



JOURNAL OF HUMANITIES, HEALTH & SOCIAL SCIENCES

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Pakistan's Judicial Odyssey (1947-2020): Maneuvering Political Pressures amidst Rule of Law Challenges

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KEYWORDS	ABSTRACT
<p>Pakistan judicial system, judiciary, political, criminal, justice and law</p>	<p>Pakistan's judicial landscape from 1947 to 2020 illustrates the complex interplay of indigenous interpretation, political engagement, and the ongoing challenges of the Dictatorship period. The paper meticulously examines the intricate relationship between judicial decision-making, political dynamics, and the persistent challenges faced by the rule of law in the country. Focusing on landmark Supreme Court decisions, it offers insights into key cases such as Maulvi Tamizuddin Khan, State v. Dosso, and Nusrat Bhutto v. Chief of Army Staff, unraveling the judicial responses to significant political and constitutional issues. The text also delves into the application of the principle of necessity, using cases like Maulvi Tamizuddin Khan and Shehla Zia v. WAPDA as illustrations. Emphasizing the concepts of judicial review and public interest litigation, the book highlights their pivotal role in upholding checks and balances, fostering transparency, and safeguarding individual rights. Despite ongoing reforms that seek to resolve the backlog, pending issues remain due to a deficit of judges and executive inefficiency. The evolving judicial system reflects the delicate balance between political pressure and an unvarying commitment to upholding the rule of law in Pakistan.</p>
ARTICLE HISTORY	
<p>Date of Submission: 28-06-2023 Date of Acceptance: 20-07-2023 Date of Publication: 30-09-2023</p>	
Funding	
<p>This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors</p>	
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<p>Volume-Issue-Page Number</p>	<p>1(1) 14-34</p>
<p>Citation</p>	<p>Zain ul Abidin, M., Khan, M. A., & Ameer, F. (2023). Pakistan's Judicial Odyssey (1947-2020): Maneuvering Political Pressures amidst Rule of Law Challenges. <i>Journal of Humanities, Health, and Social Sciences</i>, 1(1), 14-34</p>

Introduction

The judicial system of Pakistan has been a dynamic and changing pillar of the nation's history since its establishment in 1947. The legal profession, consisting of the highest courts and local courts established by the native population, has played a crucial role in interpreting the constitution, deciding politically important cases, resolving concerns over delayed cases, and navigating through periods of complete military control (Qayyum, 2021). This prelude offers a fundamental introduction to these essential elements, laying the groundwork for a thorough examination of Pakistan's judicial journey. The Supreme Court of Pakistan has the highest position in the judicial hierarchy and wields substantial power in shaping legal and political affairs (Kanwal, 2017). Over the course of its existence, this court has dealt with crucial judgments that have not only influenced the legal framework but have also intersected with the wider political storyline of the nation. Political cases have played a crucial role in delineating the role of the legal profession in the exercise of governmental authority. The court's involvement in issues of public concern, ranging from influential rulings that have shaped political history to instances of judicial activism, have been a subject of debate and a means of ensuring justice (Cheema, 2018).

The issue of pending patient cases has been a persistent and significant problem in the Pakistani legal system. Factors such as a shortage of judges and inefficiencies in the executive branch have necessitated continuous efforts to modernize and simplify the judicial process in order to ensure prompt delivery of justice (Khan, 2014). The judiciary's capacity to adapt and expand throughout periods of military dictatorship contributes to the intricacy of its story. Throughout the tenure of General Ayub Khan to General Musharraf, the judiciary has had difficulties in maintaining its autonomy, either conforming to or resisting the commands of the military governments. This analysis explores the complex interaction of these fundamental elements, including the role of the highest courts, the influence of political cases, efforts to reduce case backlog, and the changing structure of the legal profession in times of authoritarian governance. The essence of Pakistan's judicial journey lies inside this profound realm, characterized by a series of obstacles, achievements, and a continuous pursuit for a resilient and autonomous court (A. Hussain, 2008).

The term of Chief Justice Iftikhar Muhammad Chaudhry from 2005 to 2013 was characterized by an exceptional level of judicial activism, shown via proactive interventions on matters of significant national relevance. Although the court has made remarkable efforts, it continues to struggle with the ongoing issue of pending cases. The accumulation of pending cases not only causes a delay in the administration of justice but also undermines the trust that the public has in the judicial system, therefore requiring ongoing endeavors to bring about change (Kapur, 2006). Confronted with military dictatorships, the court has engaged in an intricate interplay of fortitude and endeavor for autonomy. Throughout the period spanning from General Ayub Khan's era to General Pervez Musharraf's rule, the judiciary's dedication to

safeguarding constitutional norms in the face of external pressures is evident via many examples of cooperation and opposition. The ousting and subsequent restoration of Chief Justice Iftikhar Muhammad Chaudhry in 2007, amidst widespread demonstrations and the Lawyers' Movement, exemplified the judiciary's unwavering resolve to oppose any meddling from the administrative branch (Rafiq, 2022).

Pakistan's legal history is shaped by a multitude of diverse influences. The highest courts shape the nation's fundamental legal concepts via their rulings. Political cases serve as platforms for legal and political discourse, showcasing the authority of the court. An examination of the case pendency issue via quantitative analysis exposes underlying systemic issues that need long-term remedies. The judiciary's unwavering commitment to constitutional values is evident throughout periods of authoritarian rule. The interplay of these variables gives rise to Pakistan's legal system, which functions as a dynamic entity that confronts the challenges and triumphs of a constantly evolving nation (Khan et al.).

Aims and Objectives

1. Investigating the historical and contemporary functions of Pakistan's apex courts in political cases during periods of dictatorship.
2. Evaluating the impact of political cases on the independence of the judiciary in Pakistan.
3. Examining the factors contributing to case pendency within Pakistan's judicial system, with a specific focus on apex courts.
4. Analyzing the evolution of Pakistan's judicial landscape during periods of dictatorship and its implications for the justice system.
5. Proposing practical recommendations for enhancing the independence and efficiency of Pakistan's judiciary, particularly in handling political cases and addressing case pendency.

