in which a judge is more willing to decide constitutional issues and invalidate legislative or executive actions. For details see "Judicial activism," *Britannica*, accessed on 21 February 2025, <https://www.britannica.com/topic/judicial-activism>.

²⁹ Nasir Iqbal, "Doctrine of necessity buried, says SC," *Dawn*, 6 March 2012, <https://www.dawn.com/news/700536/doctrine-of-necessity-buried-says-sc>.

Chaudhry's restoration in 2009 has prompted the military to look for more creative and coercive ways of ruling and expanding its influence in the country (more information in the succeeding sections) instead of resorting to the usual tactic of imposing martial law.

Second, it ended (even if temporarily) the Pakistani judiciary's subservience to the military following the emergence of the era of judicial activism.³⁰

Third, Chaudhry's judicial activism challenged Musharraf's grip on power, escalating tensions between the military and judiciary, which ultimately resulted in his ouster.³¹ The 2007 lawyers' movement received broad-based support from Pakistan's political parties, human rights bodies, media, and the international community against Musharraf's increasing unpopular rule.³² In retaliation, Musharraf unceremoniously removed Chaudhry after the latter refused to resign by filing a reference (a chargesheet of misconduct and abuse of power) against him.³³ However, the legal fraternity in Pakistan revolted and launched a protest movement against Musharraf's actions.³⁴ The lawyers demanded that the allegations of misconduct against Chaudhry be heard by a full bench of the Supreme Court, rather than being probed by the Supreme Judicial Council.³⁵ The petition succeeded as Musharraf's reference against Chaudhry was pursued in a full court hearing.³⁶ A full bench of SC was constituted under former Justice Khalil-ur-Rehman Ramday which quashed the allegations against Chaudhry and reinstated him as the chief justice.³⁷

In September 2007, Musharraf sought re-election as the president for another five-year term from an outgoing parliament.³⁸ At that time, he held two offices — as president and army chief. Due to growing public pressure and unease within the military, Musharraf promised to resign as the army chief if he was re-elected as the president.³⁹ Four petitions were immediately moved in the SC challenging his eligibility to contest the election while serving as the army chief.⁴⁰ The court held that Musharraf could contest for re-election as the president, in efforts to not disrupt the electoral process.⁴¹ However, it also announced to re-convene 11 days later (on 17 October) to decide on his

³⁰ Drazen Jorgic, "Stay out of politics Pakistan court tells powerful military," *Reuters*, 6 February 2021, <https://www.reuters.com/article/world/stay-out-of-politics-pakistan-court-tells-powerful-military-idUSKCN1PV1WA/>.

³¹ News agencies, "The rise and fall of Musharraf," *Al-Jazeera*, 18 August 2008, <https://www.aljazeera.com/news/2008/8/18/the-rise-and-fall-of-musharraf>.

³² Sahar Shafqat, "Civil Society and the Lawyers' Movement of Pakistan," *Law & Social Inquiry*, Vol. 43, No. 3 (Summer 2018), pp. 889-914.

³³ Nasir Iqbal, "CJ suspended, escorted home," *Dawn*, 10 March 2007, <https://www.dawn.com/news/236769/cj-suspended-escorted-home-justice-iftikhar-summoned-by-sjc-on-13th-for-reference-hearing-ex-judges-call-it-a-blow-to-judiciary-s-independence-minister-defends-decision-whither-judicial-activism>.

³⁴ Declan Walsh, "Lawyers clash with riot police over Musharraf's removal of chief justice," *The Guardian*, 13 March 2007, <https://www.theguardian.com/world/2007/mar/13/pakistan.declanwalsh>.

³⁵ Daud Munir, "Struggling for the Rule of Law: The Lawyers' Movement," *CETRI*, 13 August 2009, <https://www.cetri.be/Struggling-for-the-Rule-of-Law-The?lang=fr>.

³⁶ "Changing Course: Understanding Judicial Independence in Pakistan," DPhil Dissertation, University of Oxford, March 2017, pp. 222, <https://ora.ox.ac.uk/objects/uuid:ac9cf5cb-b1d1-4374-88fe-48b56c109a04/files/rsx61dm89z>.

³⁷ "Pakistan's Supreme Court reinstates suspended judge," *Reuters*, 10 August 2007, <https://www.reuters.com/article/world/pakistans-supreme-court-reinstates-suspended-judge-idUSISL167270/>.

³⁸ Zeeshan Haider, "Pakistan parliament to re-elect Musharraf, PM says," *Reuters*, 10 August 2007, <https://www.reuters.com/article/world/pakistan-parliament-to-re-elect-musharraf-pm-says-idUSISL1636/>.

³⁹ "Musharraf to quit army post if re-elected: lawyer," *The Sydney Morning Herald*, 18 September 2007, <https://www.smh.com.au/world/musharraf-to-quit-army-post-if-reelected-lawyer-20070918-zl7.html>.

⁴⁰ Fred Attewill, "Court clears Musharraf to seek re-election," *The Guardian*, 27 September 2008, <https://www.theguardian.com/world/2007/sep/28/pakistan>.

⁴¹ Imtiaz Gul, "Pakistan: Musharraf Clears Another Hurdle," *DW*, 5 October 2007, <https://www.dw.com/en/pakistan-musharraf-clears-another-hurdle/a-5212571>.

eligibility to hold two offices simultaneously.⁴² Seemingly, his bid to seek re-election as the president while holding the office of the army chief violated the rules against holding dual offices.⁴³ Amid rising panic, Musharraf imposed an emergency in November 2007 and placed the defiant SC judges and their families under house arrest.⁴⁴

However, the emergency was resisted by all segments of Pakistani society, led by the lawyers' movement.⁴⁵ Even Musharraf's patronage from the United States (US) could not shield him. The Bush administration, Musharraf's principal international backer, made its support conditional in exchange for allowing then Pakistan People's Party's (PPP) chairperson and former prime minister Benazir Bhutto to return to Pakistan and restoring democracy through free and impartial elections.⁴⁶

Through back-channel negotiations in Dubai, Musharraf agreed to Bhutto's return provided she would allow him to continue serving as president.⁴⁷ However, the deal collapsed⁴⁸ when Bhutto threw her party's weight behind lawyers' movement and held a rally outside Chaudhry's residence.⁴⁹ Subsequently, she was assassinated in a terrorist attack in Rawalpindi in December 2007 resulting in the elimination of some political pressure.⁵⁰

During the 2007 emergency rule, Musharraf handpicked pliant judges led by then Justice Abdul Hameed Dogar to project a charade of legitimacy.⁵¹ Nonetheless, due to mounting internal and external pressures, the emergency was lifted in December 2007. Parliamentary elections were convened in February 2008, which were won by the PPP.⁵² Anticipating impeachment by Parliament, Musharraf resigned and left the country.⁵³ However, the PPP-led coalition government refused to restore Chaudhry fearing his interference in political and governance related matters.⁵⁴

The lawyers continued their protest and former prime minister and head of the PMLN, Nawaz Sharif expressed his party's support for the lawyers' movement which led to political tensions between

⁴² The Supreme Court threw Musharraf's effort into a disarray by ruling that the winner cannot be declared before legal questions are resolved. See "Court blocks Musharraf re-election bid," *The Age*, 6 October 2007, <https://www.theage.com.au/world/court-blocks-musharraf-re-election-bid-20071006-ge5zn9.html>.

⁴³ Moeen H. Cheema, "The Chaudhry Court: Deconstructing the Judicialisation of Politics in Pakistan," *Washington International Law Journal*, Vol. 25, No. 3 (2016), pp. 447-487.

⁴⁴ "Musharraf Imposes Emergency Rule, Suspends Pakistan's Constitution," *Voice of America*, 27 October 2009, <https://www.voanews.com/a/a-13-2007-11-04-voa1-66699342/559023.html>.

⁴⁵ "Stephen P. Cohen, "Thousands Protest Emergency Rule in Pakistan," *Brookings*, 5 November 2007, <https://www.brookings.edu/articles/thousands-protest-emergency-rule-in-pakistan/>.

⁴⁶ Adrian Levy and Cathy Scott-Clark, "The plot to bring back Benazir," *The Guardian*, 21 July 2007, <https://www.theguardian.com/world/2007/jul/21/usa.politics>; Robin Wright and Glenn Kessler, "U.S. brokered Bhutto's return to Pakistan," *NBC News*, 8 December, 2007, <https://www.nbcnews.com/id/wbna22414361>.

⁴⁷ Benjamin Sand, "Pakistani Officials: Musharraf And Rival Former PM Benazir Bhutto Met in Secret," *Voice of America*, 1 November 2009, <https://www.voanews.com/a/a-13-2007-07-28-voa20/338080.html>.

⁴⁸ "Musharraf-Bhutto power deal collapses," *The Hindustan Times*, 8 September 2007, <https://www.hindustantimes.com/world/musharraf-bhutto-power-deal-collapses/story-IVqWnSjQxVAGcCobg3XMhM.html>.

⁴⁹ Declan Walsh, "Riot police deployed to prevent Benazir from leading anti-Musharraf protest," *The Guardian*, 10 November 2007, <https://www.theguardian.com/world/2007/nov/10/pakistan.international>.

⁵⁰ Owen Bennett Jones, "Benazir Bhutto assassination: How Pakistan covered up killing," *BBC News*, 27 December 2017, <https://www.bbc.com/news/world-asia-42409374>.

⁵¹ "Supreme Court validates proclamation of emergency, PCO, follow-up actions: detailed judgement delivered," *Business Recorder*, 15 February 2008, <https://www.brecorder.com/news/3482559>.

⁵² "Pakistan's Musharraf lifts emergency rule," *NBC News*, 15 December 2007, <https://www.nbcnews.com/id/wbna22268963>.

⁵³ Saeed Shah, "Pervez Musharraf resigns as president of Pakistan," *The Guardian*, 18 August 2008, <https://www.theguardian.com/world/2008/aug/18/pakistan>.

⁵⁴ "2008: Zardari, Nawaz agreed not to restore Chief Justice Iftikhar Chaudhry," *Dawn*, 23 May 2011, <https://www.dawn.com/news/631187/2008-zardari-nawaz-agreed-not-to-restore-chief-justice-iftikhar-chaudhry>.

him and then President Asif Ali Zardari.⁵⁵ In retaliation, Zardari dismissed PMLN's government in Punjab and imposed governor's rule for two months.⁵⁶ In March 2009, Sharif announced the commencement of a long march from Lahore to Rawalpindi to demand Chaudhry's restoration.⁵⁷ But, as the confrontation intensified, then army chief General Ashfaq Pervez Kayani intervened⁵⁸ to defuse the political crisis, prompting Zardari to reinstate Chaudhry.⁵⁹

But soon after his reinstatement, Chaudhry declared Musharraf's emergency as unconstitutional,⁶⁰ leading to the dismissal of all the SC judges who endorsed it.⁶¹

Emergence of Judiciary as an Independent Institution and Its Fraying Ties with the Military

The most consequential outcome of the judicial activism led by Chaudhry was the breakdown of the judiciary-military alliance. During the lawyers' movement, the SC found a new support base in civil society and the mainstream media.⁶² It also created a rapport between the SC judges and the public, effectively making the judiciary more accountable to the people⁶³ — a stark contrast to the past when it colluded with the military. After his reinstatement, Chaudhry established a human rights cell within the SC, which received hundreds of petitions each day from ordinary citizens to ensure that "the man in the street is also within reach of justice".⁶⁴ Unsurprisingly, Chaudhry took *suo motu* cognizance of the rising prices of commodities, missing persons, corrupt practices of politicians, poor governance, among other issues, based on newspaper reports.⁶⁵ However, the more critical task — improving the institutional performance of the lower judiciary, where case backlog spanned across decades and ensuring swift, affordable justice for common citizens — remained unfulfilled.⁶⁶ Despite these shortcomings, the judiciary, as a result of these developments, emerged as an independent stakeholder⁶⁷ in Pakistan's power dynamics.⁶⁸ In a showdown with the parliament in 2010, Chaudhry compelled the latter to review Article 175-A under the 18th Constitutional Amendment which gave the powers of appointing SC judges to a parliamentary committee or the

⁵⁵ "Why Pakistan cares about Chaudhry?" *Al-Jazeera*, 16 March 2009, <https://www.aljazeera.com/news/2009/3/16/why-pakistan-cares-about-chaudhry>.

