



When Constitutions Exist but Constitutionalism Fails: A Constitutional History of Pakistan from 1947 to Present

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ABSTRACT

Pakistan's constitutional history contains a paradox. Since gaining independence, the country has implemented three written constitutions as well as numerous constitutional amendments intended to establish and enhance democracy and enforce the use of state powers. Despite the constitutional developments, Pakistan continues to collide with a military coup dislocation of power, political disruption and constitutional crisis. This article examines the constitutional realms of Pakistan from 1947 till the present by distinguishing between existence and practice. In this context, distinction envisaged new laws, principles, and precedents. Pakistan's constitutional problems faced are not because constitutions were not present, but because the political institutions and state actors have constantly violated the constitutional principles. This research applies doctrinal and historical legal research methods on constitutional documents, constitutional amendments, landmark court judgments and major political developments to evaluate the relationship between constitutional text and constitutional practice. Pakistan, this article finds, suffers from weak constitutionalism due to military interference; executive dominance; weak parliamentary traditions; judicial legitimisation of unconstitutional actions; and an underdeveloped constitutional culture. For the stability of constitution to last forever security of constitutional supremacy, independence of judiciary, accountability of executive to the democratically elected parliament and rule of law must be observed by all institutions of the state.

Introduction

A constitution is the highest law of a country. It provides the legal framework for the government, divides powers among state institutions, protects fundamental rights and explains the relationship between the state and its citizens. In a democratic system, the constitution makes sure that government powers are exercised according to law. It provides stability, legitimacy and continuity to the state. However, having a written constitution does not automatically guarantee democracy or constitutional stability. Many countries have written constitutions, but they still face constitutional problems because constitutional rules are not always followed in practice. (Hamid Khan, 2023; Dicey, 1885).

Constitutionalism is a broader concept than a constitution. A constitution provides the legal structure of the state, while constitutionalism requires that all public authorities exercise their powers within constitutional limits. It is based on important principles such as the rule of law, separation of powers, judicial independence, democratic accountability, protection of fundamental rights, and the supremacy of the Constitution. Constitutionalism means that no individual, political

party, military institution, or government is above the Constitution. If constitutional rules are ignored, suspended, or used for political purposes, a country may have a written constitution but still lack constitutionalism. (McIlwain, 1947; Zafar, 2021).

Pakistan is an important example of the difference between a constitution and constitutionalism. Since independence in 1947, Pakistan has adopted three Constitutions in 1956, 1962, and 1973, each intended to establish democratic government and constitutional stability. However, constitutional development has repeatedly been interrupted by military coups, suspension of the Constitution, emergency rule, political crises, and judicial decisions that accepted unconstitutional actions. As a result, Pakistan has experienced constitutional uncertainty despite having written constitutions. (Hamid Khan, 2023; Rizvi, 2000; Talbot, 2012).

Several important events show the gap between constitutional law and constitutional practice. The dissolution of the First Constituent Assembly in 1954, the military coups of 1958, 1977, and 1999, and judicial decisions supporting military governments weakened constitutional supremacy and democratic institutions. Political interests, executive dominance, civil-military imbalance, and legal doctrines such as revolutionary legality and the doctrine of necessity reduced public confidence in constitutional institutions and slowed the development of a strong constitutional culture. (Newberg, 1995; Hamid Khan, 2023).

This article examines why constitutionalism has repeatedly failed in Pakistan despite the existence of written constitutions. Instead of simply describing constitutional events, it analyses the role of Parliament, the executive, the judiciary, political parties, and the military in shaping Pakistan's constitutional history. The study argues that constitutional instability has mainly resulted from the failure of constitutional actors to respect constitutional limits and democratic principles rather than from weaknesses in the constitutional documents themselves. (Talbot, 2012; Jalal, 1995).

The research follows a doctrinal and historical legal method. It relies on constitutional documents, constitutional amendments, landmark judicial decisions, and the writings of leading constitutional scholars. The main argument of this article is that Pakistan's constitutional crisis has not been caused by the absence of constitutions but by the failure to uphold constitutionalism. A written constitution alone cannot ensure constitutional democracy unless all state institutions remain subject to the Constitution, respect the rule of law, protect judicial independence, and follow democratic principles.

Constitution and Constitutionalism: A Brief Conceptual Framework

Before examining constitutional history of Pakistan, it is essential to know the difference between a constitution and constitutionalism. Where as these terms are closely related, they are not similar. A constitution provides the legal structure of the state, whereas constitutionalism relates to the practical application of constitutional principles. Understanding this difference is important because Pakistan has had written constitutions for most of its post-independence history but constitutional governance has continuously faced serious challenges. (McIlwain, 1947; Hamid Khan, 2023).

A constitution is the supreme law of a state. It establishes the structure of government, distributes powers among the legislature, executive, and judiciary, it defines the relationship between the state and its citizens and protects fundamental rights. It also provides the procedures for making laws, conducting elections, amending constitutional provisions and exercising public authority. In democratic societies, the constitution serves as the legal foundation upon which all governmental institutions derive their authority. No law or executive action should be against the constitution because it takes the highest position in the legal hierarchy. (Dicey, 1885; S. M. Zafar, 2021).

