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Legislative Efforts for Institutionalization of Judges' Appointments and Judicial Response: An Appraisal of 18th And 19th Constitutional Amendments

Abstract

In tripartite governments where system of checks and balances prevails, judges' appointment to the Superior Courts is one of the constitutional tools for controlling judicial organ. Through 18th Constitutional Amendment, the government brought about revolutionary reforms in the appointment of the judges to the Superior Courts, which the latter considered an attack on its autonomy. With qualitative research methodology, this research article aims to investigate mechanism for judicial appointments in the light of constitutional amendments and critically examined judicial response thereto. The research at hand concluded that judiciary had pushed parliament back to pre-18th constitutional amendment where chief justice has final say, despite of the institutionalization of the appointment process.

Keywords: judges' appointment, parliamentary committee, judicial commission, 18th amendment, 19th amendment.

1. Introduction

The democracies following trichotomy of powers control each other through various checks, in order to balance its authority and avoid prospects of its exploitation of authority. In Pakistan, Parliament strived through constitutional amendments to impose modest control on judiciary in the appointment process by introduction of a novel system for judges' appointment to the Superior Courts, which the latter considered attack on its autonomy. This new system of appointments divided legal fraternity into two competing discourses: one group supported the new mechanism of appointments and justified Parliament for keeping a reasonable control on judiciary and opposed judicial absolutism. Other group considered the new mechanism of appointments as an attack on the basic structure of the Constitution and judicial autonomy. Therefore, appointment process introduced through 18th Constitutional Amendment was challenged in the

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Supreme Court. The Court sent back it along with its recommendations, which Parliament complied with in form of 19th Constitutional Amendment. Judiciary turned around all parliamentary efforts to impose modest control over judiciary. Parliament was committed to institutionalize mechanism for judges' appointment, in order to avoid favoritism and judicial monopoly, but the Chief Justice authoritative role inside Judicial Commission and in adjudication brought no change rather reinforced his authority, despite of the institutionalization of the appointments of the judges to the Superior Courts.

Main objectives of the research are: highlighting mechanism of judges' appointment to the Superior Courts and to critically examine its associated challenges in the light of constitutional amendments and case laws. The research concluded that why the new system of appointments could not bring a significant change in judiciary, which was expected to translated in form of adjudication. The research suggested how to strike a fair balance rational compromise in the mechanism of judges' appointment to the Superior Courts ensuring equilibrium between judicial autonomy and its constraints. For conducting this research, qualitative and deductive research methodology has been used wherein both primary and secondary sources have been consulted. For its operational framework, the draft has been divided into the following segments: first segment introduced the concept and necessity of judges' appointment. Second segment explicated rational for constitutional amendments. Third segment highlighted institutionalism of judges' appointment. Fourth segment explained pre-18th constitutional mechanism for judges' appointment. Fifth segment elucidated new system introduced through 18th Constitutional Amendment. Sixth segment explicated 19th Constitutional Amendment. Seventh segment concluded the research and contributed suggestions.

2. Judicial Appointments and Constitutional Amendments

Both Judiciary and Parliament were committed to roll back entrenched Military, its transformative preservation, and at the same time both institutions sought to empower themselves. After its restoration, Judiciary not only challenged Military's extraconstitutional discourse, but also sought autonomy from the government. The pursuit of this judicial autonomy led to the self-conception of judiciary that it was the sole arbiter of resolving disputes of political nature, including morality and integrity of the politicians. In response, Parliament brought about certain Constitutional Amendments, which were meant to ensure the supremacy of Parliament and to maintain a reasonable balance between judicial autonomy and its constraints.

Generally, these Constitutional Amendments had three-pronged objectives: firstly, to eliminate extraconstitutional actions and further military intervention. Secondly, to impose at least modest constraints the judiciary, in order to discourage excessive judicial interference in the executive matters. Thirdly, to provide some constitutional safeguards against judiciary so that in future it may not validate extraconstitutional actions. Prior to the Eighteenth Amendment, Judiciary was clearly dominating the judges' appointment process. In the Superior Judiciary, the appointment, tenure, and removal of judges were the only constitutional means of

controlling judiciary. Nevertheless, this process lacked any reasonable check and was within the exclusive control of Judiciary.