⁵⁶ "President Zardari imposes two month governor rule in Punjab," *Dawn*, 25 February 2009, <https://www.dawn.com/news/955869/president-zardari-imposes-two-month-governor-rule-in-punjab>.

⁵⁷ "Sharif calls off long march as govt agrees to reinstate judge," *France 24*, 16 March 2009, <https://www.france24.com/en/20090316-sharif-calls-off-long-march-govt-agrees-reinstate-judge->.

⁵⁸ "2009: army's role in long march conclusion," *Dawn*, 15 June 2011, <https://www.dawn.com/news/634414/2009-armys-role-in-long-march-conclusion>.

⁵⁹ "Army Chief General Ashfaq Pervez Kayani... told both President Asif Zardari and Prime Minister Gilani... to reverse some of the controversial decisions... It was after his not-so-veiled warning that the two top civilian leaders agreed to restore the chief justice of Pakistan." See "Government agrees to reinstate Iftikhar Chaudhry," *Dawn*, 16 March 2009, <https://www.dawn.com/news/957153/government-agrees-to-reinstate-iftikhar-chaudhry>.

⁶⁰ "SC strikes down Nov 3 emergency," *Dawn*, 1 August 2009, <https://www.dawn.com/news/849047/sc-strikes-down-nov-3-emergency>.

⁶¹ Kaiser Zulfiqar, "Constitutional status revoked: SC rejects PCO judges' appeals," *The Express Tribune*, 19 May 2011, <https://tribune.com.pk/story/171082/pco-judges-sc-rejects-intra-court-appeals/>.

⁶² Adnan Rafiq, "Changing Course: Understanding Judicial Independence in Pakistan," p.137.

⁶³ *Ibid*, p.38.

⁶⁴ *Ibid*, p.167.

⁶⁵ Ayaz Amir, "My Lord the Chief Justice takes notice," *Dawn*, 5 May 2006, <https://www.dawn.com/news/1073150>; "Suo motu action: CJ takes notice on Express Tribune report," *The Express Tribune*, 11 March 2013, <https://tribune.com.pk/story/518936/suo-motu-action-cj-takes-notice-on-express-tribune-report>; "Chief Justice takes suo motu notice of Gujrat tragedy," *Dawn*, 29 May 2013, <https://www.dawn.com/news/1014696/newspaper/column>.

⁶⁶ Hasnaat Malik, "SC annual report: Pendency of cases reaches 15-year high," *The Express Tribune*, 21 May 2018, <https://tribune.com.pk/story/1715028/sc-annual-report-pendency-cases-reaches-15-year-high>.

⁶⁷ Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*, p.193.

⁶⁸ Moeen H. Cheema, "The 'Chaudhry Court': Deconstructing the 'Judicialization of Politics' in Pakistan," *Washington International Law Journal*, Vol. 25, No.3 (2016), pp. 447-487, <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1719&context=wilj>.

judicial council.⁶⁹ Soon after the 18th Amendment was passed,⁷⁰ six petitions were moved in the SC challenging Article 175-A. However, instead of invalidating the clause, the SC ordered the Parliament to “review Article 175-A for it has harmed judicial freedom”.⁷¹ To avoid confrontation with the judiciary, the Parliament restored the SC’s authority to appoint judges.⁷² Likewise, the SC broke the deadlock between the military and the PPP government over the memogate scandal⁷³ by offering to form a judicial commission to probe the allegations of treason against Hussain Haqqani, Pakistan’s former ambassador to the US.⁷⁴

Following the 2011 US raid in Abbottabad that killed former Al-Qaeda chief Osama Bin Laden, Haqqani allegedly wrote a secret letter to the Obama administration seeking Washington’s assistance to avert a military takeover in Pakistan.⁷⁵ Haqqani urged the US to make security assistance to the Pakistani military conditional in exchange for its support of democratic governance. A Pakistani-American businessman, Mansoor Ijaz, revealed the existence of this secret letter in an article for the *Financial Times*.⁷⁶ Pakistan’s then Inter-Services Intelligence (ISI) chief Lt-General Shuja Pasha met Ijaz in Dubai to collect evidence of treason against Haqqani for conspiring against the military establishment.⁷⁷ In a move widely seen as accommodating, the judicial commission formed by the SC found Haqqani guilty of treason and recommended his dismissal.⁷⁸ Although tensions between the military and the SC peaked during the lawyers’ movement, relations were later restored when the SC seemingly coopted with the military establishment, as Chaudhry was beholden to General Kayani for facilitating his reinstatement.⁷⁹

⁶⁹ Before the 18th Constitutional Amendment, Article 175-A of Pakistan’s Constitution pertained to the establishment of the judiciary. It states that “there shall be a Supreme Court, High Courts of each province, and other courts established by law.” However, a specific process for the appointment of judges was not laid down in it. In the 18th Constitutional Amendment, the power to appoint judges was given to a parliamentary committee or the judicial council. The SC deemed it as undue interference in judiciary’s independence and forced the parliament to give the power of judges’ appointment to the SC through another amendment. For details see “Chapter 1: The Courts,” *The Constitution of the Islamic Republic of Pakistan*, accessed on 11 July 2025, <https://www.pakistani.org/pakistan/constitution/part7.ch1.html>; “SC order on 18th Amendment calls for review of article on judges’ appointment: Ball back in parliament’s court,” *Dawn*, 22 October 2010, <https://www.dawn.com/news/849078/sc-order-on-18th-amendment-calls-for-review-of-article-on-judges-appointment-ball-back-in-parliament-s-court>.

⁷⁰ Christophe Jaffrelot, Mohammad Waseem and Asma Faiz, “Mapping the post-18th Amendment federalism in Pakistan: hegemony, centralization or cooperation?” *Commonwealth and Comparative Politics*, Vol. 62, issue 3 (2024), pp. 185-205, <https://doi.org/10.1080/14662043.2024.2419688>.

⁷¹ “Pakistan avoids judicial showdown,” *Al-Jazeera*, 21 October 2010, <https://www.aljazeera.com/news/2010/10/21/pakistan-avoids-judicial-showdown>.

⁷² “18th Amendment Case: Ball In Parliament’s Court,” *The Express Tribune*, 23 October 2010, <https://tribune.com.pk/article/2486/18-amendment-ball-in-parliaments-court>.

⁷³ “Pakistan’s memogate bodes ill for Zardari,” *BBC News*, 16 December 2011, <https://www.bbc.com/news/world-asia-16217679>.

⁷⁴ “Judicial commission for memo case probe,” *Dawn*, 31 December 2011, <https://www.dawn.com/news/684471/judicial-commission-for-memo-case-probe>.

⁷⁵ Josh Rogin, “Secret Pakistani-U.S. memo offering overthrow of military leadership revealed,” *Foreign Policy*, 17 November 2011, <https://foreignpolicy.com/2011/11/17/exclusive-secret-pakistani-u-s-memo-offering-overthrow-of-military-leadership-revealed/>.

⁷⁶ “Pakistan court summons memogate envoy Husain Haqqani,” *BBC News*, 12 June 2012, <https://www.bbc.com/news/world-asia-18409517>; Josh Rogin, “Ijaz told Jones three people prepared the ‘Memogate document,’” *Foreign Policy*, 12 January 2012, <https://foreignpolicy.com/2012/01/12/exclusive-ijaz-told-jones-three-people-prepared-the-memogate-document/>.

⁷⁷ “ISI DG has all the evidence: Mansoor Ijaz,” *The Express Tribune*, 20 November 2011, <https://tribune.com.pk/story/294898/dg-isi-pasha-has-forensically-tested-memo-evidence-mansoor-ijaz>.

⁷⁸ “Memogate commission finds Husain Haqqani guilty, says he was not loyal to Pakistan,” *NDTV*, 12 June 2012, <https://www.ndtv.com/world-news/memogate-commission-finds-husain-haqqani-guilty-says-he-was-not-loyal-to-pakistan-487892>; Haseeb Bhatti, “SC wraps up Memogate case, says govt should proceed against Hussain Haqqani if it so wishes,” *Dawn*, 14 February 2019, <https://www.dawn.com/news/1463818>.

⁷⁹ “Pakistan defuses crisis, agrees to restore top judge,” *The Economic Times*, 16 March 2009, <https://economictimes.indiatimes.com/news/politics-and-nation/pakistan-defuses-crisis-agrees-to-restore-top-judge/printarticle/4269837.cms?from=mdr>.

To avoid further friction with the military, Zardari replaced Haqqani with Sherry Rehman, whom the military trusted.⁸⁰ In Pakistan's tumultuous history, this was the first occasion where the SC defused civil-military tensions and cemented its place as the new power broker. Similarly, in 2012, the SC dismissed former prime minister Yusuf Raza Gilani for refusing to reopen dormant fraud investigations against Zardari.⁸¹ Chaudhry convicted him of contempt of court for refusing to obey the court's order.⁸² However, such judicial activism proved detrimental to Pakistan's democratic evolution, as no prime minister has yet completed a full five-year constitutional term in office. This trend could have been reversed had Gilani been allowed to serve out his tenure.⁸³ Though Chaudhry felt indebted to Kayani, whose intervention facilitated his reinstatement, he nonetheless kept the missing persons' case open and tried to hold the military and paramilitary institutions like the Rangers and the Frontier Corps accountable for extrajudicial abductions and killings in Balochistan.⁸⁴ During this period, the judiciary adopted a mixed approach toward military — accommodating it in some cases while exercising independence on others — to maintain its hard-earned independence without stoking tensions with the military. Eventually, a judicial commission was formed under a former SC judge, Justice Javed Iqbal, who had been part of the bench hearing this case, to trace the missing persons. Iqbal succeeded in getting intelligence agencies to answer questions about the people in their custody.⁸⁵ Reportedly, of the 6,156 missing persons, the commission claimed to have traced 3,938 people by June 2019. However, no missing persons were recovered in this process.⁸⁶ Though Chaudhry's judicial activism helped upend Musharraf's military rule and was critical in the restoration of democracy in Pakistan, he often overstepped his constitutional power and institutional mandate.⁸⁷ This demonstrated that judicial activism brought both positive and negative implications. Although this trend persisted even after Chaudhry's retirement, the judiciary's alliances in the power equation kept changing.⁸⁸

Judicial Activism After Chaudhry's Retirement

After Chaudhry's retirement, the judiciary maintained its position as an independent power broker in the system. However, its friction with the military subsided as the two institutions colluded to facilitate Imran Khan's rise to power in 2018.⁸⁹ Consequently, the missing persons' case was

⁸⁰ Saeed Shah, "Sherry Rehman appointed Pakistan ambassador to Washington," *The Guardian*, 23 November 2011, <https://www.theguardian.com/world/2011/nov/23/sherry-rehman-pakistan-ambassador-washington>.