On the other hand, the existence of a written constitution solely does not protect democratic governance or constitutional stability. A constitution may exist as a legal document, yet its principles may not be respected in real. For this reason, constitutional scholars distinguish between constitutional text and constitutional practice. A state may possess a detailed constitution while political leaders, public institutions or other state actors continuously breaches its provisions. In such situations, the constitution formally exists, but constitutionalism remains weak. (McIlwain, 1947; Newberg, 1995).

Constitutionalism is a wider concept than a constitution. It is the principle that governmental power must always remain within constitutional limits and the rule of law. Constitutionalism requires that every institution of the state including the executive, legislature, judiciary and armed forces use its powers strictly within the limits given by the constitution. It rejects unprincipled government and contends that political authority must be used through constitutional procedures rather than personal discretion or institutional dominance. (McIlwain, 1947; Sartori, 1987). The important elements of constitutionalism include the supremacy of the constitution, rule of law, separation of powers, judicial independence, protection of fundamental rights, free and fair elections, civilian supremacy and institutional accountability. These principles make sure that no public authority is above the constitution and that governmental power remains accountable to the people through democratic

institutions. So Constitutionalism demonstrates a constitutional culture in which constitutional values are respected not only by courts and political leaders but also by all organs of the state. (Dicey, 1885; Hamid Khan, 2023; S. M. Zafar, 2021).

Constitutional Beginnings: Independence and the Search for Constitutional Government (1947–1956)

Pakistan developed as an independent state on 14 August 1947 following the partition of British India. While independence fulfilled the political ambitions of the Muslims of the subcontinent, the newly created state followed important constitutional, administrative and political challenges. At the time of independence, Pakistan did not have its own constitution so Pakistan continued to be governed under the Government of India Act 1935, as adapted by the Indian Independence Act 1947. This legal arrangement served as a temporary constitutional framework until a permanent constitution could be formulated by the Constituent Assembly. It ensured continuity in governance, it also showed that Pakistan had obtained political independence before making an domestic constitutional order. (Hamid Khan, 2023; Talbot, 2012).

The First Constituent Assembly was given with two fundamental responsibilities. It was required to work as the federal legislature while at the same time drafting a permanent constitution for the new state. Whereas constitution-making proved to be a difficult and lengthy process. Political leaders showed difference in opinion on different constitutional issues including the nature of federalism, the distribution of legislative powers between the federation and the provinces, representation of East and West Pakistan, the role of Islam in the constitutional framework and the particular form of government. These differences caused delay in the framing of a permanent constitution and showed the political divisions that existed during Pakistan's early years. (Hamid Khan, 2023; Sharif Al Mujahid, 2014). An essential constitutional milestone was achieved on 12 March 1949, when the Constituent Assembly adopted the Objectives Resolution on the initiative of Prime Minister Liaquat Ali Khan. The Resolution made declared that sovereignty over the entire universe belongs to Almighty Allah and that the people of Pakistan would use authority through their chosen representatives within the limits prescribed by Islam. At the same time, it affirmed democracy, freedom, equality, social justice, tolerance and the protection of minority rights. Though the Objectives Resolution was not itself a constitution, it laid down the ideological and constitutional principles that later guided the framing of Pakistan's constitutions and ultimately became a substantive part of the Constitution of 1973 through Article 2A. (Objectives Resolution, 1949; Hamid Khan, 2023; S. M. Zafar, 2021).

In spite of this constitutional progress, political instability continued to cause effect the process of constitution-making. The assassination of Prime Minister Liaquat Ali Khan in October 1951 deprived Pakistan of an impactful constitutional leader at a important stage of its constitutional development. Thereafter, frequent changes in political leadership, administrative uncertainty and disagreements between constitutional institutions slowed the work of the Constituent Assembly. Resultantly, Pakistan remained under an interim constitutional arrangement for almost nine years after independence, showing the inability of political actors to reach timely constitutional with mutual understanding. The most serious constitutional crisis of this period occurred on 24 October 1954, when Governor-General Ghulam Muhammad dissolved the First Constituent Assembly before it had completed its constitutional responsibilities. The Governor-General justified/supported his decision by claiming that the Assembly no longer represented the will of the people and had become inefficient. Whereas, many constitutional scholars regarded the dissolution as a direct attack on representative government because the Assembly was actively busy in formulating Pakistan's first constitution. The dissolution caused interruption to the democratic constitution-making process and significantly caused weakened the principle of parliamentary supremacy. It also marked the beginning of executive dominance over constitutional institutions in Pakistan. (Hamid Khan, 2023; Talbot, 2012).