2.0 Literature Review

2.1 Historical context

The Supreme Court of Pakistan has produced significant rulings that establish legal precedents, influencing the country's legal framework. These significant judgments cover a wide range of topics, including constitutional interpretations, human rights, and political challenges. The judicial reactions in these situations often have significant consequences for government and society standards. Specifically, the Supreme Court's rulings on essential liberties, voting procedures, and prominent political lawsuits, like the Zulfikar Ali Bhutto case, have established substantial legal precedents (Munir, 2008). The term of Chief Justice Iftikhar Muhammad Chaudhry from 2005 to 2013 was characterized by a significant level of judicial activism, with the prominent use of Suo-motu interventions, which further established important legal precedents. These rulings not only influence the present legal framework but also provide the foundation for future legal analyses and determinations in Pakistan. Pakistan

has a history of military dictatorship that has had a negative impact on the development of independent democratic institutions, especially the judiciary. This article discusses how the highest court of law justified the use of military force to overthrow the government in the nation. How did incorrect rulings overwhelm the function of an independent judiciary? The study also examines how the political vision contributed to the enhancement of various state institutions in Pakistan in terms of upholding the rule of law (Hussain, 2011).

2.2 Maulvi Tamizuddin Khan case

The first round of testing took place following the dissolution of the inaugural Constituent Assembly of Pakistan (CAP). Maulvi Tamizuddin, the president, challenged the ruling and sought relief from the Chief Court of Sindh by using its writ authority. The last clash occurred before the erstwhile federal Court of Pakistan. Soon after, a substantial matter arose in Yusuf Patel's case, raising doubts about the power and jurisdiction of the Governor General (GG) in relation to the Federal Court (Khan, 2014). This culminated in GG's Reference No. 1 of 1955. The Federal Court's answer to the Reference represents a noteworthy milestone in Pakistan's illustrious history. The Supreme Court of Pakistan rendered a verdict on the legality and enforceability of the Martial Law 1958 in the famous Dosso Case. In the Tamizuddin Khan Case, the Federal Court, by a majority of four to one, determined that the assent of the Governor-General (GG) was necessary for every legislation enacted by the Legislature. The judgment was reached in a manner that showed bias towards the government leader and failed to address the question of dissolution, with judges reaching a verdict by a slim majority of three to two (Shabbir, 2013).

Therefore, the Governor General's authority to dissolve the Assembly could not be terminated by the enactment of a measure by the Cabinet. The Tamizuddin Case judgment established the supremacy of a single executive authority over the legislative institution, marking a significant deviation from the historical precedent set by English courts. For centuries, these courts refrained from challenging the validity of parliamentary statutes, acknowledging the sovereign authority of Parliament within the state (Ghias, 2010). Ultimately, this decision had disastrous consequences for the unity of Pakistan and posed a significant threat to democratic principles in the face of autocratic control. It is important to mention that, throughout the decision, there were differing legal and political viewpoints about the conclusion. The legal and intellectual elite considered the verdict of the Federal Court to be incorrect and voiced dissatisfaction with the deterioration of the rule of law. Nevertheless, a political dispute arose on the ineffectiveness of the Common Agricultural Policy (CAP). Reports indicate that the Suhrawardy with a legal background indicated a willingness to engage in the case, but the politically active Suhrawardy was persuaded against doing so. Later, the politicians criticized it, considering it the most flagrant judgment in the records of legal history, a finding that even the Star Court Judges had refused to make against the monarch and had opted to resign instead. Amir-ul-Islam, a former chief whip of the Awami League (AL), said

that Pakistan's downfall coincided with the dissolution of the Central Advisory Board (CAP), with the Federal Court of Pakistan being held responsible for this result (Iyer, 1973).

2.3 State vs Dosso case (1958)

On October 7th, 1958, President Iskander Mirza nullified the 1956 constitution, disbanded the Central and Provincial Legislatures, enforced Martial Law, and took charge of the whole administrative and legislative machinery. After the Martial Law Administration gained power, they quickly implemented the Laws Order of 1958. This edict acknowledged the validity of all pre-existing legislation, with the exception of the 1956 Constitution, during the assumption of government. Furthermore, it restored the authority of the Courts. Under the leadership of Chief Justice Mohammad Munir, the Supreme Court concluded that the Frontier Crimes Regulation of 1901, as stated in Act IV of Laws Order 1958, would continue to be valid owing to the lack of Article 5, which addresses Fundamental Rights, in the new Constitution.. Consequently, all ongoing cases challenging the validity of that Regulation were terminated, and the convictions and references made to the Council of Elders were deemed valid. Successful revolutions pass the test of effectiveness and establish themselves as fundamental laws that shape reality. Based on that presumption, the Laws (Continuance in Force) Order, regardless of its temporary or flawed nature, constituted a novel legal directive. It was in compliance with this directive that the legality of laws and the accuracy of judicial rulings had to be evaluated. The appeals were therefore resolved (Pliner, 1975).

2.4 Asma Jilani vs. Govt of Punjab

Malik Ghulam Jilani was apprehended in Karachi on 22-12-1971, based on an order believed to have been issued using the authority granted by clause (b) of sub rule (1) of rule 32, in conjunction with rule 213 of the Defense of Pakistan Rules, 1971. A writ petition challenging this ruling was filed at the Lahore High Court, and it was accepted for regular hearing. A notice was then given to the Government of Punjab, with a deadline of December 31, 1971. On December 30th, the previous order was revoked and replaced by another order issued on the same day by the Martial Law Administrator Zone C, claiming to have been granted authority under Martial Law Regulation no. 78. Asma Jilani, the daughter of the detenu, questioned the legitimacy of her father's detention order. The Government strongly opposed the petition and lodged a preliminary objection, arguing that the High Court lacked jurisdiction in the issue due to the restriction imposed by the authority of Courts Order 1969 enacted under the previous Martial Law regime. In agreement with the critique, Chief Justice Hamood ur Rehman acknowledged that the learned Chief Justice not only misapplied the idea of Hans Kelsen, but also made a mistake by assuming it was a widely recognized doctrine in current law. Even the followers of Kelsen have been reluctant to embrace the same extent of ideas that Kelsen himself had espoused (Kokab et al., 2012).