⁸¹ "Pakistan Supreme Court bars PM Gilani from office," *BBC News*, 19 June 2012, <https://www.bbc.com/news/world-asia-18506728/>.

⁸² Jon Boone, "Pakistan's prime minister Yousuf Raza Gilani disqualified by supreme court," *The Guardian*, 19 June 2012, <https://www.theguardian.com/world/2012/jun/19/pakistan-prime-minister-yousuf-gilani-disqualified>.

⁸³ Umair Jamal, "Democracy and Judicial Activism in Pakistan," *The Diplomat*, 1 May 2018, <https://thediplomat.com/2018/05/democracy-and-judicial-activism-in-pakistan/>.

⁸⁴ Mohamad Zafar, "Missing persons' case: Security agencies not cooperating with top court," *The Express Tribune*, 27 August 2013, <https://tribune.com.pk/story/595699/missing-persons-case-security-agencies-not-cooperating-with-top-court>.

⁸⁵ Qaiser Zulfiqar, "Missing persons: Justice Javed Iqbal to head commission," *The Express Tribune*, 26 September 2011, <https://tribune.com.pk/story/260602/missing-persons-case-justice-javed-iqbal-appointed-head-of-commission>.

⁸⁶ "3,938 missing persons traced, claims commission," *Dawn*, 13 July 2019, <https://www.dawn.com/news/1493781>.

⁸⁷ Matthew Green and Qasim Nauman, "Pakistan's gun-slinging chief justice faces backlash," *Reuters*, 24 June 2012, <https://www.reuters.com/article/world/pakistans-gun-slinging-chief-justice-faces-backlash-idUSBRE85N057/>; Faisal Siddiqi, "Judging Chaudhry," *Dawn*, 13 July 2015, <https://www.dawn.com/news/1194056>.

⁸⁸ Ian Talbot, "Pakistan's hybrid regime: Growing democratization, or increased authoritarianism?" in *Routledge Handbook of Autocratization in South Asia*, ed., Sten Widmalm, (London: Routledge, 2021), pp. 141-150, <https://www.taylorfrancis.com/books/oa-edit/10.4324/9781003042211/routledge-handbook-autocratization-south-asia-sten-widmalm?refId=2cb598b9-5f40-4383-8aa9-fe451dc0b7a7&context=ubx>.

⁸⁹ Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*, p.191& 222; "Pakistan military backs judiciary against Nawaz Sharif," *Arab News*, 21 March 2018, <https://www.arabnews.com/node/1270821/press-review>.

deprioritised,⁹⁰ but the judges continued to pursue their judicial inquiry against “corrupt” politicians.⁹¹ It is important to mention that despite reconciling with the military after Chaudhry’s retirement, the SC continued to guard its institutional turf.⁹²

During this period, the Pakistan Tehreek-e-Insaf (PTI) chairman Imran Khan led a protest movement, demanding the PMLN government’s ouster on allegations of electoral fraud and corruption.⁹³ Both times, the SC played a critical role which had far-reaching political implications. For instance, the SC formed a commission in 2015 to follow-up on Khan’s complaints that systematic rigging took place in the 2013 general elections.⁹⁴ The commission found irregularities and administrative gaps in the elections but dismissed charges of a systematic rigging. Khan’s protest movement following the decision by the SC lost steam.⁹⁵

Similarly, in 2016, the Panama Papers Scandal, a leak of 11.5 million documents from the Panamanian law firm Mossack Fonesca, revived Khan’s anti-corruption campaign. It disclosed offshore properties of Nawaz Sharif’s sons in the UK.⁹⁶ This prompted Khan to demand Nawaz’s resignation, and threaten to convene another protest movement.⁹⁷ Reportedly, the SC judges urged Khan to pursue a legal route to seek addressal of his complaints rather than mobilising street protests.⁹⁸ The probe into the Sharif’s offshore properties in the UK found him guilty of misdeclaration and disqualified him for life from holding a public office.⁹⁹ The court headed by then-Chief Justice Saqib Nisar declared him “dishonest and untrustworthy” for failing to declare his receivable salary in the 2013 election nomination papers.¹⁰⁰ The SC even barred him from leading his political party.¹⁰¹ The decision to dismiss another prime minister on technical grounds undermined Pakistan’s democratic evolution.¹⁰²

More importantly, the SC’s verdict paved the way for Khan’s rise to power through the 2018 general elections which were also marred by allegation of fraud.¹⁰³ At the same time, the judiciary’s ties with

⁹⁰ Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*, p.225.

⁹¹ Islamuddin Sajid, “Pakistan’s top court restores corruption cases against public office holders,” *Anadolu Ajansi*, 15 September 2023, <https://www.aa.com.tr/en/asia-pacific/pakistans-top-court-restores-corruption-cases-against-public-office-holders/2992817>.

⁹² Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*, p.226.

⁹³ Jon Boone, “Political crisis in Pakistan as media, politics and the military join the fray,” *The Guardian*, 29 August 2014, <https://www.theguardian.com/world/2014/aug/29/pakistan-opposition-fights-geo-tv-station>.

⁹⁴ “SC forms commission to probe alleged poll rigging,” *Dawn*, 8 April 2015, <https://www.dawn.com/news/1174694>.

⁹⁵ Hasnaat Malik, “Election rigging probe: Inquiry commission rejects PTI’s allegations,” *The Express Tribune*, 23 July 2025, <https://tribune.com.pk/story/925188/election-rigging-probe-inquiry-commission-rejects-ptis-allegations>.

⁹⁶ Luke Harding, “What are the Panama Papers? A guide to history’s biggest data leak,” *The Guardian*, 5 April 2016, <https://www.theguardian.com/news/2016/apr/03/what-you-need-to-know-about-the-panama-papers>.

⁹⁷ “Pakistan Panama Papers case: Imran Khan demands PM Nawaz Sharif’s resignation,” *The Hindustan Times*, 20 April 2017, <https://www.hindustantimes.com/world-news/pakistan-panama-papers-case-imran-khan-demands-pm-nawaz-sharif-s-resignation-after-sc-order/story-ad5UXMKvLni9D6g5gE6SyN.html>.

⁹⁸ “Panama Papers: Pakistan Supreme Court orders corruption probe against Nawaz Sharif,” *Indian Express*, 1 November 2016, <https://indianexpress.com/article/world/world-news/pakistan-supreme-court-panama-papers-nawaz-sharif-3732266/>; “Allegations of Justice Khosa ‘requesting’ Imran Khan to file petition completely untrue: SC registrar,” *Dawn*, 1 August 2017, <https://www.dawn.com/news/1348961>.

⁹⁹ Sune Engel Rasmussen, “Pakistani court removes PM Nawaz Sharif from office in Panama Papers case,” *The Guardian*, 28 July 2017, <https://www.theguardian.com/world/2017/jul/28/pakistani-court-disqualifies-pm-nawaz-sharif-from-office>.

¹⁰⁰ Ayaz Gul, “Ex-Pakistan PM Sharif Barred From Holding Public Office for Life,” *Voice of America*, 13 April 2018, <https://www.voanews.com/a/ex-pakistan-pm-sharif-barred-from-holding-public-office-for-life/4346506.html>.

¹⁰¹ Hasnaat Malik, “Supreme Court bars disqualified Nawaz Sharif from heading PMLN,” *The Express Tribune*, 21 February 2018, <https://tribune.com.pk/story/1640783/sc-reserves-judgement-election-act-case>.

¹⁰² Adnan Rasool, “Pakistan’s activist Supreme Court endangers a fragile democracy,” *The Conversation*, 28 March 2018, <https://theconversation.com/pakistans-activist-supreme-court-endangers-a-fragile-democracy-91896>.

¹⁰³ “Pakistan’s dirtiest election in years,” *BBC News*, 23 July 2018, <https://www.bbc.com/news/world-asia-44923565>.

the military and the civilian government underwent a major shift. A power troika of the SC, military and Khan emerged, ushering in the era of hybrid democracy - a combination of autocratic rule with democratic features,¹⁰⁴ in Pakistan.¹⁰⁵

Under this hybrid rule, political repressions and regular elections were held simultaneously.¹⁰⁶ However, the regular electoral fraud prevented Pakistan from being a fair and free democracy.¹⁰⁷ Khan's hybrid regime frequently applied pressure on political opponents by using accountability as a weapon, while also harassing independent media.¹⁰⁸ As this hybrid system became entrenched, the military moved from direct praetorian to indirect praetorian rule, governing through proxies while maintaining a façade of democracy.¹⁰⁹ The emergence of the middle-class, alongside advances in communication technologies and social media, is critical in understanding the mindset of the judiciary in siding with the populist PTI.¹¹⁰ Khan enjoyed a strong following among Pakistan's urban middle-class for speaking against corruption emerging from dynastic rule of the Sharif and Zardari families.¹¹¹ The middle-class citizens believed that these corrupt politicians not only accumulated wealth through illicit means at its expense but also undermined meritocracy by appointing their cronies in positions of power.¹¹² Furthermore, while the middle-class was burdened by heavy taxes, these dynasties evaded taxes and perpetuated their rule.¹¹³ Since Chaudhry's time — several SC judges, many of whom came from middle-class backgrounds rather than the older generation of Anglicised, Western-educated elites — shared these sensibilities.¹¹⁴ They were invested in the same normative thought process and values as the rest of the middle-class in Pakistan.¹¹⁵

The Rise of Hybrid Democracy in Pakistan

When Khan rose to power with the backing of the military and the SC, Pakistan's democracy regressed from a constitutional system to hybrid one,¹¹⁶ in which the military and civilians shared

¹⁰⁴ For details see "Hybrid regime," Dictionary of Populism, *European Centre for Populism Studies*, accessed on 12 July 2025, <https://www.populismstudies.org/Vocabulary/hybrid-regime/>.

¹⁰⁵ Zahid Hussain, "The new power troika," *Dawn*, 14 March 2018, <https://www.dawn.com/news/1395166>.

¹⁰⁶ "Hybrid regimes combine autocratic features with democratic ones; they can simultaneously hold political repressions and regular elections. Furthermore, hybrid regimes are nations with regular electoral frauds, preventing them from being a fair and free democracy. These nations commonly have governments that apply pressure on political opposition, non-independent judiciaries, widespread corruption, harassment and pressure placed on the media, anaemic rule of law, and more pronounced faults than flawed democracies in the realms of underdeveloped political culture, low levels of participation in politics and issues in the functioning of governance."

¹⁰⁷ "Saif Ur Rehman and Zhao Shurong, "Governing through Informal Mechanisms: Military Control Over State Institutions in Pakistan," *Asian Survey*, Vol. 61, No. 6 (November-December 2021), pp. 942-970

¹⁰⁸ "Imran used state organs to stifle opposition: PMLN," *Dawn*, 13 June 2022, <https://www.dawn.com/news/1694511>; Hannah Ellis-Petersen and Shah Meer Baloch, "Extreme fear and self-censorship: media freedom under threat in Pakistan," *The Guardian*, 5 November 2019, <https://www.theguardian.com/world/2019/nov/05/extreme-fear-and-self-censorship-media-in-pakistan-under-attack>.