The dissolution of the Constituent Assembly was challenged before the Federal Court in the landmark case of *Federation of Pakistan v. Maulvi Tamizuddin Khan*. Maulvi Tamizuddin Khan, the President of the dissolved Assembly, stated that the Governor-General lacked constitutional authority to dissolve the Assembly. The Federal Court, headed by Chief Justice Muhammad Munir, upheld the Governor-General's action on technical constitutional grounds relating to the requirement of assent to legislation. Although the judgment was dependant upon legal interpretation, its constitutional consequences were profound. By validating the dissolution of the Constituent Assembly, the Court strengthened executive authority at the expense of representative institutions and weakened the principle of constitutional supremacy. Many constitutional scholars identify this decision as the beginning of judicial accommodation of executive power in Pakistan's constitutional history. (*Federation of Pakistan v. Maulvi Tamizuddin Khan*, PLD 1955 FC 240; Hamid Khan, 2023; Newberg, 1995). Following the dissolution of 1st constituent assembly, a Second Constituent Assembly was established to continue the process of constitution-making. Learning from earlier political conflicts, the Assembly aimed at greater political consensus on fundamental constitutional issues. After prolonged deliberations, Pakistan eventually adopted its first Constitution on 23 March 1956. The Constitution declared Pakistan an Islamic Republic, established a parliamentary system of government, recognised fundamental rights, created an independent judiciary and adopted a federal system intended to accommodate both East and West Pakistan. The adoption of the Constitution showed an important constitutional achievement and fulfilled one of

the principal objectives that had remained outstanding since independence. (Constitution of the Islamic Republic of Pakistan, 1956; Hamid Khan, 2023; S. M. Zafar, 2021).

However, the constitutional developments between 1947 and 1956 show that the only process of constitution-making was not sufficient to make constitutionalism. While Pakistan succeeded in drafting constitutional principles and eventually followed its first written constitution, constitutional governance remained weak because constitutional institutions were repeatedly impacted by political instability, executive interference and judicial decisions that supported executive authority. The events of this period reveal that Pakistan's constitutional problems started not with the absence of constitutional documents but with the weakening of constitutional norms and democratic institutions. These early constitutional experiences laid the base for many of the constitutional problems that arised in subsequent decades. (Jalal, 1995; Hamid Khan, 2023; Newberg, 1995).

The First Constitution and Constitutional Breakdown (1956–1958)

The adoption of the Constitution of 1956 on 23 March 1956 made a historic turning point in Pakistan's constitutional development. After almost nine years of constitutional making proces, Pakistan finally replaced the interim constitutional framework with its first domestic constitution. The Constitution declared Pakistan an Islamic Republic and made a parliamentary system of government based on the Westminster model. It recognised the supremacy of the Constitution, guaranteed fundamental rights, introduced an independent judiciary and introduced a federal structure to facilitate the country's provinces. The adoption of the Constitution was widely welcomed as an important step towards democratic governance and constitutional stability. Many hoped that it would make an end to the longer constitutional uncertainty that had existed since independence. One of the most important elements of the 1956 Constitution was the making of a parliamentary form of government in which the Prime Minister served as the head of government whereas the President acted as the constitutional head of state. Executive authority was intended to remain accountable to the National Assembly, showing the democratic principle of responsible government. The Constitution also recognised fundamental rights, including equality before the law, freedom of speech, freedom of religion and protection of life and liberty. Further it adopted a federal system in order to balance the interests of East and West Pakistan by recognising provincial participation in national governance. These constitutional arrangements showed the framers' commitment to representative democracy and constitutional government. (Constitution of Pakistan, 1956; Hamid Khan, 2023; S. M. Zafar, 2021).

In spite of these constitutional achievements, the Constitution of 1956 failed to produce political stability. Continuous changes in government, weak political parties, factional politics and the absence of stable parliamentary majorities prevented democratic institutions from functioning effectively. Between 1956 and 1958, Pakistan witnessed rapid changes in political leadership, making it difficult for elected governments to implement long-term constitutional and administrative reforms. The constitutional framework itself was not defective rather political instability and the inability of constitutional actors to develop democratic traditions weakened its effectiveness. (Talbot, 2012; Jalal, 1995).

Another major constitutional challenge was the continuing concentration of authority in the office of the President, particularly under Iskander Mirza. Though the Constitution established parliamentary democracy, President Iskander Mirza increasingly caused interference in political affairs by dismissing ministries, influencing party politics and exercising powers beyond the spirit of parliamentary government. Such actions weakened parliamentary supremacy and undermined the constitutional principle that elected representatives should determine the composition and continuity of government. This showed that constitutionalism bases not only on constitutional provisions but also on the willingness of political leaders to respect constitutional conventions and democratic norms. (Hamid Khan, 2023; Hasan Askari Rizvi, 2000).

The constitutional crisis reached its climax on 7 October 1958, when President Iskander Mirza abrogated the Constitution of 1956, dissolved the National and Provincial Assemblies, banned political parties and proclaimed martial law throughout the country. He appointed Muhammad Ayub Khan, the Commander-in-Chief of the Pakistan Army, as the Chief Martial Law Administrator. This action ended Pakistan's first constitutional experiment after only two and a half years. The Constitution, which had been adopted with the hope of establishing democratic governance, was set aside through executive action rather than amended or replaced through constitutional procedures. (Hamid Khan, 2023; Talbot, 2012).