The legal dispute between Begum Nusrat Bhutto and Muhammad Nasrullah Virk, including the Chief of Army Staff and the Federation of Pakistan. General Mohammad Zia-ul-

Haq enforced Martial Law over the whole country and took on the position of Chief Martial Law Administrator. The implementation of the 1973 Constitution was temporarily suspended, but not permanently overturned. The Federal and Provincial Cabinets, together with the National and Provincial Assemblies, were dissolved. The Prime Minister, Cabinet Members, and important opposition individuals were detained and placed under "Protective custody". The President was authorized to continue serving as the symbolic head of the state, while the Chief Justices of Provincial High Courts were appointed as acting Governors of their respective provinces (Zeffertt, 1975). The article focuses on the relationship between the military and politics in Pakistan from 1947 to 1986. As per the petition, Mr. Zulfikar Ali Bhutto and 10 other Pakistan People's Party officials were arrested on September 17, 1977 and detained in various prisons throughout the four provinces of Pakistan. On September 17, 1977, the Chief of the Army Staff issued a public statement including unfounded and incorrect allegations against the Pakistan People's Party Government and the prisoners. This was done to provide a rationale for their arrest and incarceration. Furthermore, he conveyed his resolve to bring the prisoners before Military Courts or Tribunals for prosecution in order to defend the principle of public accountability. The appeal contends that the measures taken against the inmates were carried out with malicious intent, aiming to impede the Pakistan People's Party from actively participating in the next elections scheduled for October (AKHTAR)

2.5 Nusrat Bhutto vs Chief of Army Staff

The Nusrat Bhutto v Chief of Army Staff case (1977) has significant importance in Pakistan's legal and political history, representing a crucial juncture in a tumultuous period. The case concerns the consequences of the military coup that resulted in the removal of Prime Minister Zulfikar Ali Bhutto on July 5, 1977, and the subsequent imposition of martial rule by Chief Martial rule Administrator General Muhammad Zia-ul-Haq. Following Zulfikar Ali Bhutto's resignation, his wife Nusrat Bhutto submitted a petition challenging the martial rule regulations and the validity of the military takeover (Virk, 2012). Nusrat Bhutto's legal team said that the imposition of martial rule and following military measures were unlawful and infringed upon the constitutionally protected basic rights. This case had significance not alone due to its legal ramifications, but also for its ability to provide insight on the broader political backdrop of that period. The military coup resulted in the annulment of the constitution, disbandment of parliament, and apprehension of political figures, notably Zulfikar Ali Bhutto. Nusrat Bhutto's appeal raised doubts about the validity of these actions and demanded the reinstatement of constitutional governance. In a landmark judgment known as the "necessity doctrine," the Supreme Court, led by Chief Justice Sheikh Anwarul Haq, decided in favor of the junta.

The court upheld the provisions of martial law and justified the military occupation based on the principle of 'necessity'." The ruling determined that the concept of necessity might be used to justify extraordinary actions in certain instances when the regular operation of the government is in jeopardy.

The contentious precedent created in Pakistan was the acceptance and application of the theory of necessity in this case. Despite the legal justification for this military action, some said that it established a dangerous precedent by endorsing the bypassing of constitutional norms. The Nusrat Bhutto case sparked a legal discussion over the delicate equilibrium between civilian governance and military interference in Pakistan. This event is a crucial moment in history, illustrating the intricate and difficult nature of managing the limits between legal, political, and military authority at a period of political turmoil (Hussain, 1985).

2.6 Panama papers Case (2017) system

On April 3, 2016, the Panamanian company known as Sueddeutsche Zeitung (SZ) publicly released 2.4 terabytes of data in partnership with the International Consortium of Investigative Journalism. Approximately 214,000 firms, 200 nations, and terrorist organizations were implicated in the event. Several other prominent figures, including as politicians, entertainers, sportsmen, and judges, were also implicated in corruption. A total of 200 journalists, 100 media organizations, and 80 nations participated in the inquiry. The Panama leaks consisted of around 1.5 million documents. Data was obtained via several means, including E-Mail, picture files, Pdf papers, and input from database professionals. The chosen time period for the investigation spanned from the 1970s until spring 2016. Following the Panama leaks, many governments initiated investigations and dismissed individuals from their positions. In Pakistan, almost 200 individuals, including the current Prime Minister Mian Muhammad Nawaz Sharif and his children, were implicated in the Panama leaks (Shah, 2009).

Altaf Hussain, Asif Ali Zardari, Benazir Bhutto, and other politicians were subjected to media scrutiny at various stages of their careers. The State Bank of Pakistan collaborated with the Securities and Exchange Commission (SEC), the Anti-Narcotics Force, National Accountability Bureau, and Federal Investigative Agency to enforce anti-money laundering legislation. The Pakistani Government has made concerted efforts to put a stop to these illegal activities. In 2007, Prof. Dr. Syed Abdul Siraj¹ and Anbreen Waheed introduced the AML 87 law with the aim of overseeing and penalizing money laundering, terrorist financing, and the deterrence of anti-money laundering endeavors. Following that, the Laundering Ordinance was replaced by the Anti-Money Laundering Act. The purpose of establishing the Financial Monitoring Unit (FMU) is to guarantee the financial integrity and transparency of accounts that are considered suspicious. The general populace, the protest by the opposition, and the opposition leader are advocating for a lockdown of the capital. On November 1st, 2016, the Supreme Court commits to addressing the Panama situation via the establishment of a commission, one day before to the lock down protest. Imran Khan, in compliance with the Supreme Court, abandoned his lockdown plan and chose to address the matter via the normal legal channels. After a prolonged duration of 126 days, which included 25 court sessions, a substantial volume of 126 thousand documents were presented before the Supreme Court. On

April 20th, 2017, a group of five judges decided to create a Joint Investigation Team (JIT) in order to investigate the Prime Minister (Marri, 1990).