¹⁰⁹ Moeen Cheema, David Dyzenhaus and Thomas Poole, "Indirect Praetorianism: Public Interest Litigation and the First Wave of Judicial Activism," in *Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan*, *Cambridge Studies in Constitutional Law* (London: Cambridge University Press; 2021), pp. 138-168.

¹¹⁰ Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*, p.198.

¹¹¹ Christophe Jaffrelot, "Painted into a Corner," *Indian Express*, 20 August 2014, <https://indianexpress.com/article/opinion/columns/painted-into-a-corner/>.

¹¹² Adnan Rafiq, "Changing Course: Understanding Judicial Independence in Pakistan," p. 20.

¹¹³ *Ibid*, pp. 174-176.

¹¹⁴ *Ibid*, p.160.

¹¹⁵ *Ibid*.

¹¹⁶ According to the Oxford Bibliographies, "hybrid regimes are found in developing countries, especially since the end of the Cold War. They are called hybrid (democracies) because they combine democratic traits (e.g., frequent and direct elections) with autocratic ones (e.g., political repression)." For details see "Hybrid Regimes," *Oxford Bibliographies*, accessed on 21 February, 2025, <https://www.oxfordbibliographies.com/display/document/obo-9780199756223/obo-9780199756223-0167.xml>.

power.¹¹⁷ According to the European Centre for Populism Studies, “hybrid regimes combine autocratic features with democratic ones, whereupon they can simultaneously hold political repressions and regular elections.”¹¹⁸ Under this hybrid period, the military’s influence expanded in the civilian sphere. Beyond running the country’s security and foreign policies, the military now also started managing the economy.¹¹⁹ As democracy receded, the SC’s *suo motu* intervention on matters of public interest continued.¹²⁰ During his tenure, Nisar routinely visited public hospitals¹²¹ and dismissed any criticism of his interference into the executive’s sphere by maintaining that constitution allowed him to take cognisance of public matters.¹²² Likewise, he was also very concerned about environmental degradation in Pakistan, especially the issue of water scarcity. He created a Dam Fund under the SC’s account for the construction of dams in Pakistan.¹²³ He even organised fundraising events within and outside Pakistan for his Dam Fund.¹²⁴ The judiciary’s acquiescence in assisting the military’s effort to install Khan as prime minister hurt Pakistan’s democratic evolution. Under the hybrid regime, the parliament’s role as a legislative body was greatly undermined.¹²⁵ Although the legislature is typically considered a supreme institution in a constitutional democracy, this principle has never taken hold in Pakistan. During Khan’s tenure, the authority of the parliament eroded further.¹²⁶

Faced with a strong opposition in the parliament, the PTI government pushed legislations through presidential ordinances and later converted them into laws through parliament’s rushed joint sittings prior to their expiration.¹²⁷ At the same time, several opposition leaders were also jailed on unsubstantiated corruption charges, and the SC took few steps to stop PTI’s political witch hunt or safeguard fundamental rights.¹²⁸

Likewise, media freedom plummeted and the Pakistan Army’s media wing, the Inter Services Public Relations (ISPR), urged news organisations to report positively on the government’s performance, a euphemism for media censorship.¹²⁹ In sum, a weak opposition undercut by an anti-corruption campaign, dysfunctional parliament and a censored media contributed to the weakening of democracy in Pakistan.¹³⁰

¹¹⁷ Mohammad Taqi, “Pakistan’s Hybrid Regime: The Army’s Project Imran Khan,” *The Diplomat*, 1 October, 2020, <https://thediplomat.com/2020/10/pakistans-hybrid-regime-the-armys-project-imran-khan/>.

¹¹⁸ “Hybrid regime,” *European Centre for Populism Studies*, accessed on 22 February 2025, <https://www.populismstudies.org/Vocabulary/hybrid-regime/>.

¹¹⁹ “Pakistan’s generals are ever more involved in running the country,” *The Economist*, 8 April 2021, <https://www.economist.com/asia/2021/04/08/pakistans-generals-are-ever-more-involved-in-running-the-country>.

¹²⁰ Adeel Hussain, “Mango Scented Sovereignty: Pakistan’s Chief Justice Saqib Nisar and Baba-justice,” 17 September 2018, *VerfBlog*, <https://verfassungsblog.de/mango-scented-sovereignty-pakistans-chief-justice-saqib-nisar-and-baba-justice/>.

¹²¹ Kaukab Tahir Shairani, “A tenure of surprise visits,” *The Express Tribune*, 17 January 2019, <https://tribune.com.pk/story/1889405/chief-justice-mian-saqib-nisar-tenure-surprise-visits>.

¹²² “Constitution gives me right to visit hospitals, says CJP,” *Geo News*, 11 January 2018, <https://www.geo.tv/latest/176347-constitution-gives-me-right-to-visit-hospitals-says-cjp>.

¹²³ “Pakistan looking for billions in donations to build dams,” *Dawn*, 25 February 2019, <https://www.dawn.com/news/1465852>.

¹²⁴ Abid Hussain, “The mega-dam being crowdfunded by Pakistan’s top judge,” *BBC News*, 30 October 2018, <https://www.bbc.com/news/world-asia-45968574>.

¹²⁵ Raja Riaz, “Opposition parties join hands in parliament after shocking defeat by PTI,” *Arab News*, 31 July 2018, <https://www.arabnews.com/node/1348901/world>.

¹²⁶ Fahd Hussain, “Democracy’s fight club,” *Dawn*, 17 June 2021, <https://www.dawn.com/news/1629761>.

¹²⁷ Amir Wasim, “Ordinances outnumber laws passed by National Assembly,” *Dawn*, 17 August 2020, <https://www.dawn.com/news/1574860>.

¹²⁸ “Pakistan opposition leader arrested in corruption case,” *Al-Jazeera*, 28 September 2020, <https://www.aljazeera.com/news/2020/9/28/pakistan-opposition-leader-arrested-in-corruption-case>.

¹²⁹ “DG ISPR urges media to show progress, potential of Pakistan,” *Geo News*, 6 December 2018, <https://www.geo.tv/latest/220948-dg-ispr-urges-asks-media-to-show-progress-potential-of-pakistan>.

¹³⁰ Madiha Afzal, “An inflection point for Pakistan’s democracy,” *Brookings*, February 2019, <https://www.brookings.edu/articles/an-inflection-point-for-pakistans-democracy/>.

Khan's Ouster and the Unravelling of the Judiciary-Military Nexus

Khan was deposed in a parliamentary vote of no-confidence in April 2022, becoming the first Pakistani prime minister to be removed from power in this manner after developing intractable differences with the military establishment.¹³¹ Tensions peaked when the-then Chief of Army Staff, General Qamar Javed Bajwa, wanted to transfer the former Director General of ISI, Lieutenant General Faiz Hameed, to command a corps. Khan, however, insisted on retaining him as the spy chief.¹³² Faiz, widely viewed as Khan's right-hand man in managing political opposition and the media, became a controversial figure both within and outside the military. His political interference drew criticism from serving officers, creating mounting internal pressure on Bajwa to transfer him. Bajwa and Khan also clashed over the removal of then Punjab Chief Minister Usman Buzdar, whose poor governance had become a growing liability. Bajwa wanted to replace Buzdar with Chaudhry Pervaiz Elahi, who was then the Speaker of the Punjab Assembly and the president of the Pakistan Muslim League-Quaid-e-Azam (PMLQ).¹³³ During Musharraf's military rule, Elahi had successfully governed Punjab as chief minister.¹³⁴ Khan, however, was determined to retain Buzdar — a weak chief minister — in a bid to rule Punjab from Islamabad. Similarly, Bajwa urged Khan to stop the witch hunt of political opponents under the pretext of accountability,¹³⁵ the central plank of the latter's politics.¹³⁶ Khan had arrested and imprisoned major opposition figures (as discussed above), a move that contributed to political instability in the country.¹³⁷ Bajwa, in contrast, wanted political tensions to deescalate by persuading Khan to slow down the so-called accountability agenda. As the Khan-military-judiciary troika unravelled, it left the latter in a quandary. In April 2022, ahead of its ouster in a parliamentary vote of no-confidence, the PTI government claimed that the move to oust Khan was a US-funded conspiracy and dismissed the parliamentary session convened for the vote.¹³⁸ Soon after, in a televised address Khan advised the then-President Arif Alvi to dissolve the parliament and call for fresh elections.¹³⁹

Khan's move was both unexpected and unconstitutional. After President Alvi announced the dissolution of the assemblies, then SC Chief Justice Umar Atta Bandial convened the court through a *suo motu* notice to determine the legality of Khan's move.¹⁴⁰ Over three days of hearings, during which arguments were presented by the government and the opposition, the SC ruled that Khan could not dissolve the assemblies while parliament was in session to vote on opposition's no-

¹³¹ "Imran Khan ousted as Pakistan's PM after vote," *BBC News*, 10 April 2022, <https://www.bbc.com/news/world-asia-61055210>.

¹³² Dipanjan Roy Chaudhury, "Imran Khan-Gen Qamar Javed Bajwa fight over ISI chief refuses to die down," *The Economic Times*, 14 October 2021, <https://economictimes.indiatimes.com/news/defence/imran-khan-gen-qamar-javed-bajwa-fight-over-isi-chief-refuses-to-die-down/articleshow/87010710.cms?from=mdr>.

¹³³ "General (ret'd) Bajwa wanted Usman Buzdar's removal as CM Punjab: Imran Khan," *Geo TV*, 10 December 2022, <https://www.geo.tv/latest/457842-general-ret-d-bajwa-asked-to-remove-usman-buzdar-as-cm-punjab-imran-khan>.

¹³⁴ "Chaudhry Pervaiz Elahi," *Dawn*, 25 June 2012, <https://www.dawn.com/news/729373/chaudhry-pervaiz-elahi>.

¹³⁵ "Accountability fixation," *Dawn*, 25 October 2020, <https://www.dawn.com/news/1586901>.

¹³⁶ Dipanjan Roy Chaudhury, "Imran Khan's relations with mentor Gen Qamar Bajwa enter trouble zone," *The Economic Times*, 19 May, 2019, https://economictimes.indiatimes.com/articleshow/69395158.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&from=mdr.

¹³⁷ "Imran Khan's accountability drive sought to settle political scores with Nawaz Sharif," *ANI*, 5 May 2021, <https://www.aninews.in/news/world/asia/imran-khans-accountability-drive-sought-to-settle-political-scores-with-nawaz-sharif20210505234446/>.

¹³⁸ Fahad Chaudhry and Nadir Guramani, "NA speaker dismisses no-trust move against PM Imran, terms it contradictory to Article 5," *Dawn*, 3 April 2022, <https://www.dawn.com/news/1683067>.

¹³⁹ "President Alvi dissolves National Assembly on PM Imran's advice," *Dawn*, 3 April 2022, <https://www.dawn.com/news/1683230>.