The government, through the 18th Constitutional Amendment, strived to change the traditional mechanism of judicial appointments and gave Parliament a role in the judges' appointment. Judiciary, however, challenged the provisions of the 18th Amendment pertaining to judges' appointment and directed the government to reconsider the amendment in the light of the court's suggestions. However, the subsequent judicial and legislative developments after 18th Amendment diminished Parliament's role and can be referred to a transition to the traditional pre-18th Amendment position.

3. The Institutionalism: the Mechanism of Judges' Appointment

Judiciary, as an institution, acquired itself a very significant role. Assertion of authority for conferring legitimacy or withdrawing the same from the civilian government has become a legal and political tool in the hands of judiciary whereby it can override public mandate as a constitutional source of legitimacy. In recent years, functional space of judiciary, in terms of preserving and asserting its authority, has been expended due to institutionalism. In its dynamic conflicts, judiciary not only safeguarded its own institutional efficacy, but its legal and moral legitimacy.¹ Generally speaking, the court verdict directly or indirectly contributes to the law-making process, which is the primary objective of Parliament. In order to keep this authority intact, Parliament seeks to restraint courts' authority to reconstruct legal edifice through case law, and seeks to keep it exclusively for itself.²

This power struggle entails institutional conflicts. This tendency of power struggle between state organs also effectuated courts' functioning and turned constitutionalism as a matter of institutional design rather than social consensus.³ Scope of the judicial activism is not confined to review enactment of the constitutional provisions, rather it is the outcome of bad-governance and inefficiency of the executive to perform its functions. The judges' appointment remained a considerable issue in terms of its institutional autonomy, which is politicized throughout the constitutional history of Pakistan. There are instances regarding arbitrary appointments, promotions, transfers, and suspensions of judges who refused to take Oath under the Provisional Constitutional Order (PCO).

Before the 18th Amendment, the appointments of judges were at the mercy of individuals since there was no institutional mechanism for judges' appointments. The following instances elaborate that how an individual manipulated the appointment process without observing constitutional norms. In the 1990s, the courts strived to take back matters regarding judges' appointment and other related matters in its hands. In this regard, *Al-Jihad Trust case*⁴ turned out to be a landmark case in the context of judges' appointment with reference to judicial autonomy. The Court held that the opinion of the Chief Justice is binding on the government.⁵ The Court also curtailed the President's discretionary authority in the appointment process, making it entirely ineffectual. The Court declared that the President is bound by the Chief Justice's recommendations, and in case of any deviation the latter must provide justifiable reasons.⁶

In February 2010, the Court took cognizance of the Presidential Order pertaining to the appointment of a judge of the SC and an Acting CJ of the LHC. The Court while suspending the appointments held that notification was not complied with provisions of the Constitution whereby the President was bound by the Chief Justice's recommendations.⁷ On the other hand, extension of judges by the newly formed Judicial Commission, constituted under the 18th Amendment, received critical feedback from legal fraternity and media. These extensions were criticized on the pretext of being contrary to the spirit of *Al-Jihad Trust* Case where the Court decided against the appointment of judges on *ad hoc* basis.

Similarly, the Parliamentary Committee refused extension to judges. Nevertheless, the SC rejected Committee's decision, rendered it contrary to the Constitution, and directed for the notifications to the judges.⁸ In 2009, after the regime shift, the new democratic dispensation put the appointment of the superior courts' judges in a positive track. The 18th Amendment⁹ introduced an institutional framework for judges' appointments whereby individuals' appointing authority was substituted with the institutions: it replaced the Chief Justice with the Judicial Commission and the President with the Parliamentary Committee.