2.7 Legal Precedents

The notion of 'precedent' is the primary legal theory relied upon by judges in the Common Law system when making their rulings. The components that comprise the notion of precedent are many and intricate. Although the theory has significant relevance in the Pakistani legal system, it has received little scholarly attention so far. This endeavor serves to connect or close the divide between two entities. This work provides a comprehensive analysis of the history, genesis, and context of this theory. It also explores the regulations that govern its implementation in Pakistan's Supreme Court, High Courts, Federal Shariat Court, and other tribunals. The legal framework of Pakistan has been greatly influenced by some important judgments and precedents set by the Pakistani court. The judiciary, under the leadership of the Supreme Court, has a crucial responsibility as the protector of the Constitution. It is responsible for interpreting the law, safeguarding basic rights, and establishing legal precedents that have a significant impact on broader legal discussions. Throughout time, these significant legal achievements have not only established the boundaries of our legal framework, but also played a role in the advancement of constitutional governance, the safeguarding of personal freedoms, and the intricate equilibrium among the three arms of government. These cases, ranging from constitutional interpretation to significant rulings on matters of public significance, contribute to a diverse collection that showcases the ongoing advancement of Pakistan's court in establishing a just and unbiased legal framework (Hussain & Khan, 2012).

2.7.1 Doctrine of Necessity use in different cases

The following lines provide a concise introduction to the theory of necessity, which has been used in many instances by the higher courts of the judiciary in Pakistan.

2.7.1.1 First use in Malvi Tamizuddin Khan case

Moulvi Tamizuddin Khan, who served as Deputy to Ali Jinnah and Liaquat Ali Khan and then became President of the Constituent Assembly (CA) after the assassination of the latter, used the legal authority of the Sindh High Court to challenge the dissolution of the CA. In the case of Moulvi Tamizuddin Khan v Federation of Pakistan, 1954 SHC 81, the High Court issued the requested writs and ruled that a Governor General does not possess any unique privileges similar to those of the Crown. The Court referenced the prominent Privy Council case of *Musgrave v. Pulido* (1879) 5 AC 102, in which the Governor of Jamaica attempted to avoid liability in a lawsuit concerning his seizure and detention of the vessel 'Florence'. The Governor argued that he had acted within the bounds of his authority as Governor and that his actions were considered an act of state. The Judicial Committee, like the Court below, rejected the argument that this was a valid response, firmly stating that a

Governor cannot be considered a Viceroy, nor can it be presumed that he has overall royal authority (Hilali, 2002)

2.7.1.2 Shehla Zia vs WAPDA (1989)

The Petitioners resided in a specific area inside Islamabad. The Water Resources and Power Development Authority (WAPDA) had plans to build an electrical grid station at that specific location. The Petitioners objected, citing that the electromagnetic field generated by the high voltage transmission lines posed a health risk. Furthermore, the designated green belt in that location would be annihilated. Hence, feeling wronged by the planned building, they submitted a petition to the Supreme Court. They documented several worldwide research and publications that established a correlation between electromagnetic radiation and various health issues, including cancer, depression, and heart disease. The Respondent Government, however, argued that the scheme was secure and devoid of danger. Furthermore, the Respondent argued that the petition lacked any explicit mention of breached basic rights, thereby rendering it ineligible for consideration (Saleem et al., 2023).

Decision and Reasoning

The Court determined that, notwithstanding the Petitioners' provision of previous and current research, it was not feasible to definitively establish a causal connection between the impacts of electromagnetic fields and human health. Nevertheless, due to the potential presence of latent hazards in electromagnetic radiation, it would be prudent to prioritize safety precautions, even in the absence of solid evidence from studies. Moreover, the study conducted by the Respondent Government was over two decades old, and hence insufficient to alleviate the Petitioners' concerns. The Court ruled that the Respondent Government must take a cautious approach similar to Principal No. 15 in the Rio Declaration. The Court also ruled that the establishment of an autonomous Commission is necessary to assess the trade-off between energy generation and potential risks to human life (Cochrane, 2010).

The Commission would consist of globally renowned and respected scientists who are impartial and unbiased. The purpose of the examination is to evaluate claims for the establishment of electrical grid stations. The opinion of the examination will be requested prior to the construction of such stations. The Court designated National Engineering Services Pakistan Pvt. Ltd (NESPAK) as this Commission with the agreement of both parties. NESPAK will evaluate the plan and proposals of WAPDA in relation to the complaint raised by the Petitioners and provide a report. If needed, NESPAK will recommend any feasible modifications or additions for the construction of a grid station. The Court ultimately determined that the petition was admissible. The court determined that the Petitioners had a legitimate concern that their fundamental right to life, as provided by the constitution, may be infringed by the actions suggested by the Respondent

Government. Furthermore, the court recognized that the right to life is extensive enough to include circumstances similar to the one at hand. The Petitioners have the right to seek legal recourse for a preventative solution. Furthermore, the Court determined that the impact of electromagnetic radiation on human health would be mostly unfamiliar to those living in close proximity, who would endure quietly without recognizing the danger to their life. Thus, it was advantageous for the general populace that such a petition could be submitted.

2.7.1.3 Benazir Bhutto and others vs President of Pakistan

The President of Pakistan dissolved the national legislature and fired the Petitioner from the office of the Prime Minister on 5th November 1996. The President further mandated the disbandment of the Petitioner's government and set a date of 3rd February 1997 for general elections to the national legislature. Syed Yousaf Raza Gillani and the Petitioner submitted a constitutional petition to the Supreme Court on November 11th and 13th, 1996. The purpose of the petition was to request the enforcement of Article 9 (which guarantees the right to life), Article 14 (which protects the right to privacy), and Article 17 (which ensures the right to organize a political party) of the Constitution. Furthermore, a proclamation asserting that the President's acts were devoid of legal authority, capricious, and null. The Petitioner and her administration faced allegations of intentionally breaching the basic right to privacy, as protected by Article 14 of the Constitution, on a significant magnitude (Shafqat, 1996).