Only twenty days after the proclamation of martial law, General Ayub Khan removed Iskander Mirza from office and assumed complete control of the state. Iskander Mirza was forced to resign and leave the country, while Ayub Khan became both the Chief Martial Law Administrator and the supreme political authority. This defined the beginning of Pakistan's first direct military government and basically changed the country's constitutional pattern and development. For the first time, political authority passed directly from civilian leadership to the military outside the constitutional framework. The transfer of power established a precedent that military intervention could replace constitutional government during periods of political instability, a pattern that would recur in later decades. (Hamid Khan, 2023; Talbot, 2012; Rizvi, 2000).

The collapse of the Constitution of 1956 demonstrated that the existence of a written constitution alone was insufficient to secure constitutional governance. Although the Constitution contained democratic principles, recognised fundamental rights and created representative institutions, constitutionalism remained weak because constitutional actors failed to respect constitutional limits. Political instability, executive interference, weak political institutions and the absence of a strong constitutional culture made it easier for extra-constitutional forces to interfere. And also Pakistan's first constitutional experiment ended not because the Constitution itself lacked democratic principles, but because those entrusted with implementing it failed to uphold its spirit and supremacy. (Jalal, 1995; Newberg, 1995; Hamid Khan, 2023).

Military Rule, Constitutional Breakdown and the Birth of the 1973 Constitution (1958–1973)

The imposition of martial law in October 1958 constituted a decisive turning point in Pakistan's constitutional history. Ayub Khan defended his military takeover by stating that parliamentary democracy had failed to provide political stability, effective administration and national unity. According to him, corruption, political rivalries and weak governments had made conditions that justified military intervention. While these arguments influenced some sections of society, they also introduced a dangerous constitutional precedent. Political instability was considered as sufficient justification for suspending constitutional government rather than resolving disputes through democratic institutions. Resultantly, the principle of constitutional supremacy time to time gave way to the doctrine of political necessity, weakening public confidence in constitutional governance. (Talbot, 2012; Hamid Khan, 2023).

A major constitutional development happened in the landmark decision of *State v. Dosso*, where the Supreme Court validated and declared valid the military regime established by Ayub Khan. Chief Justice Muhammad Munir relied upon Hans Kelsen's Theory of Revolutionary Legality, holding that a successful revolution or coup automatically makes or constitutes a new legal order and therefore becomes legally valid. The Court concluded that the military takeover had replaced the previous constitutional system and possessed legal authority. Although the judgment tried to explain the legality of the new regime, it fundamentally changed Pakistan's constitutional jurisprudence by recognising the success of a coup rather than its constitutional validity. (*State v. Dosso*, PLD 1958 SC 533; Munir, 1979; Hamid Khan, 2023).

The *Dosso* judgment elaborates the important distinction between constitutional legality and constitutional legitimacy. Legality relates to the recognition of governmental authority under a legal theory, whereas legitimacy needs that governmental authority be exercised and used in accordance with constitutional principles, democratic consent and the rule of law. Although the Supreme Court considered the military government legally valid under Kelsen's theory, many constitutional scholars state that it lacked constitutional legitimacy because it originated through the abrogation of a democratic constitution rather than constitutional procedures. The judgment weakened constitutionalism by allowing constitutional authority to be replaced through force and compulsion instead of democratic processes. The judicial approval granted in *Dosso* had consequences extending far beyond the Ayub period. It made the impression that successful military interventions could subsequently get judicial recognition and reducing the lessening effect of constitutional protections. Instead of protecting constitutional supremacy, the judiciary became connected with validating unconstitutional political change. This development weakened public confidence in the courts as guardians of the Constitution and contributed to the gradual institutionalisation of extra-constitutional governance in Pakistan. (Newberg, 1995; Jalal, 1995).

In 1962, General Ayub Khan introduced Pakistan's second Constitution, replacing martial law with a constitutional framework that introduced a presidential system of government. Unlike the parliamentary Constitution of 1956, the Constitution of 1962 focused on executive authority in the office of the President, who exercised extra powers over legislation, administration and national policy. Ayub Khan stated that presidential government would provide stronger leadership and greater political stability than parliamentary democracy. On the other hand, critics were of the opinion that the Constitution concentrated power in the executive and significantly reduced parliamentary oversight and political accountability. (Constitution of Pakistan, 1962; Hamid Khan, 2023).

One of the essential elements of the 1962 Constitution was the introduction of the Basic Democracies System, under which local government representatives served as an electoral college for the election of the President and legislative bodies. Although presented as a procedure for advancing grassroots participation, the system limited direct electoral participation by denying citizens the opportunity to elect the President through universal adult franchise. Many constitutional scholars therefore opined that Basic Democracies as an administrative rather than a genuinely democratic institution, designed primarily to consolidate presidential authority. (Talbot, 2012; Jalal, 1995).

In spite of noticeable economic growth and administrative reforms during the 1960s, constitutionalism remained weak. Political parties faced restrictions, parliamentary institutions lacked meaningful authority and executive dominance continued to shape constitutional governance. Economic development improved infrastructure and industrialisation but could not

substitute for democratic accountability, institutional independence and constitutional restraint. This period showed that constitutional stability depends not mere upon economic performance but also upon the effective operation of constitutional institutions. (McGrath, 1996; Hamid Khan, 2023).