However, judiciary considered this an encroachment upon its autonomy and directed the government for reconsideration of the said Amendment in view of the court's recommendations: to increase the judges of the Commission from two to four and bound the Committee to give sound reasons for the rejections of the Commission's recommendations and if the same recommendations are reiterated by the Commission without making any changes the appointment would deem to have been confirmed. Ultimately, Parliament adopted 19th Amendment¹⁰ and increased the number of judges from two to four in the Commission. After 19th Amendment, the court also rejected the Committee's decision, which was tantamount to its virtual annulment. The court had declared that the appointment of judges is closely associated with the judicial autonomy and ensured judges' strength in the Commission.

Nevertheless, mechanism of judges' appointment pertaining to their external scrutiny and accountability remained unresolved.¹¹ In past, judiciary used to manipulate and validate extraconstitutional actions. In 2000, *Musharraf* required the judges of the Superior Courts to take fresh Oath under the PCO so as to strengthened the regime generally and manipulate the upcoming elections particularly. After imposing emergency in 2007, Musharraf required the Superior Courts' Judges to take Oath under the PCO-II. However, after restoration of Chief Justice *Iftikhar Chaudhry* in March 2009, invalidated the PCO-II and thereby dismissed seven out of seventeen judges of the SC.

4. Judges' Appointment: Pre-Eighteenth Amendment

Before 18th Amendment, judges' appointments were made by the President in view of the Chief Justice's recommendations. In case of appointment to the High Court, the President had to consider recommendations of the concerned Court's Chief Justice, which had to be channelized through the CJ of the SC and Governor of the concerned Province. In this process of appointments, the pivotal role rested with the CJ and the Provincial Chief Justices. In *Al-Jehad Trust* case¹², the court curtailed the executive authority of the President in the judges' appointments. The

Court declared that the Chief Justice's recommendations are binding on the President. Where the President departed from the recommendations the same must be followed by justiciable reasons.¹³

5. The Eighteenth Amendment: Reconfiguration of Institutional Structure

Immediately after the NRO case, there were rumors regarding Military takeover. Nevertheless, Parliament responded to the situation with more maturity and effectiveness than ever.¹⁴ The year-long conflict between the coalition partners culminated with the adoption of Eighteenth Amendment to the Constitution in April 2010. This Amendment implemented most of the Charter of Democracy and was an exceptional package, which brought about significant constitutional changes: upholding civilian rule, empowering the Prime Minister over the President, devolution of power and provincial autonomy, and reconfiguration of equilibrium between the judicial autonomy and its constraints, with reference to the appointment process.¹⁵ The 18th Amendment addressed the constitutional distortion of *Zia* and *Musharraf*, incorporated by virtue of 8th and 17th Constitutional Amendments in 1985 and 2003 respectively.

Both were meant to validate military regimes, to entrench its transformative preservation, and to provide constitutional shield to their extraconstitutional actions. The 18th Amendment not only strengthened representative institutions, but also replaced the President's executive authority with that of the Prime Minister, ensured maximum Provincial autonomy, and institutionalized judges' appointment. In order to prevent the Court from legalizing extraconstitutional actions and military regimes in future, the government was committed to regulate judicial autonomy so Article 6 of the Constitution was modified. The government also transformed the judges' appointment process from individuals to institutionalized framework.¹⁶

The Parliamentary Committee on Constitutional Reforms (PCCR), which was comprised of twenty-six members having representation from most of the political parties, prepared this constitutional package.¹⁷ The PCCR achieved exceptional political consensus.¹⁸ The PCCR's members unanimously presented the 18th Amendment, which Parliament passed without any dissenting vote.¹⁹ The Court while reasserting civilian supremacy, repealed extraconstitutional amendments after Musharraf's 1999 coup for these Amendments were passed without lawful authority.²⁰ In order to maintain perpetual status of the supremacy of the Constitution, the Amendment also expanded the definition of high treason to the suspension, holding the Constitution in abeyance, and prevented the superior judiciary to validate such actions.²¹ This clause seems to have closed judicial license to register and validate extraconstitutional actions and military regimes.