The right to privacy specifically ensured that the dignity of individuals and the private of their homes were inviolable. The Intelligence Bureau allegedly conducted unlawful telephone tapping of the judges of the higher courts, leaders of political parties, and high-ranking military and civil officials at the directives of the Petitioner. The transcripts of these telephone calls were reportedly sent straight to the Petitioner's residence for her examination. Nevertheless, the Petitioner herself asserted that she was a target of telephone surveillance. The federal government, acting as respondents, presented extensive documentation to demonstrate that the Intelligence Bureau, operating directly under the authority of the Petitioner / Prime Minister, engaged in telephone tapping and eavesdropping (Ziring, 1991b). The Court, by a majority of 6 to 1, affirmed the validity of the presidential decree. The document presented two perspectives: a majority view and a dissident opinion, both in support of reinstating the national legislature, the Prime Minister (Petitioner), and her cabinet (Ziring, 1991b).

2.7.2 Judicial Review

Judicial review refers to the authority of a country's courts to scrutinize the activities of the legislative, executive, and administrative branches of the government in order to ascertain their compliance with the constitution. Actions that are deemed to be inconsistent are deemed to be in violation of the constitution and, as a result, are considered to have no

legal effect. The establishment of judicial review in this context relies on the presence of a written constitution. In Pakistan, the Judicial Review is a powerful instrument granted by the Constitution of Pakistan 1973 to the Supreme Court of Pakistan and the High Courts of the Provinces. It allows them to examine and correct any laws that have legal gaps or errors. The Constitution of Pakistan has been somewhat derived from the American Constitution and partially from the British Constitution. The Constitution of our nation mandates a government that is restricted in its powers and authority (Bhutto, 1993).

The notion of judicial review was first included into the Constitution in 1962. Article 199 of our current Constitution replaces Article 98 from the 1962 Constitution. The clause was inserted without making any significant changes to its content or wording. Article 199, although bearing similarities to the British writ jurisdiction, exhibits notable distinctions in terms of its scope and constraints. However, the rulings of English courts on the scope and boundaries of writ jurisdictions may indeed assist Pakistani courts in interpreting Article 199. The following precedents may be referenced: (1) *Presiding Officer v. Sadruddin*, (2) *Muhammad Hussain v. Sikandar*, (3) *Jamal Shah's case*, and (4) *Rahim Shah's case*. According to Article 199, *judicial review has the power to examine the legality of both main and subordinate legislation, as well as administrative action*. While the 'fundamental structure' notion has not been acknowledged by Pakistani courts, they have repeatedly maintained (as shown in the *Abdul Wali Khan case* and *Pakistan Lawyers Forum v. Federation of Pakistan*) that a constitutional change may only be contested if it has been done in an unlawful way (Ziring, 1991a).

2.7.3 Public Interest Litigation

The development of public interest litigation in Pakistan may be categorized into four distinct phases. The first phase, known as the 'activist phase', focused on advocating for the inclusion of underrepresented interests. During this phase, the judges are required to attentively hear the grievances of marginalized individuals to safeguard against anarchy, malfeasance, and a state of lawlessness within society. In the second step, the courts recognize the need to remove the limitations on who may bring a legal case, allowing the injured individual to have standing. Illustrations of this may be seen in the case of *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416) and the prominent case of *Darshin Masih* (PLD 1990 SC 513), both of which are regarded as groundbreaking instances of public interest litigation. The limitations of public interest litigation, particularly in terms of procedural relaxation, were evident during the third stage. These concerns were extensively examined in the case of *Ardeshir Cowajee v. Multiline Associates, Karachi* (PLD 1990 SC 513). In the fourth stage, the emphasis of public interest litigation is modified, and it transitions into petitions that advocate for one private interest over another (Khan et al., 2019).

The jurisdiction of the Supreme Court, as stipulated in Article 184(3), is not contingent upon the notion of an aggrieved party, as is the case in adversarial proceedings. Consequently, the Supreme Court has relaxed the conventional requirement of the affected individual or locus standi. According to Article 184(3), the Supreme Court has the authority to consider only those cases that include issues of public significance, which are defined as concerns that impact the whole population or a whole community. Therefore, by loosening the strict criteria of adversarial proceedings and including informal methods like letters, telegrams, media, and newspapers, the courts have transformed the judicial process to be more comprehensive and inclusive (Y. Hussain, 2008).

3.0 Methodology

Pakistan's complex judicial system was examined using mixed methodologies in this study. The quantitative aspect required data collecting from the Law and Equity Commission of Pakistan and the National Legal Arrangement Making Committee. The research sought to do thorough statistical assessments of case pendency, transfer rates, and other key factors. These investigations used descriptive statistics and inferential approaches to identify trends, connections, and causes of Pakistani case pendency. The research included quantitative and qualitative methods by reviewing legal publications, academic articles, books, and research papers. This qualitative research provided historical background, illuminated apex court rulings, and revealed the judiciary's reactions to dictatorship. The research used topic and content analysis to find patterns, significant ideas, and nuanced interpretations in qualitative data. By integrating these two methods, Pakistan's legal journey was fully understood, including the statistical complexities of case pendency and the contextual richness of apex court decisions in response to political challenges and dictatorships. It recognized the multifaceted legal environment and the interaction between quantitative trends and qualitative insights. This study was ethical throughout. To ensure voluntary participation and privacy, informed permission was necessary for all research participants. Anonymity preserved sensitive data, respecting research ethics. Transparency ensured the study's legitimacy via explicit procedures, precise citations from respected sources, and careful presentation of conclusions.