¹⁴⁰ "Pakistan's Chief Justice takes notice of latest political situation," *Deccan Herald*, 3 April 2022, <https://www.deccanherald.com/world/pakistans-chief-justice-takes-notice-of-latest-political-situation-1097281.html>.

confidence motion.¹⁴¹ The SC therefore restored the assemblies and ordered that the National Assembly session could not be adjourned until the outcome of the vote of no-confidence.¹⁴² As a result, Khan was ousted in the no-confidence vote, and incumbent prime minister Shahbaz Sharif replaced him as the head of a coalition government.¹⁴³ After his removal, Khan launched a scathing critique of the SC's judges while doubling down on his claim that a US conspiracy was behind the move.¹⁴⁴ PTI supporters also amplified this narrative by running a vicious social media campaign maligning the SC judges and portraying them, along with opposition parties, as co-conspirators in Khan's removal from power.¹⁴⁵

These developments marked the beginning of a tumultuous period which divided the SC judges and tarnished the judiciary's public image. It is worth mentioning that the Pakistani public also blamed the judiciary and supported Khan's position,¹⁴⁶ as evidenced by his thumping victories in by-elections for National Assembly seats vacated after the disqualification of defecting lawmakers.¹⁴⁷

Critically, Khan's ouster became possible only when the opposition parties secured the support of at least 20 disgruntled PTI members,¹⁴⁸ who had privately assured the opposition that they would vote against Khan if a no-confidence motion was brought. In response, ahead of the vote, the PTI issued notices to these dissident lawmakers, warning them not to defy party directives.¹⁴⁹ Concurrently, President Alvi sent a constitutional reference to the SC, seeking clarification on four key questions regarding party defections under Article 63A of the Constitution.¹⁵⁰ The prevailing interpretation held that lawmakers were required to follow party directives when voting, except in five specific cases: the passage of a money bill, the election of the prime minister or chief minister, constitutional amendments, and a vote of no-confidence. Previously, if a legislator voted against party instructions in these instances, their vote would still be counted.¹⁵¹ However, in its ruling, the SC upheld that a defecting lawmaker's vote — regardless of the context — would not be counted.¹⁵² The verdict further stated that the Election Commission of Pakistan (ECP) had the authority to decide whether such a legislator should be disqualified, while also allowing parliament to legislate on the matter.¹⁵³ The SC's decision that a defecting lawmaker's vote could not be counted baffled Pakistan's legal

¹⁴¹ "SC nullifies Deputy Speaker's ruling, orders voting on no-confidence motion against PM," *Dunya News*, 7 April 2022, <https://dunyanews.tv/en/Pakistan/648279-SC-verdict-suo-motu-NA-deputy-speaker-ruling-no-trust-move-Pakistan>.

¹⁴² Haseeb Bhatti, "Supreme Court restores National Assembly, orders no-confidence vote to be held on Saturday," *Dawn*, 7 April 2022, <https://www.dawn.com/news/1683857>.

¹⁴³ Adnan Aamir, "Pakistan's Shehbaz Sharif elected PM as Khan's party boycotts vote," *Nikkei Asia*, 11 April, 2022, <https://asia.nikkei.com/Politics/Pakistan-s-Shehbaz-Sharif-elected-PM-as-Khan-s-party-boycotts-vote>.

¹⁴⁴ Rhea Mogul and Sophia Saifi, "Imran Khan claims there's a US conspiracy against him. Why do so many Pakistanis believe him?" *CNN*, 7 May 2022, <https://edition.cnn.com/2022/05/27/asia/pakistan-imran-khan-us-conspiracy-intl-hnk/index.html>.

¹⁴⁵ Hasnaat Malik, "PTI social media drive pressuring judges," *The Express Tribune*, 30 April 2022, <https://tribune.com.pk/story/2354823/pti-social-media-drive-pressuring-judges>.

¹⁴⁶ Aamir Saeed, "Despite crackdown, Pakistan's former PM Imran Khan's popularity, vote bank intact — analysts," *Arab News*, 2 June 2023, <https://www.arabnews.com/node/2314711/amp>.

¹⁴⁷ Ayaz Gul, "Ousted Pakistan PM Khan Sweeps Key By-Election," *Voice of America*, 17 October 2022, <https://www.voanews.com/a/ousted-pakistan-pm-khan-sweeps-key-by-election/6793241.html>.

¹⁴⁸ "Several Pakistan MPs defect from PM's party before no-trust vote," *Al-Jazeera*, 18 March 2022, <https://www.aljazeera.com/news/2022/3/18/pakistan-mps-defect-pm-imran-khan-pti-party-no-confidence-vote>.

¹⁴⁹ "Pak PM Imran Khan's party issues show-cause notices to dissident lawmakers ahead of no-confidence motion," *The Tribune*, 20 March 2022, <https://www.tribuneindia.com/news/world/pak-pm-imran-khans-party-issues-show-cause-notices-to-dissident-lawmakers-ahead-of-no-confidence-motion-378981/>.

¹⁵⁰ The four questions were: can defected parliamentarians be allowed to vote? Will defected MPs vote be given equal weightage? Can defected MPs be disqualified for life? Other measures that can be taken to curb vote-buying? For details see, Haseeb Bhatti, "Article 63-A: SC decides defecting lawmakers' votes will not be counted," *Dawn*, 17 May 2022, <https://www.dawn.com/news/1690120>.

¹⁵¹ *Ibid.*

¹⁵² "Votes of defectors will not be counted, rules SC," *The Express Tribune*, 17 May 2022, <https://tribune.com.pk/story/2356960/votes-of-defectors-will-not-be-counted-rules-sc>.

¹⁵³ *Ibid.*

and political fraternities,¹⁵⁴ triggering a fresh political crisis. The defecting lawmakers were subsequently disqualified and by-elections were held for their vacated National Assembly seats. Khan, in a bold move, filed nomination papers for seven of the eight vacant assembly seats and won six of them.¹⁵⁵ His popularity and overwhelming victory further undermined the legitimacy of the PMLN-led coalition government, intensifying pressure for the early elections.¹⁵⁶ Separately, the ruling also weakened democratic norms by stripping legislators of their right to vote freely. In effect, the SC's interpretation rendered the entire process of vote of no-confidence ineffective.¹⁵⁷ However, in October 2024, the SC unanimously accepted a review petition against its 2022 verdict on the defection law and announced that, in any future legislation, the vote of members cast against the party directions will be counted.¹⁵⁸

During this period, the PTI inundated the SC with multiple petitions, further fuelling the political turmoil gripping Pakistan. The SC was divided between two senior SC judges Atta Bandial, Qazi Faiz Isa and their respective supporters. The former and his supporters backed the PTI while the latter and his companions opposed it.¹⁵⁹ Isa maintained that politics was being affected by the SC's daily proceedings.¹⁶⁰ Hence, the judiciary should distance itself from such cases as the parliament, not the SC, was the appropriate institution to settle these issues. For them the judiciary's role was not to intervene in such matters. On the contrary, Bandial was of the view that if the constitution was being used for politics, then it was the duty of the SC to interpret it. The conflicting positions within the apex court weakened both the judiciary and democracy¹⁶¹ through judicialisation of politics and politicisation of the judiciary.¹⁶²

In January 2023, the PTI dissolved its governments in Khyber Pakhtunkhwa and Punjab assemblies, expecting elections to be held in both provinces within the constitutionally mandated 90-day period, that is, by April.¹⁶³

However, the ECP delayed elections in the both provinces until October 2023, citing a lack of funds, insufficient manpower and the need to redraw electoral constituencies.¹⁶⁴ In May 2023, the SC took a *suo motu* notice of the delays in Khyber Pakhtunkhwa and Punjab, and directed the ECP to announce

¹⁵⁴ Through the 17 May 2022 verdict, the SC maintained that votes cast contrary to the parliamentary party lines in four instances, the election of prime minister and chief minister; a vote of confidence or no-confidence; a constitution amendment bill; and a money bill, as outlined in Article 63-A should not be counted.

¹⁵⁵ Abid Hussain, "Former PM Imran Khan dominates Pakistan by-elections," *Al-Jazeera*, 17 October 2022, <https://www.aljazeera.com/news/2022/10/17/former-pm-imran-khan-dominates-pakistan-by-elections>.

¹⁵⁶ Samira Hussain, "Pakistan: Imran Khan's high-stakes election gamble," *BBC News*, 22 December 2022, <https://www.bbc.com/news/world-asia-64062905>.

¹⁵⁷ Asim Yasin, Muhammad Anis, Mumtaz Alvi and Sohail Khan, "SC annuls its verdict on Article 63(A) interpretation: Way cleared for constitutional amendments," *The News International*, 4 October 2024, <https://www.thenews.com.pk/print/1236597-sc-annuls-its-verdict-on-article-63a-interpretation-way-cleared-for-constitutional-amendments>.

¹⁵⁸ Umer Mehtab, "In major relief to govt, SC strikes down 2022 ruling on defection clause under Article 63-A," *Dawn*, 3 October 2024, <https://www.dawn.com/news/1862816>.

¹⁵⁹ Hasnaat Malik, "Divide in judiciary: Have senior most SC judges switched roles?" *The Express Tribune*, 28 May 2023, <https://tribune.com.pk/story/2419009/divide-in-judiciary-have-senior-most-sc-judges-switched-roles>.

¹⁶⁰ Hasnaat Malik, "Minallah acknowledges SC's democracy derailment role," *The Express Tribune*, 4 February 2024, <https://tribune.com.pk/story/2455441/minallah-acknowledges-scs-democracy-derailment-role>.

¹⁶¹ Democracy in Pakistan was weakened as politics was decided in the SC through verdicts, instead of the parliament, on petitions moved by politicians, and judiciary was weakened because the verdicts on political matters both politicised and divided the judiciary.

¹⁶² Arifa Noor, "A tale of two judges," *Dawn*, 29 October 2024, <https://www.dawn.com/news/1868383>.

¹⁶³ Abid Hussain, "Another Khan party-led provincial assembly dissolved in Pakistan," *Al-Jazeera*, 18 January 2023, <https://www.aljazeera.com/news/2023/1/18/another-khan-party-led-provincial-assembly-dissolved-in-pakistan>.

¹⁶⁴ Shah Meer Baloch, "Pakistan delays Punjab election despite supreme court ruling," *The Guardian*, 23 March 2023, <https://www.theguardian.com/world/2023/mar/23/pakistan-delays-punjab-election-despite-supreme-court-ruling>.

an election date.¹⁶⁵ The SC also directed the military to provide manpower to the ECP to maintain security during the elections. However, citing a surge in terrorism and ongoing counter-terrorism operations in Khyber Pakhtunkhwa and Balochistan, the military refused to cooperate with the SC's directive.¹⁶⁶ Following the 9 May riots, during which PTI supporters ransacked several military installations across Pakistan, the political landscape changed drastically.¹⁶⁷ The SC also retreated from its previous position of pressurising the ECP to hold elections and directing the military to provide security assistance.¹⁶⁸

After Bandial's retirement, Isa became the chief justice. Some of his rulings — including the removal of PTI's election symbol, the cricket bat, and barring PTI-backed candidates from contesting elections under the party's banner — further weakened Pakistan's democracy¹⁶⁹ and undermined the integrity of the electoral process.¹⁷⁰

The Judiciary-Parliament Tussle After the 26th Constitutional Amendments

Divisions within the judiciary, between judges sympathetic to the PTI and those critical of it, heightened tensions between the parliament backed by the military, and a section of the SC judges supported by PTI.¹⁷¹ These tensions peaked when an SC bench, ruling on PTI's petition concerning reserved seats, not only decided in favour of the party but also restored its status as a political party in the parliament - a relief exceeding what PTI had originally sought.¹⁷² However, despite the SC's decision in PTI's favour, the reserved seats were not allocated to the party.¹⁷³

In December, PTI was barred from contesting the elections after the ECP revoked its electoral symbol, citing irregularities in intra-party polls. The SC upheld this decision on 13 January 2024, forcing PTI candidates to run as independents in the 8 February elections. After winning seats, the PTI-backed independents joined the Sunni Itte had Council (SIC) for collective representation. However, the ECP rejected the SIC's claim to reserved seats, citing its failure to apply or submit a priority list before the elections, a legal requirement. Instead, the ECP allocated these seats to PMLN, PPP, and Jamiat Ulema-i-Islam — Fazl (JUI-F), a move that the PTI denounced as political marginalisation and called for nationwide protests.¹⁷⁴

Mansoor Ali Shah, the senior most judge who was Isa's successor based on the seniority principle, also ruled in PTI's favour, alarming both the military establishment and the government. Other judges supporting this decision included Justice Ayesha Malik and Justice Muneeb Akhtar, while those

¹⁶⁵ Abid Hussain, "Pakistan's Supreme Court orders Punjab election on May 14," *Al-Jazeera*, 4 April 2023, <https://www.aljazeera.com/news/2023/4/4/pakistan-top-court-says-punjab-election-delay-unconstitutional>.