The Amendment package significantly contributed in putting an end to military's transformative preservation. The Amendment also restored the supremacy of Parliament, placing the Prime Minister's selection in the hands of Parliament and transferring of the President's executive authority to the Prime Minister, making the latter more powerful.²²

The Amendment also repealed Article 58 (2) (b) and consequently ousted discretionary authority of the President to dissolve assembly.²³ While diminishing the President's legislative role, the Amendment also eliminated constraints on lawmaking authority of Parliament.²⁴ The Amendment incorporated provisions, increasing the number of fundamental rights, which were not previously guaranteed.²⁵ The Amendment package further improved provincial autonomy, modified formula for distribution of national revenue, and entrusted greater provincial control over national resources.²⁶

Finally, the amendment introduced a new system for judicial appointments.²⁷ The court while relying on the Indian precedents held that during the consultation process of the judges' appointment, executive is bound by the Chief Justice's recommendations, which was criticized both in India and Pakistan for lack of transparency. In this pattern of appointments, exclusive authority vests with the Chief Justice and the President without active involvement of Parliament, legal fraternity, and general public.²⁸ In Pakistan, the Supreme Court's assertion, in the consultation process regarding Chief Justice's dominance secured the judiciary even greater judicial autonomy than in India. Unlike India, in Pakistan judges' removal is constitutionally assigned to the Supreme Judicial Council while in India this authority has been exercised by the President.²⁹

Based on this criticism, a transparent and institutionalized appointment system was proposed to ensure judicial fairness in judges' appointment and maintaining a reasonable control on the judiciary. Unlike the traditional system where the Chief Justice and the President had exclusive authority in judges' appointments, the 18th Amendment placed modest restraints on judicial sovereignty by transforming the individuals' authority to the institutions: the Judicial Commission and the Parliamentary Committee.

As per the novel system of appointments, nomination is to be made by the commission, which is chaired by the CJ, having representation from judiciary, executive, and Bar Association. For each vacancy, one nominee has been referred to the Committee, comprised of eight members having equal representation from the treasury and opposition, which may reject it within fourteen days and in its default it will deem to have been confirmed.³⁰ However, the Court considered this mechanism contrary to its autonomy and referred it back along with its recommendations, which the government complied with.³¹ Collectively, both the Amendment and the PCO judges' case addressed the impasse of constitutional order, followed by Musharraf regime. In the former case, the court not only annulled the emergency and other extraconstitutional actions of *Musharraf's* regime, but also repudiated jurisprudential basis used for the justification of military intervention for decades. In the latter case, Parliament reversed the legal edifice which was the outcome of 1999 coup and an eye-opener to challenge entrenched military and its affiliated interests. Both these institutional developments, challenging the tyrannical regimes, extraconstitutional actions, and transformative preservation, significantly contributed in reconfiguration of Pakistan's political and institutional patterns. Structurally, democracy was much stronger than it had ever been. Despite its instability and rumors regarding the apprehension of military's takeover after invalidation of the NRO by the Court, a successful transition of democratic order was made.³²

Nevertheless, the government's initiative towards institutional reforms in the form of the 18th Amendment received harsh response from some segments of the legal community, who considered this Amendment in contravention of the basic features of the Constitution. The main controversies in the Amendment were regarding the composition of the Judicial Commission, the Committee's ultimate authority to decide judges' appointment, and the Supreme Court's jurisdiction. Indian precedents regarding the basic structure doctrine were referred, which divided legal opinion into two categories: one side endorses basic structure doctrine and asserted that even the legislature has no authority to modify basic structure of the Constitution. The other side argues that the court has no authority to challenge a constitutional amendment.

6. The Nineteenth Amendment : Back to the Past

The 18th Constitutional Amendment was challenged in the Court on the pretext that provisions relating to judges' appointment infringed upon judicial autonomy. The Court admitted the petition for hearing before the full bench.³³ The Courts' sitting in judgments over Constitutional Amendment was an unprecedented move. The Court instead of passing a definitive order, referred the matter back to Parliament, presented some minimum standards of restraints, and offered advice how to modify the Amendment in order to make it consistent with the Constitution. The Court made it clear to strike down the provisions relating to judges' appointment if Parliament could not change the provisions in the light of the former's recommendations.