4.0 Measuring Efficiency and Quantifying Judicial Performance of Apex courts

This research seeks to ascertain the factors contributing to the prolonged dispensation of justice in Apex courts and district courts, and analyze the key reasons for delay that the Pakistani judicial and legal system faces on a daily basis. Article 37 (d) of the Constitution of the Islamic Republic of Pakistan highlights the need of delivering justice in a prompt, efficient, and cost-effective manner. Pakistan has been placed 130th out of 142 nations by the World Justice Project Rule of Law Index, based on a range of factors such as the performance of its civil and criminal courts. This study conducts a thorough examination of civil and criminal litigation in Pakistan with the aim of minimizing delays. Regrettably, there has been a lack of progress in Pakistan, particularly in terms of quantitative measures. This study will specifically

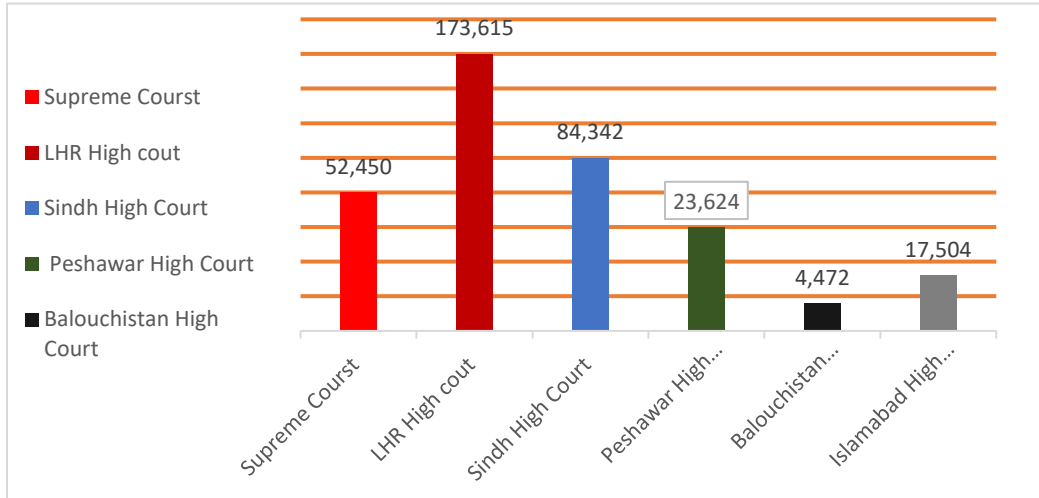
examine the quantitative dimension of the rule of law. Furthermore, this research used factor analysis to identify the primary variables that contribute to delays in subordinate courts. The linear regression model is used to ascertain and evaluate the relationships of the independent variables. This study quantifies the importance of these parameters in order to reject the null hypothesis at a 5% confidence level. Linear regression is used to analyze the cost of litigation and determine the correlation between independent and dependent variables, specifically the "cost of each hearing". The findings indicate that the primary cause of delayed justice and the filing of superfluous petitions is the frequent adjournments based on trivial reasons. Additionally, the lack of proficiency and inconsistent training levels among both lawyers and judges also contribute to this issue (Salarzai 2017).

The problem of civil justice delays is a pervasive and prevalent issue, with particular significance in developing countries such as Pakistan. On a regular basis, the number of pending cases, including civil matters, increases in the lower courts of the nation. Regularly, many commissions have been established to investigate the reasons for the delay. This study investigates the subject by taking into account prior national and international research (Tabassum et al., 2021). Conversely, lawyers often seek adjournments to increase their frequency of court appearances, so maximizing their financial gains. However, judges are burdened with excessive work and would be inclined to grant adjournments in order to cope with their workload. It has been clarified that the failure to enforce the basic right to access justice and the decline in the reputation of the judicial system in Pakistan resulted from delays in the administration of justice. According to the research, the average duration of a case in the civil courts of Punjab is more than 37 months, and from the start to the final decision, an average case takes around 58 hearings (Saeed, 2020).

4.1 Pending case in Supreme Court and High courts of Pakistan

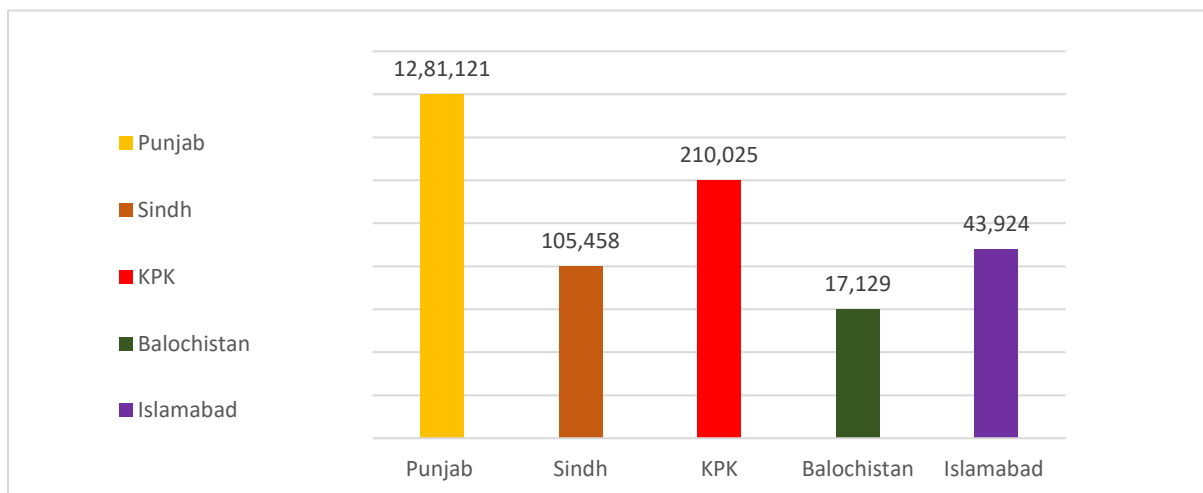
In order to accomplish the study goals, the researchers used an analytical research approach and relied on data obtained from the law and justice commission of Pakistan. They specifically focused on data reports on the backlog of cases from 2017 to 2020. While the constitution of the Islamic Republic of Pakistan guarantees prompt and affordable justice to its inhabitants (Constitution of Islamic Republic of Pakistan, 1973), the large number of outstanding cases undermines the principles of justice. It is important to emphasize that the backlog of cases may lead to delays in criminal trials, from the district courts all the way up to the Supreme Court of Pakistan (Ali & Hassan, 2022). The researcher has compiled two tables including pending cases in the Supreme Court and the High Courts of Pakistan, with comprehensive facts from all provinces. The Law and Justice Commission of Pakistan 2018 adheres to the data. The National Judicial Policy Making Committee in Pakistan has released statistics about the number of unresolved cases in all courts throughout the country. The combined number of pending cases in the Supreme Court, Federal Shariat Court, high courts, and district judiciary exceeds 2 million (Pirzada et al.).