By the late 1960s, widespread public dissatisfaction had emerged against Ayub Khan's government. Students, lawyers, workers, journalists and opposition parties organised nationwide protests demanding democratic reforms and constitutional government. At the same time, grievances in East Pakistan caused tension because many Bengalis believed they were politically underrepresented and economically disadvantaged despite constituting the majority of Pakistan's population. These developments exposed the limitations of a constitutional system that concentrated authority while failing to facilitate democratic participation and provincial aspirations. (Talbot, 2012; Jalal, 1995).

In March 1969, Ayub Khan resigned but transferred power to General Agha Muhammad Yahya Khan instead of following constitutional procedures. Yahya Khan imposed martial law immediately and suspended the Constitution of 1962, once again interfering constitutional government. He later promulgated the Legal Framework Order (LFO) 1970, which provided a temporary constitutional arrangement and facilitated Pakistan's first general elections based on universal adult franchise. The elections held in December 1970 produced a decisive victory for the Awami League under Sheikh Mujibur Rahman, giving it a clear constitutional mandate to form the federal government. (Hamid Khan, 2023; Talbot, 2012). But the democratic verdict was not honoured. Political disagreement between the Awami League and the Pakistan Peoples Party, together with military intervention to transfer power, transformed a constitutional dispute into a national crisis. The postponement of the National Assembly session, military action in East Pakistan and later civil war consequently caused to the creation of Bangladesh in December 1971. The separation of East Pakistan remains the greatest constitutional failure in Pakistan's history because it showed the results of ignoring democratic mandates and constitutional rights. Had constitutional procedures been respected after the 1970 elections, the constitutional crisis might have been resolved through political negotiation rather than armed conflict. (Jalal, 1995; Talbot, 2012; Hamid Khan, 2023).

After the resignation of Yahya Khan, Zulfikar Ali Bhutto assumed power in December 1971 and started the process of constitutional reconstruction. The Interim Constitution of 1972 restored constitutional governance while political parties negotiated a permanent constitutional settlement. These negotiations resulted in the unanimous adoption of the Constitution of 1973, which restored parliamentary democracy, strengthened federalism, recognised fundamental rights and reaffirmed judicial independence. Unlike previous constitutions, it was formed through broad political consensus and enjoyed greater democratic legitimacy. Nevertheless, Pakistan's constitutional experience between 1958 and 1973 clearly shows that constitutional documents alone cannot guarantee constitutionalism. Military intervention, judicial support and the failure to respect democratic mandates continuously undermined constitutional governance despite the existence of constitutional frameworks. (Constitution of Pakistan, 1973; Hamid Khan, 2023; Newberg, 1995).

The 1973 Constitution under Pressure: Bhutto, Zia-ul-Haq and Constitutional Distortions (1973–1988)

The adoption of the Constitution of 1973 marked a new start in Pakistan's constitutional history. Unlike the Constitutions of 1956 and 1962, it was framed through consensus among almost all major political parties represented in Parliament. After the traumatic separation of East Pakistan, political leaders recognised that the country needed a constitutional framework capable of promoting democracy, national unity and political stability. The Constitution restored the parliamentary system of government, recognised fundamental rights, strengthened the federal structure and reaffirmed the independence of the judiciary. Because it reflected broad political agreement, the Constitution of 1973 enjoyed greater legitimacy than its predecessors and continues to serve as Pakistan's supreme law. (Constitution of Pakistan, 1973; Hamid Khan, 2023; S. M. Zafar, 2021).

Although Zulfikar Ali Bhutto played a central role in framing the Constitution, his government was increasingly criticised for concentrating political authority in the executive. Bhutto argued that a strong executive was necessary to rebuild the country following the events of 1971 and to implement social, economic, and constitutional reforms. His government introduced several important legislative measures and sought to strengthen state institutions. However, opposition parties and constitutional scholars argued that some governmental actions weakened parliamentary accountability and reduced institutional independence. This period demonstrated that even elected governments must exercise their constitutional powers within legal limits if constitutionalism is to flourish. (Hamid Khan, 2023; Jalal, 1995).

The Fourth Constitutional Amendment (1975) introduced several important constitutional changes relating to the judiciary, preventive detention, and the enforcement of fundamental rights. While the government defended these amendments as necessary for maintaining public order and improving constitutional administration, critics argued that certain provisions reduced judicial protection of individual liberties and expanded executive authority. Similarly, the Fifth Constitutional

Amendment (1976) altered judicial service conditions and affected the powers relating to appointments and retirement of judges. Many constitutional commentators gave opinions that these amendments as weakening judicial independence by increasing executive influence over constitutional institutions. These developments indicated that constitutional amendments, although enacted through constitutional procedures, may still weaken constitutionalism if they disturb the balance among state institutions. (Hamid Khan, 2023; S. M. Zafar, 2021).

The constitutional crisis intensified after the general elections of March 1977. The opposition alliance, known as the Pakistan National Alliance made allegations that the elections had been manipulated and demanded fresh elections. Large-scale demonstrations, strikes and political unrest spread across the country. Instead of resolving the dispute through constitutional dialogue or judicial processes, political confrontation continued to escalate. The crisis reflected the inability of political actors to resolve electoral disputes within constitutional institutions, later creating conditions that once again invited military intervention. (Talbot, 2012; Hamid Khan, 2023).