The Court suggested two main changes: firstly, to enhance the Commission's judges from two to four. Secondly, where the Committee rejects the Commission's nomination, the former shall refer back the matter to the latter for reconsideration coupled with sound reasons for rejections. If the letter reiterates its previous recommendations, the former is bound to accept the recommendations and the President will be bound to make the appointments accordingly. There were some implications of these recommendations: judges' overwhelming majority in the Commission, its overruling authority over the Committee was a step back towards pre-18th Amendment scenario. As per directions of the Court, the government amended the 18th Amendment in the light of the Court's suggestions and adopted 19th Constitutional Amendment.

The Court going further, in another case³⁴ held that the Commission is the right forum to evaluate a judges' caliber and legal wisdom and the Committee can only reject the nomination of the Commission by presenting strong and justiciable reasons, which shows the Commission's ultimate control over the judges' appointments. Subsequently, the Commission, by virtue of Article 175A (4)³⁵, also formulated the Judicial Commission of Pakistan Rules (JCPR), 2010. According to Rule 3 (1) of the JCPR, vacancy in the Superior Courts shall be initiated by the Chief Justice through nomination in the Commission. The JCPR vested power of nomination in the Chief Justice of Pakistan making his role stronger both inside and outside the Commission.

In 2013, the Chief Justice of Pakistan in exercise of his nomination powers under the JCPR, allegedly superseded the senior judge, *Justice Riaz A. Khan*, and appointed his junior judge as CJ of IHC.³⁶ Despite the fact that both these judges

were appointed to the High Court on the same day, but in principle the judge older in age was deemed to be senior. In the preceding cases, the Court strengthened the role of the CJP and the Commission in the judges' appointment process and rendered the Committee almost redundant. The Court undone the progress made by Parliament. Hypothetically, in the appointment process, the CJP is just a member of the Commission with one vote. Nevertheless, after introduction of the JCPR, the Chief Justice has sole authority to initiate or propose nomination for the appointment, which may be confirmed or rejected by the Commission.³⁷

Before the 18th and the 19th Amendments, the Chief Justice had inordinate authority in judges' appointments. Nevertheless, due to political dynamics and frequent regime shifts, this discretion was barely exercised impartially. After the restoration of judiciary in March 2009, the judiciary had taken unprecedented actions. In judicial fabric, the role of the Chief Justice has been transformed from judiciary's theoretical head to practically unanimous leader. The Court³⁸ while deciding about the legality of the PCO judges removed over one hundred judges of the Superior Courts. Despite the fact that reference to the Supreme Judicial Council is the only constitutional mechanism for removal of the judges.³⁹

The removal of judges by the Court itself consequently defunct the Supreme Judicial Council in context of its exclusive authority to hold judges accountable. Being part of a broader institutional struggle of democratic transition, the government was committed to impose at least modest control over judges' appointment and strived to be an active participant in judicial appointments. Nevertheless, the Court reversed all those efforts and re-empowered the Chief Justice in the appointment process. The opponents of this judicial activism highlights two main adverse impacts: firstly, the Court's negation to the basic idea of constitutional amendment further weakened the fragile representative institutions and consolidation of democracy. Secondly, the decision-making flowing from an individual to an institution seems to have been compromised the whole idea of checks and balances.⁴⁰

The critics also believe that after restoration of judiciary, the country stood at the junction of judicialization of politics – a situation where laws are being served by judiciary to achieve political ends. On the other hand, politicians are stressing on legal imagination of contestants of power. In this whole transition, the court's functional dynamics based on some uncertain variables such as the personification of institutional powers by the Chief Justice, which the court could not translate into a sound institutional policy pertaining to other state organs. The whole episode of transition which started from the 18th amendment and progressed through judicial directions projects judiciary's institutional autonomy for exercising a veto power over judges' appointment. The underlying objective was to safeguard judiciary from an external scrutiny at the entrance point of appointments and immunity from the accountability at the other end. The newly constituted Court was inclined towards selective adjudication.⁴¹ Instead of right based discourse, the court followed political approach of upholding certain nature of cases and avoiding others.