¹⁶⁶ Saqib Virk, "Army declines troops for election duty," *The Express Tribune*, 9 February 2023, <https://tribune.com.pk/story/2400231/army-declines-troops-for-election-duty>.

¹⁶⁷ Gibran Naiyyar Peshimam, Asif Shahzad and Ariba Shahid, "Pakistan calls in army to stop protest violence after ex-PM Khan's arrest," *Reuters*, 11 May 2023, <https://www.reuters.com/world/asia-pacific/pakistan-court-indicts-ex-pm-imran-khan-geo-news-2023-05-10/>.

¹⁶⁸ Madiha Afzal, "Pakistan's always-troubled democracy is on the brink once again," *Brookings*, 26 May 2023, <https://www.brookings.edu/articles/pakistans-always-troubled-democracy-is-on-the-brink-once-again/>.

¹⁶⁹ Ayaz Gul, "Pakistan's PTI Barred From Using Cricket Bat Electoral Symbol," *Voice of America*, 14 January 2024, <https://www.voanews.com/a/pakistan-s-pti-barred-from-using-cricket-bat-electoral-symbol-/7439552.html>.

¹⁷⁰ "Pakistan official admits involvement in rigging election results," *Al-Jazeera*, 17 February 2024, <https://www.aljazeera.com/news/2024/2/17/pakistan-official-admits-involvement-in-rigging-election-results>.

¹⁷¹ Maleeha Lodhi, "Institutions as battleground," *Dawn*, 7 February 2023, <https://www.dawn.com/news/1739338>.

¹⁷² On June 27, an eleven-member constitutional bench of the SC dismissed PTI's petitions in the reserved seats case and declared it ineligible for them in the national and provincial assembly seats. For details see Abdullah Momand, "Major win for PTI as Supreme Court rules party eligible for reserved seats," *Dawn*, 12 July 2024, <https://www.dawn.com/news/1845359>.

¹⁷³ Umer Mehtab, "SC dismisses PTI petitions, making party ineligible for reserved seats," *Dawn*, 17 June 27, <https://www.dawn.com/news/1920543>.

¹⁷⁴ "PMLN, PPP Benefit from 'SIC-Claimed' Seats: PTI Protests against ECP Decision." *The Express Tribune*, 5 March 2024. <https://tribune.com.pk/story/2458466/pml-n-ppp-benefit-from-sic-claimed-seats>.

opposing it included Justice Yahya Afridi, the incumbent chief justice, among others. As PTI pinned its hopes on Shah,¹⁷⁵ the government feared that once he became the chief justice, he might initiate an inquiry into PTI's complaints of election rigging pending before the election tribunals and could also potentially declare the February 2024 election null and void.¹⁷⁶ The government-establishment duo viewed the SC's decision as an attempt at political engineering and decided to curb the court's powers through the 26th constitutional amendment.¹⁷⁷ In simple terms, the 26th constitutional amendment was passed to prevent Shah from becoming chief justice. Political and legal opinions are divided on this amendment: some view it as an attempt to undermine judicial freedom,¹⁷⁸ while others consider it necessary to check judiciary overreach, especially in the political sphere. Regardless, the government managed to prevent Mansoor's elevation and appointed Yahya Afridi as the new chief justice.¹⁷⁹

The 26th constitutional amendment included 22 changes, among them a revision of the criteria for appointing the chief justice.¹⁸⁰ Under the new rules, the senior-most judge no longer automatically succeeds as chief justice upon the retirement of their predecessor. Instead, a 12-member Special Parliamentary Committee (under Article 175A) selects the chief justice from a shortlist of the three most senior SC judges.¹⁸¹ Of the committee's 12 members, eight are from the National Assembly and four from the Senate. After vetting the three senior judges, the committee sends the chosen name to the prime minister, who forwards it to the president for formal nomination.¹⁸²

Likewise, the *suo motu* powers under Article 184 have been taken from the chief justice and given to a committee. Furthermore, the SC's ability to take *suo motu* notice has been curtailed. The SC cannot initiate cases on its own and can only act if an application is filed. Similar restrictions have been imposed on the High Courts (HC), which also lost *suo motu* powers under amendments to Article 199. Another revision in the 26th constitutional amendment worth mentioning is the formulation of a constitutional bench within the SC and the HC to hear constitutional-related cases. The judges on the constitutional benches may comprise of equal number judges from each province. The senior-most judge will be the presiding judge of the constitutional bench.¹⁸³

The 26th constitutional amendment epitomises the ongoing tensions between a section of the judiciary and the government. While it has curtailed the judiciary's ability to interfere in the government's domain, it has simultaneously undermined judicial independence. The overlapping nature of cases makes it difficult to distinguish between constitutional and non-constitutional matters, creating confusion within the judiciary and sparking a new struggle among SC judges over their powers, mandates, and authority.

¹⁷⁵ Hasnaat Malik, "SC ruling offers glimmer of hope," *The Express Tribune*, 23 July 2024, <https://tribune.com.pk/story/2479315/sc-ruling-offers-glimmer-of-hope>.

¹⁷⁶ Ansar Abbasi, "Change of govt: PMLN's fear and PTI's hope from post-Qazi Faez Isa SC," *The News International*, 27 July 27, <https://www.thenews.com.pk/print/1213863-change-of-govt-pmln-s-fear-and-pti-s-hope-from-post-qazi-faez-isa-sc>.

¹⁷⁷ "Pakistan passes amendment empowering parliament to pick top judge," *Al-Jazeera*, 21 October 2024, <https://www.aljazeera.com/news/2024/10/21/pakistan-passes-amendment-empowering-parliament-to-pick-top-judge>.

¹⁷⁸ Rizwan Shehzad, "Judiciary's wings clipped," *The Express Tribune*, 21 October 2024, <https://tribune.com.pk/story/2504255/judiciarys-wings-clipped>.

¹⁷⁹ Umer Mehtab, Ishaq Tanoli and Abdul Hakeem, "Justice Yahya Afridi to take oath as CJP on Oct 26 after president approves appointment," *Dawn*, 23 October 2024, <https://www.dawn.com/news/1867088>.

¹⁸⁰ Sumair Abdullah, "Explainer: What are 'judicial reforms' in the new amendment?" *Dawn*, 21 October 2024, <https://www.dawn.com/news/1866542>.

¹⁸¹ Asim Yasin, Muhammad Anis and Mumtaz Alvi, "Special Parliamentary Committee formed for CJP appointment to meet today," *Geo News*, 22 October 2024, <https://www.geo.tv/latest/570258-special-parliamentary-committee-formed-for-cjp-appointment-to-meet-today>.

¹⁸² Ibid.

¹⁸³ "In a first, constitutional bench to begin hearing cases from Nov 14," *Geo News*, 12 November 2024, <https://www.geo.tv/latest/574094-in-a-first-constitutional-bench-to-begin-hearing-cases-from-nov-14>.

The 26th constitutional amendment epitomises the persisting tensions between a section of the judiciary and the government. Though the government has curtailed the judiciary's ability to interfere in its domain, it has weakened the judiciary's independence in the process. The overlapping nature of cases makes it difficult to differentiate between constitutional and non-constitutional cases creating confusion within the judiciary,¹⁸⁴ and sparking a new struggle among SC judges over their powers, mandates, and authority.¹⁸⁵ A vibrant parliament, a free judiciary, an independent media and an active civil society are important cornerstones of a functioning democracy. In Pakistan, the current parliament is weak as it is beholden and subservient to the military establishment.¹⁸⁶ The military's influence has expanded beyond security and foreign policies to managing the economy through the Special Investment Facilitation Council (SIFC), a body established to attract foreign investment in Pakistan. However, the SIFC has effectively sidelined the parliament, as the key economic decision-making powers now reside with it.¹⁸⁷ It is important to note that the Pakistani army chief is the member of the SIFC, raising concerns over conflicts of interest.

Meanwhile, the never-ending tussle between the parliament and the judiciary has hurt the latter, curtailing its powers for the time being. The establishment has effectively silenced critical voices in mainstream media, and through the Prevention of Electronic Crimes (Amendment) Act, 2025 passed in February, is extending its control over social and digital media as well.¹⁸⁸

Implications of Judicial Activism

Political Consequences

The impact of judicial activism on Pakistan's democratic evolution has been paradoxical. Indeed, a free and independent judiciary is the cornerstone of any vibrant democracy. Yet, an overzealous and interventionist judiciary has both judicialised politics — shifting political disputes from Parliament to the courts — and politicised the judiciary, with some Supreme Court judges increasingly projecting themselves as powerbrokers and political arbiters.¹⁸⁹

In Pakistan's context, judicial activism has shaped democracy both positively and negatively.¹⁹⁰ On the one hand, it has invalidated the doctrine of necessity, which legitimised military coups in Pakistan. Given the judiciary's evolution since Chaudhry's restoration, it is now far more difficult for any judge to endorse a military coup by invoking the doctrine of necessity. While this may not prevent an adventurist general from staging a coup, it will make him think twice before taking such an extreme step. On the other hand, judicial overreach¹⁹¹ into the parliament's domain has weakened democracy

¹⁸⁴ Hasnaat Malik, "SC judge cautions regular benches on jurisdiction," *The Express Tribune*, 9 February 2025, <https://tribune.com.pk/story/2527418/sc-judge-cautions-regular-benches-on-jurisdiction>.

¹⁸⁵ Jehanzeb Abbasi, "Justice Shah highlights loopholes in new system," *The Express Tribune*, 12 November 2024, <https://tribune.com.pk/story/2509033/justice-shah-highlights-loopholes-in-new-system>.

¹⁸⁶ Arifa Noor, "Unpacking the hybrid," *Dawn*, 24 September 2024, <https://www.dawn.com/news/1860787>.

¹⁸⁷ Salman Rafi Sheikh, "Pakistan's military can now legally do whatever it wants," *Nikkei Asia*, 23 August 2023, <https://asia.nikkei.com/Opinion/Pakistan-s-military-can-now-legally-do-whatever-it-wants>.

¹⁸⁸ "Prevention of Electronic Crimes (Amendment) Act, 2025," *National Assembly of Pakistan*, accessed at https://na.gov.pk/uploads/documents/679255ee36f45_595.pdf

¹⁸⁹ Azwar Shakeel, "The politicisation of judiciary and the judicialisation of politics — who is to blame?" *Dawn*, 5 April 2023, <https://www.dawn.com/news/1745687>.