Pending case in Supreme Court and High courts



The chart presents statistics derived from Pakistan's national judicial policy. As of July 31, the Supreme Court had 45,508 pending cases, the Lahore High Court had 188,411 pending cases, the High Court of Sindh had 84,341 pending cases, the Peshawar High Court had 38,464 pending cases, the High Court of Baluchistan had 5,313 pending cases, and the Islamabad High Court had 15,847 pending cases. Furthermore, the provided visual may be used to evaluate the inventory of unresolved cases in the district court, as per the national judicial policy (Ali & Hassan, 2022).

Pending Cases in all provinces District courts of Pakistan

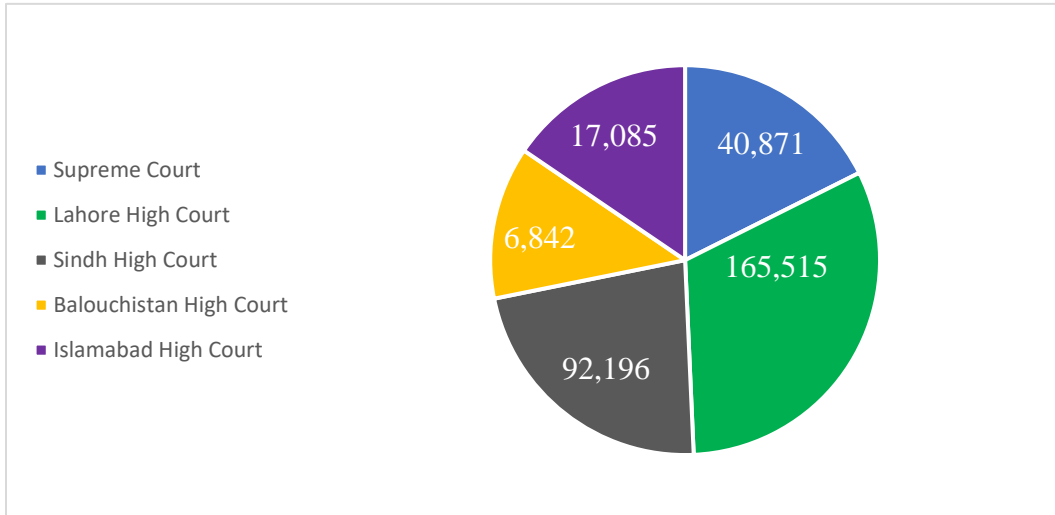


The chart illustrates the number of pending cases in the different district judiciaries of Pakistan. Specifically, there were 1,287,121 pending cases in the District Judiciary Punjab, 105,458 pending cases in the District Judiciary Sindh, 210,025 pending cases in the District Judiciary Khyber Pakhtunkhwa, 17,000 pending cases in the District Judiciary Baluchistan, and 43,924 pending cases in the District Judiciary Islamabad. The number of outstanding cases in 2020 is more than the figures reported by the law and justice commission of Pakistan in 2018, 2017, 2016, 2015, and 2014. The researcher might conclude that the number of pending cases is consistently growing in all courts of Pakistan. Hence, the extensive roster of unresolved cases across all courts is the primary factor contributing to the delay in the dispensation of justice in Pakistan (Ghani et al., 2023).

4.2 Overview of Pending Cases in Criminal Courts of Pakistan

A significant and destructive cause for the delay in the functioning of the judicial system is the substantial backlog of cases in all courts of Pakistan. The criminal courts in Pakistan are overwhelmed with a heavy workload. As to the 2018 report from the law and justice commission of Pakistan, there is a significant backlog of around 2 million criminal and civil cases in the courts. This backlog poses a grave challenge to the prompt delivery of justice. While the constitution of the Islamic Republic of Pakistan guarantees prompt and affordable justice to its inhabitants (Constitution of Islamic Republic of Pakistan, 1973), the large number of outstanding cases undermines the principles of justice. The number of outstanding cases in Pakistan is steadily rising, as shown by the 2018 data. The number 40871 Among the 2 million unresolved cases, the Supreme Court of Pakistan has 1,095,542 cases, the Punjab judiciary has 101,095 cases, Sindh has 209,985 cases, Khyber Pakhtunkhwa has 13,969 cases, Balochistan has 38,291 cases, and Islamabad district judiciaries have 38,291 cases. How can the courts of Pakistan resolve this backlog of cases, considering that only around 4000 judges are handling the workload for a population over 207 million.

Pending Cases in Criminal Apex Courts of Pakistan



Thus, the current arrangement assigns a single judge the responsibility of handling a staggering 48838 individuals, a situation that lacks fairness and impartiality in terms of dispensing justice. The substantial backlog of cases in all courts not only undermines the principle of prompt justice but also contravenes the constitutional guarantee of a fair trial as enshrined in the Constitution of the Islamic Republic of Pakistan (1973). The researcher is highly motivated to elucidate and scrutinize the data pertaining to pending cases using the methods.

The figure provides a clear breakdown of the distribution of outstanding cases in various courts in Pakistan. Specifically, there are 40871 cases in the Supreme Court of Pakistan, 165515 cases in the Lahore High Court, 92196 cases in the Sindh High Court, 29624 cases in the Peshawar High Court, 6842 cases in the Baluchistan High Court, and 1785 cases in the Islamabad High Court. The backlog of cases in the higher courts of Pakistan was greater compared to the backlog of cases in 2018, as seen by the figure above (Ali & Hassan, 2022).