Moreover, the court's overseeing authority to check executive's performance not only weakened the fragile democratic system, but also flourished a cost to the

institutional reform of judiciary itself. After unnecessary expansion of the *suo motu* authority, public interest litigations have significantly been multiplied in the Superior Courts. Similarly, drastic steps of diminishing judges of the Superior Courts through a single verdict and deviation from Musharraf's accountability for a series of extraconstitutional actions, which could have been a potential deterrent for Military. Such steps adversely affect the consolidation of democracy.⁴²

In this judicial transition, the court remained preoccupied with the expansion of external boundaries of the court system, but it has not succeeded in formulating and implementing the internal agenda to overcome procedural formalities and legal black holes in dispensation of justice. The transformation of judicial activism remained restricted due to its retrospective rather than prospective attitude: fighting the last dictator and not taking any precautions against the future one.⁴³ The invalidation of the NRO, referral of the 18th Amendment to Parliament for reconsideration in the light of its suggestions, and rejection of the Committee's recommendations regarding judges' appointment that amounted to the annulment of the 19th Amendment. The Court further complicated the institutional working of state organs. The Court faced a moral predicament in dealing with the judges who served the regime. The Chief Justice who pushed the PCO-II judges out of the office himself had taken Oath under the PCO-I and had validated Musharraf's takeover in 2000 on the pretext of necessity doctrine, validated referendum as well as the 17th Amendment in 2003, and retention of two offices in 2005.

7. Conclusion

After its restoration in March 2009, both judiciary and Parliament exceptionally emerged and were committed to eliminate direct military intervention. The government, with the help of major political parties, came up with a constitutional package in form of 18th Constitutional Amendment. The underlying objectives of this package were to secure supremacy of Parliament, curb military intervention, and restrain judiciary from validation of extraconstitutional actions. The government was committed to impose modest restrictions on the judiciary, in order to make equilibrium between judicial autonomy and its constraints so introduced a novel system for the appointment of judges to the Superior Judiciary. To diminish individuals' role in the appointment of judges, the government institutionalized the process, which the Supreme Court returned to Parliament for review in light of its recommendations. Parliament complied with the directions of the Court in form of 19th Constitutional Amendment. The Court further held itself to be a right forum, in order to evaluate judges' caliber and legal wisdom and thereby obsolete the Committee's role. Judicial response to Parliament gave an impression that the whole idea of checks and balances has been compromised. By virtue of Article 175A (4), the Commission formulated JCPR, 2010. Rule 3(1) of the JCPR authorizes the Chief Justice of Pakistan to initiate a vacancy in the Superior Judiciary, which made him more powerful both inside and outside the Commission.

Another dilemma, which Pakistan has been going through, is personification of institutions. Individuals whether public representatives or officials serving both in public and private sectors, including the Prime Minister, the Chief Justice, the Chief of Army Staff, and bureaucrats etc are more powerful than their respective

institutions. Most of the efforts whether constitutional or other arrangements are being made to strengthen and protect individuals' interests at the expense of their institutions. Lack of democratization in the institutions created an impasse, which has been adversely affecting democratic consolidation and constitutionalism in Pakistan. In order to achieve fruits of democracy, democratization of institutions is inevitable.