¹⁹⁰ Hasnaat Malik, "Minallah acknowledges SC's democracy derailment role," *The Express Tribune*, 4 February 2024, <https://tribune.com.pk/story/2455441/minallah-acknowledges-scs-democracy-derailment-role>.

¹⁹¹ Judicial overreach refers to instances where the judiciary is perceived to exceed its constitutional authority, often by encroaching on the functions of the legislative or executive branches. See R Suttner "The Question of 'Judicial Overreach'" *Polity* (22 May 2017) available at <http://www.polity.org.za/article/the-question-of-judicial-overreach-2017-05-22>.)

in Pakistan.¹⁹² Consequently, the restoration of democracy in 2008 which reached a major milestone in 2013 through a peaceful power transition from one elected government to another has faced a setback. The managed elections of July 2018 facilitated Khan's political rise (with assistance from the judiciary) to power downgraded Pakistan's democratic rule to a hybrid regime.¹⁹³ Following the managed elections of February 2024, Pakistan's hybrid democracy has slipped to an authoritarian regime, according to the *Economist Intelligence Unit*.¹⁹⁴

The military's creeping influence in all spheres of life, such as the media, think-tanks, educational institutions, politics (appointing its henchmen as senators) is unmistakable.¹⁹⁵ It is ruling the country through indirect praetorianism which has even weakened and discredited mainstream political parties, another important pillar of a functioning democracy.¹⁹⁶

Economic Consequences

The judiciary's overreach into the executive domain has not only undermined democracy, but has also produced significant economic and reputational losses.¹⁹⁷ Certain decisions, particularly those involving the privatisation of loss-making public enterprises and contracts awarded to mining companies, had far-reaching consequences. For instance, Chaudhry's decision to halt PSM's privatisation in 2006 citing corruption and procedural irregularities cost Pakistan whopping Rs 400 million by 2016.¹⁹⁸

Similarly in 2012, Chaudhry, acting *suo motu*, declared illegal all agreements that the PPP-led government had awarded in 2009 to 12 rental companies, including a Turkish power firm Karkey.¹⁹⁹ The SC also directed the anti-corruption body, known as the National Accountability Bureau (NAB), to initiate a corruption inquiry into these projects.²⁰⁰ As a result, NAB prevented Karkey from leaving Pakistan for 16 months.

In 2013, Karkey took the matter to the World Bank's International Centre for Settlement of Investment Disputes (ICSID), seeking compensation for damages and depreciation caused by the prolonged detention of its ship at Karachi port.²⁰¹ In 2017, the ICSID ruled in Karkey's favour and ordered Pakistan to pay more than US\$800 million, along with US\$5.6 million per month as

¹⁹² Manoj Kumar Lohana, "Pakistan's Judiciary Has A Long History Of Undermining Democracy," *The Friday Times*, 17 April 2023, <https://thefridaytimes.com/17-Apr-2023/pakistan-s-judiciary-has-a-long-history-of-undermining-democracy>.

¹⁹³ Muhammad Taqi, "Pakistan's Hybrid Regime: The Army's Project Imran Khan," *The Diplomat*, 1 October 2020, <https://thediplomat.com/2020/10/pakistans-hybrid-regime-the-armys-project-imran-khan/>.

¹⁹⁴ "Democracy Index: conflict and polarisation drive new low for global democracy," *Economist Intelligence Unit*, 15 February 2024, <https://www.eiu.com/n/democracy-index-conflict-and-polarisation-drive-a-new-low-for-global-democracy/>.

¹⁹⁵ Sharat Sabharwal, "The Pakistani Military's Role in National Politics Is Growing," *The Wire*, 4 September 2023, <https://thewire.in/south-asia/pakistani-military-national-politics>.

¹⁹⁶ Danish Khan and Asim Sajjad Akhtar, "Transforming a praetorian polity: the political economy of democratization in Pakistan," *Canadian Journal of Development Studies*, Vol. 43, Issue 3 (2022), pp. 320-338, <https://doi.org/10.1080/02255189.2021.2012132>.

¹⁹⁷ Khalid Answer, "Privatisation & the Supreme Court," *Dawn*, 8 August 2016, <https://www.dawn.com/news/1276084>.

¹⁹⁸ "Landmark judgments of Justice Iftikhar," *Dawn*, 10 March 2007, <https://www.dawn.com/news/236725/landmark-judgments-of-justice-iftikhar>.

¹⁹⁹ "Rental Power Projects declared illegal by SC," *Dawn*, 30 March 2012, <https://www.dawn.com/news/706607/rpps-declared-illegal-by-supreme-court>.

²⁰⁰ "Rental power case: NAB asked to file report by January 23," *Business Recorder*, 18 January 2013, <https://www.brecorder.com/news/4056248/rental-power-case-nab-asked-to-file-report-by-january-23-201301181145040>.

²⁰¹ "Karkey rental power case: Pakistan resolves \$1.2bn dispute with Turkey," *Geo News*, 4 November 2019, <https://www.geo.tv/latest/254573-karkey-rental-power-case-pakistan-resolves-12bn-dispute-with-turkey>.

interest.²⁰² Fortunately, in 2019, with the support of the Turkish government, Pakistan and Karkey reached an out of court settlement.²⁰³

Another disastrous decision by Chaudhry in 2013 was to declare the Reko Diq mining deal illegal for violating the laws of the country, this ruling ultimately led the ICSID to impose a US\$5.976 billion award against Pakistan.²⁰⁴ The mining contract was awarded to the Tethyan Copper Company (TCC) — a Canadian and Chilean consortium of Barrick Gold and Antofagasta Minerals.

The Reko Diq mines, located in Balochistan's Chaghi district, sits within the Tethyan Magmatic Arc, a mineral-rich belt that runs through Iran and Afghanistan into Pakistan.²⁰⁵ By 2011, TCC had reportedly invested about US\$220 million in exploration and development before the Pakistani government refused to issue the mining lease to continue operations.²⁰⁶

In 2012, TCC filed a claim with the ICSID, and the proceedings continued for seven years.²⁰⁷ In 2019, in a 700-page ruling, the ICSID imposed a massive US\$5.976 billion fine, including US\$4.08 billion penalty, US\$1.87 billion in interest and US\$62 million in compensation for the cost incurred in the litigation process, to Pakistan. The penalty slapped on Pakistan was one of the largest in the ICSID's history. Fortunately, in July,²⁰⁸ TCC expressed willingness to pursue a negotiated resolution with Pakistan, and both parties eached an out-of-court settlement in March 2022.²⁰⁹

Under this settlement, the Reko Diq project was handed to Barrick Gold, which agreed to revive and develop the mine in partnership with Pakistani entities.²¹⁰ However, according to the agreement, the deal required the approval of both the parliament and the SC.²¹¹ Although Pakistan ultimately resolved these disputes through out-of-court settlements and avoided the full financial penalties, the damage to its reputation was significant. These episodes damaged investor confidence and discouraged foreign investment, leaving Pakistan lagging behind its peers.

²⁰² Amr Arafa Hassan, "ICSID tribunal awards compensation for the seizure of power generation vessels, dismisses Pakistan's counterclaim," *Investment Treaty News*, 17 October 2018, <https://www.iisd.org/itn/2018/10/17/icsid-tribunal-awards-compensation-for-the-seizure-of-power-generation-vessels-dismisses-pakistans-counterclaim-amr-arafa-hasaan/>.

²⁰³ "Erdogan helps Pakistan escape huge penalty: PM Khan," *Anadolu Ajansi*, 4 November 2019, <https://www.aa.com.tr/en/asia-pacific/erdogan-helps-pakistan-escape-huge-penalty-pm-khan/1635605>; "Pakistan saved from paying \$1.2bn penalty as Karkey dispute 'amicably' resolved: PM Imran," *Dawn*, 4 November 2019, <https://www.dawn.com/news/1514885#:~:text=As%20a%20result%2C%20Karkey%20moved,won%20the%20case%20in%202017>.

²⁰⁴ Hasnaat Malik, "Reko Diq case: Ex-CJP's verdict costs Pakistan \$6b," *The Express Tribune*, 14 July 2019, <https://tribune.com.pk/story/2013028/reko-diq-case-ex-cjps-verdict-costs-pakistan-6b>; "Supreme Court declares Reko Diq agreement void," *Dawn*, 7 January 2013, <https://www.dawn.com/news/776967/supreme-court-declares-reko-diq-agreement>.

²⁰⁵ "A world class copper-gold mine in the making," *Barrick*, accessed at <https://www.barrick.com/English/operations/reko-diq/default.aspx>.

²⁰⁶ Amin Ahmed, "Pakistan told to pay \$5.9bn to mining firm in Reko Diq case," *Dawn*, 14 July 2019, <https://www.dawn.com/news/1493967>.

²⁰⁷ Christopher Finnigan, "The Reko Diq Fiasco in Perspective: Pakistan's Experience of International Investment Arbitration," *LSE Blog*, 14 August 2019, <https://blogs.lse.ac.uk/southasia/2019/08/14/long-read-the-reko-diq-fiasco-in-perspective-pakistans-experience-of-international-investment-arbitration/>.

²⁰⁸ James Mackenzie, "Pakistan welcomes venture's willingness for negotiated settlement after Reko Diq mine ruling," *Reuters*, 14 July 2019, <https://www.reuters.com/article/markets/currencies/pakistan-welcomes-ventures-willingness-for-negotiated-settlement-after-reko-diq-idUSKCN1U908T/>.

²⁰⁹ Asif Shahzad and Syed Raza Hassan, "Barrick to restart Reko Diq project in deal ending dispute with Pakistan," *Reuters*, 20 March 2022, <https://www.reuters.com/world/asia-pacific/barrick-agrees-deal-with-pakistan-waive-11-bln-penalty-restart-reko-diq-2022-03-20/>.

²¹⁰ "Barrick's gold reserves rise in 2024 on Reko Diq project," *Reuters*, 6 February 2025, [https://www.reuters.com/markets/commodities/barrick-gold-sees-higher-gold-reserves-reko-diq-project-2025-02-06/#:~:text=Feb%206%20\(Reuters\)%20%2D%20Canadian,the%20company%20said%20on%20Thursday](https://www.reuters.com/markets/commodities/barrick-gold-sees-higher-gold-reserves-reko-diq-project-2025-02-06/#:~:text=Feb%206%20(Reuters)%20%2D%20Canadian,the%20company%20said%20on%20Thursday).

²¹¹ Khaleeq Kiani, "Barrick Gold seeks legal cover for Reko Diq deal," *Dawn*, 19 July 2022, <https://www.dawn.com/news/1700468>.

Despite a 17% increase in 2024, the country's Foreign Direct Investment (FDI) remained low at just US\$1.9 billion — one of the smallest inflows among developing economies.²¹²

In February 2025, a delegation of the International Monetary Fund (IMF) met Afridi to seek assurances that the judiciary would not obstruct the government's privatisation programme. It is important to mention that privatisation of loss-making public entities is part of Pakistan's IMF bailout package, alongside tax reforms.²¹³ The IMF sought these guarantees to ensure that, unlike 2006, the SC would not intervene to torpedo the privatisation process.²¹⁴

Institutional Imbalance

The principle of separation of powers²¹⁵ is fundamental to the smooth functioning of institutions, which are the pillars of a strong democracy: the stronger the institution of a state, the healthier the democracy.²¹⁶ However, in Pakistan, institutional imbalance, particularly the power struggle between the judiciary and the parliament, coupled with persistent civil-military tensions, has hindered democratic growth and safeguarding of the rule of law.²¹⁷ The fallout of judiciary's interference in the executive's domain in Pakistan has resulted in three critical consequences vis-à-vis this institutional imbalance.