On 5 July 1977, Chief of Army Staff Muhammad Zia-ul-Haq overthrew the elected government, suspended constitutional institutions and imposed Pakistan's third nationwide martial law. Although the Constitution of 1973 was not formally repealed, many of its provisions were held in abeyance and political authority was transferred to the military government. This development also showed another important element of Pakistan's constitutional history. constitutions may formally continue to exist while constitutionalism is suspended. The military justified its intervention by claiming that it was necessary action to restore order and organise free elections. On the other hand, the promised elections were repeatedly postponed and military rule continued for more than eleven years. (Hamid Khan, 2023; Hasan Askari Rizvi, 2000).

The legality of General Zia-ul-Haq's military takeover was challenged before the Supreme Court in *Begum Nusrat Bhutto v. Chief of Army Staff*. The Court upheld the military government by invoking the Doctrine of Necessity, holding that extraordinary circumstances justified temporary constitutional deviation in order to protect the state and restore public order. Though the judgment emphasised that the military government should organise elections and restore constitutional rule, it provided judicial legitimacy to another extra-constitutional regime. Many constitutional scholars have criticised the decision because it revived the judicial approach previously reflected in *State v. Dosso* and weakened the principle of constitutional supremacy. (*Begum Nusrat Bhutto v. Chief of Army Staff*, PLD 1977 SC 657; Hamid Khan, 2023; Newberg, 1995).

The Doctrine of Necessity occupies a controversial position in Pakistan's constitutional history. Earlier, in *State v. Dosso*, the Supreme Court had validated military rule by relying upon Hans Kelsen's Theory of Revolutionary Legality. However, in *Asma Jilani v. Government of Punjab*, the Supreme Court clearly rejected the reasoning adopted in *Dosso* and declared General Yahya Khan's regime as unconstitutional. The Court reaffirmed that no individual possesses the legal authority to abrogate or suspend the Constitution outside the constitutional framework. Despite this important judgment, the subsequent decision in *Begum Nusrat Bhutto* illustrated the continuing difficulty faced by the judiciary in consistently protecting constitutional supremacy during periods of political instability. (*Asma Jilani v. Government of Punjab*, PLD 1972 SC 139; Hamid Khan, 2023; Newberg, 1995).

During General Zia-ul-Haq's rule, Pakistan went through extra constitutional and legal changes under the policy of Islamization. The government made the Federal Shariat Court to examine whether laws were consistent with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah. The Hudood Ordinances, the Zakat and Ushr Ordinance and various amendments to criminal laws caused to seek to incorporate Islamic principles into Pakistan's legal system. Supporters regarded these reforms as important for strengthening the Islamic identity of the state whereas critics stated that they were also used to enhance the political legitimacy of the military government and extend executive control over constitutional institutions. The most important constitutional development during this period was the Eighth Constitutional Amendment (1985). This amendment retrospectively validated actions taken during martial law and incorporated several constitutional changes introduced by the military government. Most importantly, it inserted Article 58(2)(b), empowering the President to dissolve the National Assembly if, in his opinion, the government could no longer function in accordance with the Constitution. Although Pakistan formally retained a parliamentary system, this amendment increased presidential authority and altered the constitutional balance originally envisaged by the framers of the Constitution of 1973. The amendment later became a major source of political instability because it was repeatedly used to dismiss elected governments before the completion of their constitutional terms. (Constitution (Eighth Amendment) Act, 1985; Hamid Khan, 2023; S. M. Zafar, 2021).

Democratic Restoration, Constitutional Instability and Military Rule (1988–2008)

The death of Muhammad Zia-ul-Haq in August 1988 brought an end to more than a decade of military rule and created an opportunity for Pakistan to restore parliamentary democracy. General elections held later that year resulted in the formation

of an elected government led by Benazir Bhutto, marking the return of civilian rule under the Constitution of 1973. The transition generated public optimism that democratic institutions would gain again their constitutional role and that the period of military dominance had finally come to an end. But despite the restoration of elected governments, constitutionalism remained weak again because the constitutional and political structures inherited from the Zia era continued to influence the balance of power among state institutions. (Hamid Khan, 2023; Talbot, 2012).

One of the most important constitutional legacies of the Zia period was Article 58(2)(b), inserted through the Eighth Constitutional Amendment. This provision empowered the President to dissolve the National Assembly if, in his opinion, the government could no longer work in accordance with the Constitution. Although the provision was incorporated into the Constitution through a constitutional amendment, its repeated use during the democratic period undermined parliamentary stability. Between 1988 and 1996, successive governments led by Benazir Bhutto and Nawaz Sharif were dismissed before completing their constitutional terms. Resultantly, constitutional continuity was repeatedly interrupted despite the existence of elected governments and a functioning constitution. (Hamid Khan, 2023; S. M. Zafar, 2021).