Bibliography

- Adeney, Katharine. "A step towards inclusive federalism in Pakistan? The politics of the 18th amendment." *Publius: The Journal of Federalism* 42, no. 4 (2012).
- Al-Jihad Trust v. Federation of Pakistan, PLD 324 (SC 1996).
- Colin Cookman. *The 18th Amendment and Pakistan's Political Transitions*, center for AM. Progress. (April 19, 2010).
- Constitution (18th Amendment) Act, No. 10 of 2010.
- Constitution (19th Amendment) Act, 2010, No. 1 of 2011.
- Convention against Torture
- Cyril Almedeida. *A More Complicated Script*. Dawn (December, 30, 2011); Zaidi, S. Akbar. "Is Pakistan Collapsing?." *Economic and Political Weekly* (2011).
- Fruman, Sheila. *Will the Long March to Democracy in Pakistan Finally Succeed?*. (US Institute of Peace, 2011).
- Gazdar, Haris. "Democracy in Pakistan: The chasm." *Economic and Political Weekly* (2010): 10.
- Gazdar, Haris. "Judicial activism vs democratic consolidation in Pakistan." *Economic and Political Weekly* 44, no. 32 (2009).
- International Covenant on Economic, Social and Cultural Rights
- Justice Hasnat Ahmed Khan v. Federation of Pakistan, PLD 680 (SC 2011).
- Kalhan, Anil. "'Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan." (2013)
- Khalid, Iram. "Role of Judiciary in the Evolvement of Democracy in Pakistan." *Journal of Political Studies* 19, no. 2 (2012).
- Mehta, Pratap Bhanu. "India's judiciary: The promise of uncertainty." *The Supreme Court versus the Constitution: A Challenge to Federalism* (2006).
- Munir Hussain Bhatti v. Federation of Pakistan, PLD 407 (SC 2011)
- Nadeem Ahmad v. Federation of Pakistan, PLD 1165 (SC 2010).
- Osama Siddique, *Judicial Appointments and Accountability: A Flawed Debate*, Friday Times, (March, 12, 2010).
- Reference No. 01 of 2012, PLD 279 (SC 2013).
- Saroop Ijaz. *Judicial Appointments in Pakistan: Coming Full Circle*. LUMS Law Journal. vol. 1. No. 1 (2014).
- Shah, Nasim Hasan. "Judiciary in Pakistan: A quest for independence." *Pakistan 1997, eds., Baxter, Craig and Charles Kennedy*, 61–78. (Boulder: West view Press 1998).
- Sweet, Alec Stone. "Judicialization and the Construction of Governance." *Comparative Political Studies* 32, no. 2 (1999).
- The Constitution of India, 1950.
- The Constitution of Pakistan, 1973
- The International Covenant on Civil and Political Rights
- Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and judiciary." *Contemporary South Asia* 20, no. 1 (2012).