First, it has given the military an upper hand, undoing the setbacks it suffered during the Chaudhry era. The lawyers' movement not only paved the way for restoration of democracy in Pakistan, but also weakened Musharraf's grip on power leading to his resignation from the presidency.²¹⁸ Nearly two decades later, the military, has reasserted itself as the most powerful actor in the country. The ongoing power struggle between the judiciary and parliament has only strengthened the military's position, enabling it to maintain its dominance over civilian institutions.²¹⁹

Second, the judiciary's frequent interventions — from dismissing two successive prime ministers to issuing *suo motu* rulings on issues such as rising commodity prices, school fees, and access to clean drinking water — have contributed to political instability.²²⁰ Moreover, the repeated public reprimanding of bureaucrats has led to a culture of hesitation within the civil service. Until recently, many high-ranking officials refused to sign contracts involving significant financial commitments over fears of being accused of corruption, resulting in delays in governance.²²¹ Similarly, heightened judicial scrutiny of legislation, with multiple laws being challenged and reversed, has weakened the

²¹² "FDI jumps 17pc to \$1.9bn," *Dawn*, 20 July 2024, <https://www.dawn.com/news/1846796>.

²¹³ "In meeting with CJP, IMF delegation hails ongoing judicial reforms," *Geo News*, 11 February 2025, <https://www.geo.tv/latest/590146-in-meeting-with-cjp-imf-delegation-hails-ongoing-judicial-reforms>.

²¹⁴ *Ibid.*

²¹⁵ According to the Britannica thesaurus, "the principle of separation of powers pertain to the division of the legislative, executive and judicial function of the government among separate and independent bodies. Such a separation, it has been argued, limits the possibility of arbitrary excesses by government, since the sanction of all three branches is required for the making, executing, and administering of laws." For details see "Separation of powers," *Britannica*, accessed on 21 February 2024, <https://www.britannica.com/topic/separation-of-powers>.

²¹⁶ Carlos Pereira and Vladimir Teles, "Political Institutions, Economic Growth, and Democracy: The Substitute Effect," *Brookings*, 19 January 2011, <https://www.brookings.edu/articles/political-institutions-economic-growth-and-democracy-the-substitute-effect/>.

²¹⁷ Moeen Cheema, "Pakistan: Contempt of court or democracy?" *Al-Jazeera*, 20 July 2012, <https://www.aljazeera.com/opinions/2012/7/20/pakistan-contempt-of-court-or-democracy>.

²¹⁸ Declan Walsh, "Pakistan: Lawyers in 'long march' against Musharraf," *The Guardian*, 10 June 2008, <https://www.theguardian.com/world/2008/jun/10/pakistan>.

²¹⁹ Yasser Kureshi, "Politics at the Bench: The Pakistani Judiciary's Ambitions and Interventions," *Carnegie Endowment for International Peace*, 23 June 2022, <https://carnegieendowment.org/research/2022/06/politics-at-the-bench-the-pakistani-judiciarys-ambitions-and-interventions?lang=en>.

²²⁰ Imdad Hussain Sahito, "Decade of Judicial Politics in Pakistan: 2008-2018," *Research Journal of Social Sciences & Economics Review*, Vol. 5, Issue 1, (January – March, 2024), pp. 47-55.

²²¹ Aasiya Riaz, "Chapter 4 Judicial Populism and Its Impact on the Quality of Democracy in Pakistan," in *Populism in Asian Democracies: Features, Structures, and Impacts*, eds., Sook Jong Lee, Chin-en Wu, and Kaustuv Kanti Bandyopadhyay (Boston: Brill, 2021), pp. 80-94.

confidence and undermined the authority of the parliament. Lawmakers increasingly question the value in drafting, debating, and passing laws, when it can be easily overturned by the courts.²²²

Finally, the tensions between the judiciary and the parliament have not only intensified but also created internal rifts within both institutions.²²³ On one side of the spectrum, the political class which runs the parliament is divided between the current political dispensation, primarily comprising the PMLN and the PPP, and the country's main and the most popular opposition party, the PTI. The military establishment has exploited these divisions to consolidate its hold on power and expand its influence in the civilian sphere.²²⁴ On the other end of the spectrum, the judiciary remains divided between judges, such as Mansoor Ali Shah, who believe that the 26th Constitutional Amendment is mala fide, aimed at curbing judiciary's independence²²⁵ and others, like Afridi, view it as a necessary reform to introduce checks and balances on the judiciary's previously unchecked powers.²²⁶

The legal fraternity, including the judiciary and political parties, once united to restore democracy and reinstate Chaudhry in 2007. However, as time progressed, these alliances fractured, and instead of reclaiming the space from the military, their infighting has further empowered the latter to become the most powerful actor in the country.

Moreover, the judiciary itself is divided between two factions: activist judges, who support an interventionist role in interpreting and upholding the constitution regardless of political consequences, and traditionalist judges, who argue that the judiciary should refrain from political interference and focus solely on dispensing justice.²²⁷

A similar divide exists in the parliament, where parliamentarians are split between those who benefit from judicial decisions and those who have suffered from them. Instead of resolving disputes within the parliamentary framework, political opponents increasingly take their battles to the courts.²²⁸ This has resulted in the judicialisation of politics and the politicisation of the judiciary.²²⁹ The 26th constitutional amendment, which curtailed judicial intervention in parliamentary matters, has renewed institutional tensions. While the ruling coalition sees it as a necessary check on judicial overreach,²³⁰ a section of the judiciary and the opposition led by PTI consider it an assault on judicial independence.²³¹

²²² Yasser Kureshi, "The People's Court: Dissonant Institutionalization and Judicial Populism in Pakistan," *Law and Social Inquiry* (2024), pp.1-32, <https://doi.org/10.1017/lsi.2024.49>.

²²³ Zahid Hussain, "The division within the top judiciary and Pakistan's worsening predicament," *Arab News*, 2 April 2023, <https://www.arabnews.pk/node/2280031>.

²²⁴ Sania Muneer and Saroj Kumal Aryal, "Cause and Effect: The Factors that Make Pakistan's Military a Political Force," *Observer Research Foundation*, 28 February 2024, <https://www.orfonline.org/research/cause-and-effect-the-factors-that-make-pakistans-military-a-political-force>.

²²⁵ Imran Ahmed, Muhammad Saad UI Haque, "Pakistan's Constitutional Reform Package: Judicial Independence Under Threat?" ISAS Briefs, *Institute of South Asian Studies*, 23 October 2024, <https://www.isas.nus.edu.sg/papers/pakistans-constitutional-reform-package-judicial-independence-under-threat/>.

²²⁶ "Pakistan passes constitutional amendment empowering parliament to pick top judge," *Reuters*, 22 October 2024, <https://www.reuters.com/world/asia-pacific/pakistan-empowers-parliament-pick-countrys-top-judge-2024-10-21/>.

²²⁷ Moeen H. Cheema, "Two steps forward one step back: The non-linear expansion of judicial power in Pakistan," *I•CON*, Vol. 16 No. 2 (2018), pp. 503–526, doi:10.1093/icon/moy040.

²²⁸ "Disputed Polls and Political Furies: Handling Pakistan's Deadlock," Asia Report N°345, *International Crisis Group*, 28 November 2024, <https://www.crisisgroup.org/sites/default/files/2024-11/345-pakistan-deadlock.pdf>.

²²⁹ Osama Siddique, "The Judicialization of Politics in Pakistan: The Supreme Court after the Lawyers' Movement from Part II - Forms and Sources of Instability," in *Unstable Constitutionalism: Law and Politics in South Asia*, ed, Mark Tushnet and Madhav Khosla (Cambridge: Cambridge University Press, 2015), pp. 159-191.

²³⁰ Mohsin Saleem Ullah, "Redefining the judiciary via constitutional amendments," *Express Tribune*, October 30, 2024, <https://tribune.com.pk/story/2506165/redefining-the-judiciary-via-constitutional-amendments>.

²³¹ "Pakistan: 26th Constitutional amendment is a blow to the independence of the judiciary," *The International Commission of Jurists*, 21 October 2024, <https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/>.

Conclusion

A strong and independent — but not interventionist — judiciary is essential for a robust democracy. However, Pakistan's judiciary has repeatedly overstepped its role, shaping political outcomes instead of ensuring judicial integrity. From Chaudhry's judicial activism to Nisar's controversial decision to remove a sitting prime minister on flimsy technical grounds and, most recently, Isa's ruling that deprived the PTI of its electoral symbol ahead of the February 2024 elections, both politics and the justice system have suffered. Instead of focusing on internal reform, the judiciary has attempted to influence politics and governance, ultimately doing itself a disservice by risking delegitimisation.

Pakistan's institutional fragility is reflected in global assessments. According to the World Justice Project's Rule of Law Index, Pakistan is ranked 129 out of 142 countries in 2024. Likewise, democracy has further eroded, from a hybrid system to an authoritarian regime. These are sobering outcomes.

At the heart of Pakistan's instability lies a fractured elite consensus, which has fuelled prolonged political and institutional discord. Without a renewed commitment to institutional balance, these conflicts will persist. To move forward, Pakistan needs a Truth and Reconciliation Commission (TRC) — one that acknowledges past mistakes, rebuilds trust among institutions, and lays the foundation for a functional and consensus-driven democracy. Other nations facing institutional crises have successfully implemented similar mechanisms to address political overreach, human rights violations, and cycles of unrest.²³² However, for such a commission to have a real impact, it must be part of a larger reform agenda that confronts Pakistan's deep-seated governance failures. Such a commission should be independent to be free of any influence or bias.

The reality is pungent: Pakistan is stuck in a rut, burdened by institutional decay, worsening security situation, a stagnant economy, unbalanced civil-military relations and a widening state-society gap. Overcoming these problems may appear simple in principle but challenging in practice. The country needs internal institutional reforms alongside a national consensus to respect the mandate of the various institutions. This must be built on the principle of separation of powers — where institutions act as checks on one another rather than rivals vying for dominance. Political stability will remain elusive unless all stakeholders uphold their constitutional roles: Parliament must reclaim its authority, the judiciary must exercise restraint, and the military must operate within its defined limits. Without such a course correction, Pakistan will remain trapped in a cycle of instability and dysfunction, with each institution undermining the other at the expense of the country's future.

²³² Britannica. 2024. "Truth and Reconciliation Commission (South Africa)." *Encyclopaedia Britannica*. Accessed 26 February 2025. <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa>; Comisión de la Verdad y Reconciliación. 2024. "Final Report." *Peru's Truth and Reconciliation Commission*. Accessed 26 February, 2025. <https://cverdad.org.pe/ingles/pagina01.php>

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The Rule of Law Programme Asia is one of five regional rule of law programmes managed worldwide by Konrad-Adenauer-Stiftung. Through the regional programme, the foundation's long-term goal is to contribute to the development and enhancement of an efficient legal system, based on the rule of law, as a core element of a democratic policy in the region. In this context, it is important to initiate or expand the discussion on the rule law in order to provide and extend the constitutional foundations in the international context. This includes the strengthening of those institutions and organisations which uphold the constitutional order and the enforcement of citizens' rights in line with the rule of law.