The repeated dissolution of elected governments highlighted an essential constitutional weakness. Though constitutional procedures were formally followed, constitutional powers were continuously exercised for political purposes rather than to preserve constitutional order. Presidential interference became a recurring cause of Pakistan's constitutional politics, reducing the authority of Parliament and weakening public confidence in democratic institutions. These developments demonstrate that constitutionalism needs not only constitutional powers but also constitutional restraint. When constitutional provisions are used to gain political objectives rather than constitutional purposes, democratic governance becomes unstable even without the formal suspension of the Constitution. (Jalal, 1995; Hamid Khan, 2023).

During this period, the judiciary was required to resolve constitutional crisis arising from the dissolution of elected governments. In *Ahmed Tariq Rahim v. Federation of Pakistan*, the Supreme Court examined the constitutional exercise of presidential powers under Article 58(2)(b). Later, in *Ahmed Tariq Rahim v. Federation of Pakistan and Muhammad Nawaz Sharif v. President of Pakistan*, the Court restored the National Assembly after concluding that the dissolution lacked sufficient constitutional justification. These decisions demonstrated a more clear judicial role in protecting parliamentary democracy. But frequent constitutional litigation showed the continuing inability of political institutions to resolve constitutional disagreements through democratic dialogue. (Hamid Khan, 2023; Newberg, 1995).

Following the general elections of 1997, Prime Minister Nawaz Sharif's government introduced the Thirteenth Constitutional Amendment, which repealed Article 58(2)(b) and substantially reduced the discretionary powers of the President. The amendment restored the parliamentary character of the Constitution by strengthening the office of the Prime Minister and limiting presidential authority. Many constitutional scholars regarded this amendment as an important step towards reinforcing constitutionalism because it sought to restore the constitutional balance originally intended by the framers of the Constitution of 1973. (Constitution (Thirteenth Amendment) Act, 1997; Hamid Khan, 2023).

Despite these constitutional changes, institutional conflict continued. Political confrontation between the executive, the judiciary and other state institutions remained a feature of Pakistan's constitutional landscape. Constitutional amendments alone proved insufficient to establish constitutional stability because broader problems relating to political tolerance, institutional independence and constitutional culture remained unresolved. The constitutional experience of the 1990s so demonstrated that constitutional reform must be accompanied by respect for democratic norms and institutional accountability. A new constitutional crisis arises on 12 October 1999, when Chief of Army Staff Pervez Musharraf removed the elected government of Prime Minister Nawaz Sharif and assumed executive authority. The military justified the takeover by alleging political instability, constitutional deadlock, and administrative failure. Once again, constitutional government was interfered again through extra-constitutional means, demonstrating that democratic continuity alone had not succeeded in eliminating military intervention from Pakistan's constitutional politics. (Hamid Khan, 2023; Rizvi, 2000).

The legality of General Musharraf's military government was challenged before the Supreme Court in *Syed Zafar Ali Shah v. General Pervez Musharraf*. The Court validated the military takeover by invoking the Doctrine of State Necessity, while directing the government to restore constitutional rule within a specified period. Though the judgment imposed certain constitutional limitations upon the military government, it continued the historical way in which judicial approval was extended to governments established outside the constitutional framework. Many constitutional scholars argue that the decision weakened constitutional supremacy by allowing political necessity to prevail over constitutional procedure. (Syed Zafar Ali Shah v. General Pervez Musharraf, PLD 2000 SC 869; Hamid Khan, 2023; Newberg, 1995).

General Musharraf introduced also extra constitutional reforms through the Legal Framework Order (LFO) 2002, later incorporated into the Constitution through the Seventeenth Constitutional Amendment. These reforms restored several presidential powers, expanded executive authority, and altered the institutional balance established by the Constitution of

1973. Although the government argued that these changes would improve political stability and administrative efficiency, critics viewed them as another example of constitutional engineering designed to legitimise military rule. The use of constitutional amendments to consolidate executive authority once again illustrated that constitutional change does not necessarily strengthen constitutionalism unless it is guided by democratic consensus and constitutional principles. (Constitution (Seventeenth Amendment) Act, 2003; Hamid Khan, 2023; Talbot, 2012).

The final years of Musharraf's government witnessed one of the most significant constitutional movements in Pakistan's history. In 2007, the suspension of Chief Justice Iftikhar Muhammad Chaudhry and the subsequent declaration of emergency generated widespread opposition from lawyers, judges, political parties, civil society organisations and the media. The Lawyers' Movement became a nationwide campaign demanding judicial independence, restoration of the Constitution and the rule of law. Unlike previous constitutional crises, this movement demonstrated growing public support for constitutionalism and reinforced the principle that constitutional authority must remain subject to judicial oversight and democratic accountability. (Hamid Khan, 2023; Talbot, 2012).

The constitutional developments between 1988 and 2008 reveal a mixed constitutional experience. On the one hand, democratic institutions were restored, constitutional amendments strengthened parliamentary government, and the Lawyers' Movement renewed public commitment to judicial independence. On the other hand, repeated dismissals of elected governments, continuing military interference, judicial validation of extra-constitutional authority and institutional conflict restricted constitutionalism from fully developing.