4.3 A comparative Assessment with international standard Reports

The World Justice Project is an independent and multidisciplinary organization committed to advancing the global adherence to the principles of law and order via the provision of information, raising public awareness, and active involvement. At 2017, a survey was conducted where 2010 individuals were interviewed at their respective households. The dwellings were distributed proportionally throughout five metropolitan districts: Quetta, Peshawar, Lahore, Karachi, and Faisalabad. The purpose of this survey was to gather data for the WJP Rule of Law Index by obtaining insights from ordinary persons on government integrity, corruption and bribery, crime, and equal protection under the law. The WJP used a same methodology to conduct an additional Justice Sector Survey of 2010 households in order to get a more comprehensive understanding of justice-related matters. The objective of this survey is to gather information from respondents on their experiences and viewpoints on

resolving conflicts, participating in civic activities, establishing legal identity, managing family dynamics, and addressing gender issues. Unlike the WJP's main Rule of Law Index, which presents combined scores for the rule of law, this report provides detailed data at the individual question level (ur Rehman et al., 2021). It is presented in 12 thematic briefs that highlight different facets of Pakistan's rule of law as seen by its people. These articles explore topics such as responsibility, unfairness, basic entitlements, the legal system, equal treatment, and the viewpoints of women, internally displaced individuals, and refugees. These briefs provide a concise overview of Pakistan's governance via the rule of law and justice system. They serve as a valuable resource for gaining a deeper understanding of the state's influence on the everyday lives of its inhabitants (Iqbal, 2015).

5.0 Discussion and conclusion

The discussion of the documents that were supplied covers a broad variety of subjects that are associated with the legal situation in Pakistan. Particular attention is paid to the decisions made by the Supreme Court, significant decisions, the application of legal theory, and the difficulties that the judicial system is now facing. This book analyzes the events that occurred in Pakistan's past and focuses on the development of the nation's legal system as well as the function that the judiciary plays in determining the future of the country. The study of Supreme Court judgments and other significant decisions, which play a significant part in establishing precedent and affecting the evolution of legal systems, is a notable issue that is the focus of this discussion. Through this debate, one may get an understanding of key cases such as *Maulvi Tamizuddin Khan, State v. Dosso*, and *Nusrat Bhutto v. Chief of Army Staff*, as well as judicial reactions to significant political and constitutional concerns. This offers a historical point of view. In light of these examples, the intricate relationship that exists between legal interpretation, political processes, and the larger sociopolitical environment is brought into emphasis.

In addition, the book makes reference to the application of the concept of need in a number of different situations and demonstrates how the legal principle is used to cope with constitutional crises and extraordinary circumstances. Cases such as *Maulvi Tamizuddin Khan and Shehla Zia v. WAPDA* are examples of cases that highlight instances in which the principle of necessity has been used. These cases also demonstrate the role that the concept plays as a tool to overcome constitutional ambiguities and crises. The notions of judicial review and public interest litigation are also taken into consideration, with an emphasis placed on the ability of courts to examine legislative and administrative actions to determine whether or not they are constitutional and whether or not they respect basic rights. This conversation sheds light on the significance of these legal concepts in terms of ensuring that the legal system is a system of checks and balances, fostering openness, and preserving individual rights. A quantitative examination of the elements that lead to the pendency of cases is presented in the last section of the book, which focuses on the essential topic of trial delays. Utilizing methodologies such

as factor analysis and linear regression, the purpose of this research is to determine the underlying factors that contribute to delays in the judicial system.

6.0 Implication of study

This research has major legal and judicial consequences for Pakistan. First, identifying reasons of delayed justice in the apex and district courts illuminates structural concerns that have slowed case resolution. The need for procedural improvements and stronger legal ethics is highlighted by the fact that superfluous adjournments and frivolous petitions cause delays. Addressing these concerns may simplify the judicial process and help achieve the constitutional aim of quick justice. The study's quantitative approach to rule of law, using data analysis and regression models, helps explain and reduce delays. Adjournments and skills training are quantified to inform policy choices. These results may help policymakers and judicial authorities focus actions, allocate resources, and create training programs to solve legal system flaws. A more responsive and effective judicial structure requires this data-driven approach. The study highlights how case pendency affects judicial reputation. The erosion of public confidence owing to judicial delays is serious. The research stresses the need of upholding the right to access justice, noting that a lengthy legal procedure undermines the judiciary's impartiality and effectiveness. This conclusion encourages legal authorities to emphasize improvements that boost public trust in the judicial system, which upholds the rule of law and protects people's rights. This research has practical ramifications for politicians, lawyers, and the public. The quantitative analysis and identified delays give a path for specific changes to speed up the judicial process, restore public faith, and respect Pakistan's constitutional promise to fast and affordable justice.

7.0 Limitations of the study

This extensive study illuminates Pakistan's legal structure, although its breadth and generalizability are limited. The biggest drawback is relying on accurate and thorough source data. Data gathering and research publishing may be affected by legislative and judicial developments. Because subordinate courts and ad hoc courts generate legal precedents, a study's concentration on Supreme Court and major judgments may not properly reflect the legal system. Although helpful, litigation and judicial performance analysis may not represent the numerous contextual circumstances that cause justice system delays. This research did not analyze socioeconomic circumstances, cultural impacts, or administrative problems in jurisdictions, which may give additional insight. Research generally uses quantitative methodologies, which may neglect qualitative features that illuminate the intricacy of legal transactions, judicial decision-making, and legal system participants' lived experiences. Finally, this study sheds light on Pakistan's legal history and Supreme Court, although it should be viewed with caution. A more holistic, multidisciplinary strategy that incorporates quantitative and qualitative approaches, ethical issues, and legal system dynamics should overcome these shortcomings in future study.

Contributions

Muhammad Zain ul Abidin: Problem Identification and Model Devolvement

Muhammad Abbas Khan: Literature search, Methodology

Faisal Ameer: Drafting and data analysis, proofreading and editing

Conflict of Interests/Disclosures

The authors declared no potential conflicts of interest w.r.t this article's research, authorship, and/or publication.

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