Notes & Reference

- ¹ Sweet, Alec Stone. "Judicialization and the Construction of Governance." *Comparative Political Studies* 32, no. 2 (1999): 155-56.
- ² Ibid. p161.
- ³ Mehta, Pratap Bhanu. "India's judiciary: The promise of uncertainty." *The Supreme Court Versus the Constitution: A Challenge to Federalism* (2006): 170-73.
- ⁴ Al-Jihad Trust v. Federation of Pakistan, PLD 324 (SC 1996).
- ⁵ Shah, Nasim Hasan. "Judiciary in Pakistan: A quest for independence." *Pakistan 1997*, eds., Baxter, Craig and Charles Kennedy, 61–78. (Boulder: West view Press 1998): 62-63.
- ⁶ Saroop Ijaz. *Judicial Appointments in Pakistan: Coming Full Circle*. LUMS Law Journal. vol. 1. No. 1 (2014): 87.
- ⁷ Article 177 and 260 of the Constitution of Pakistan, 1973.
- ⁸ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and judiciary." *Contemporary South Asia* 20, no. 1 (2012): 25.
- ⁹ Constitution (18th Amendment) Act, No. 10 of 2010.
- ¹⁰ Constitution (Nineteenth Amendment) Act, 2010.
- ¹¹ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and judiciary." *Contemporary South Asia* 20, no. 1 (2012): 25.
- ¹² Al-Jihad Trust v. Federation of Pakistan, PLD 324 (SC 1996)
- ¹³ Saroop Ijaz. *Judicial Appointments in Pakistan: Coming Full Circle*. LUMS Law Journal. vol. 1. No. 1 (2014): 87.
- ¹⁴ Fruman, Sheila. *Will the Long March to Democracy in Pakistan Finally Succeed?*. (US Institute of Peace, 2011): 21-22.
- ¹⁵ Colin Cookman. *The 18th Amendment and Pakistan's Political Transitions*, center for AM. Progress. (April 19, 2010).
- ¹⁶ Khalid, Iram. "Role of Judiciary in the Evolvement of Democracy in Pakistan." *Journal of Political Studies* 19, no. 2 (2012): 135-36.
- ¹⁷ Adeney, Katharine. "A step towards inclusive federalism in Pakistan? The politics of the 18th amendment." *Publius: The Journal of Federalism* 42, no. 4 (2012): 539-565.
- ¹⁸ Gazdar, Haris. "Democracy in Pakistan: The chasm." *Economic and Political Weekly* (2010): 10.
- ¹⁹ Kalhan, Anil. "'Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan." (2013): 68.
- ²⁰ Constitution (18th Amendment) Act, No. 10 of 2010.
- ²¹ Article 6 (amended) of the Constitution of Pakistan, 1973.
- ²² Amending Articles 46, 48, 89, 90, 91, 99, 129, 123, 101, 213, 242, 243, and adding Article 175A to the Constitution of Pakistan, 1973.
- ²³ Repealing Article 58(2)(b) – (C) of the Constitution of Pakistan, 1973.
- ²⁴ Kalhan, Anil. "'Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan." (2013): 69.
- ²⁵ Adding Article 10A: right to fair trial, Article 19A: right to information, and Article 25A: right to education. In order to improve Pakistan's international human rights' compliance, the government also ratified International Covenants such as International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and Convention Against Torture (CAT).
- ²⁶ Amending Articles 157, 160, 172 of the Constitution of Pakistan, 1973.
- ²⁷ Adding Article 175A to the Constitution of Pakistan, 1973.
- ²⁸ Osama Siddique, *Judicial Appointments and Accountability: A Flawed Debate*, Friday Times, (March, 12, 2010).
- ²⁹ Article 209 of the Constitution of Pakistan, 1973 and Article 124(4) and Article 217(1) of the Constitution of India, 1950.

- ³⁰ Kalhan, Anil. "'Gray Zone' Constitutionalism and the Dilemma of Judicial Independence in Pakistan." (2013): 71.
- ³¹ Constitution (19th Amendment) Act, 2010, No. 1 of 2011.
- ³² Cyril Almedeida. *A More Complicated Script*. Dawn (December, 30, 2011); Zaidi, S. Akbar. "Is Pakistan Collapsing?" *Economic and Political Weekly* (2011): 16-20.
- ³³ Nadeem Ahmad v. Federation of Pakistan, PLD 1165 (SC 2010).
- ³⁴ Munir Hussain Bhatti v. Federation of Pakistan, PLD 407 (SC 2011)
- ³⁵ Article 175A of the Constitution of Pakistan, 1973.
- ³⁶ Reference No. 01 of 2012, PLD 279 (SC 2013).
- ³⁷ Saroop Ijaz. *Judicial Appointments in Pakistan: Coming Full Circle*. LUMS Law Journal. vol. 1. No. 1 (2014): 92.
- ³⁸ Justice Hasnat Ahmed Khan v. Federation of Pakistan, PLD 680 (SC 2011).
- ³⁹ Article 209 of the Constitution of Pakistan, 1973.
- ⁴⁰ Saroop Ijaz. *Judicial Appointments in Pakistan: Coming Full Circle*. LUMS Law Journal. vol. 1. No. 1 (2014): 93-95.
- ⁴¹ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and judiciary." *Contemporary South Asia* 20, no. 1 (2012): 29.
- ⁴² Gazdar, Haris. "Judicial activism vs democratic consolidation in Pakistan." *Economic and Political Weekly* 44, no. 32 (2009): 10-11.
- ⁴³ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and judiciary." *Contemporary South Asia* 20, no. 1 (2012): 29.