Constitutionalism in Contemporary Pakistan: Democratic Continuity and Emerging Constitutional Challenges (2008–Present)

The return to democratic government in 2008 marked the start of a new phase in Pakistan's constitutional history. Opposite to an earlier democratic periods, the years after 2008 witnessed greater constitutional continuity. Elected governments increasingly completed their constitutional terms and transferred power through elections instead of military intervention. This created hope that Pakistan was moving towards a more stable constitutional system. On the other hand, constitutional continuity alone did not ensure constitutionalism. Although the Constitution remained in practice, constitutional disputes continued in the form of institutional conflicts, political polarization, judicial controversies, and disagreements over the distribution of constitutional powers. An important constitutional development at the beginning of this period was the Supreme Court's decision in *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 SC 879). The Court declared the Proclamation of Emergency of 3 November 2007 and the Provisional Constitutional Order (PCO) unconstitutional. It restored the supremacy of the Constitution, reaffirmed judicial independence, and rejected the use of extra-constitutional measures to suspend the Constitution. The judgment also made it clear that no individual or institution has the authority to act above the Constitution. This decision strengthened public confidence in constitutional governance and became an important step towards restoring the rule of law in Pakistan. (*Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2009 SC 879; Hamid Khan, 2023).

One of the most important constitutional reforms during this period was the Constitution (Eighteenth Amendment) Act, 2010. The amendment was passed with the agreement of almost all major political parties and is considered one of the most significant constitutional reforms since the adoption of the 1973 Constitution. It restored the parliamentary character of the Constitution by removing the President's power under Article 58(2)(b) to dissolve the National Assembly. It also strengthened provincial autonomy, expanded the powers of Parliament, and transferred many legislative subjects to the provinces. These reforms aimed to reverse constitutional changes introduced during previous military governments and strengthen parliamentary democracy and federalism. The Eighteenth Amendment also introduced important reforms regarding judicial appointments. It established the Judicial Commission of Pakistan and the Parliamentary Committee to make the appointment of judges more transparent while protecting judicial independence. Although these reforms improved the constitutional framework, debates continued over the proper balance between judicial independence, parliamentary oversight, and institutional accountability. These discussions reflected the continuing challenge of strengthening constitutional institutions while maintaining the separation of powers. (Constitution (Eighteenth Amendment) Act, 2010; Hamid Khan, 2023).

Another important feature of this period has been the increasing role of the superior judiciary in constitutional governance. Through judicial review, the Supreme Court examined matters relating to executive authority, legislation, elections, and the protection of fundamental rights. Judicial activism helped promote constitutional accountability by ensuring that government actions remained subject to constitutional review. However, some critics argued that excessive judicial involvement in political matters could affect the constitutional balance among state institutions. The debate shows that constitutionalism requires both an independent judiciary and mutual respect among all constitutional organs. (*Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2009 SC 879; Hamid Khan, 2023; Newberg, 1995).

One of the most significant constitutional events of this period was the Panama Papers case, which resulted in the disqualification of Prime Minister Muhammad Nawaz Sharif in 2017. Supporters viewed the decision as proof that even the highest public office is subject to the Constitution and the rule of law. Others argued that increasing judicial involvement in political matters could disturb the constitutional balance between elected institutions and the judiciary. Regardless of different opinions, the case highlighted the growing importance of constitutional accountability in Pakistan's democratic system. Another important achievement of this period has been the peaceful transfer of power through the general elections of 2008, 2013, 2018, and 2024. For the first time in Pakistan's constitutional history, several elected governments completed their constitutional terms and transferred power through democratic elections rather than military intervention. This strengthened constitutional legitimacy and increased public confidence in representative government. However, political disputes regarding election management, parliamentary majorities, constitutional interpretation, and relations among state institutions continued to create constitutional challenges. (Election Commission of Pakistan; Hamid Khan, 2023).

Despite these democratic achievements, Pakistan continues to face important constitutional challenges. Political polarization has often reduced constructive dialogue in Parliament, while disagreements between constitutional institutions have sometimes created governance problems. Questions relating to judicial independence, separation of powers, executive authority, constitutional appointments, and federal-provincial relations continue to generate constitutional debate. These issues show that constitutionalism depends not only on the existence of a constitution but also on the willingness of political leaders and state institutions to resolve disputes within the constitutional framework. (Talbot, 2012; Hamid Khan, 2023).

A major recent constitutional development was the Constitution (Twenty-sixth Amendment) Act, 2024. The amendment introduced important changes relating to the structure of the judiciary, including reforms concerning the appointment of the Chief Justice of Pakistan, constitutional benches, and other judicial matters. Supporters argued that these reforms would improve judicial efficiency and institutional accountability. Critics, however, expressed concerns that some changes could affect judicial independence and alter the constitutional balance among state institutions. The debate surrounding the Twenty-sixth Amendment demonstrates that constitutional reform remains an ongoing process in Pakistan's constitutional democracy. (Constitution (Twenty-sixth Amendment) Act, 2024; Hamid Khan, 2023).

Another continuing constitutional issue is the relationship between civilian institutions and the military establishment. Although Pakistan has not experienced another direct military takeover since 2008, constitutional scholars continue to discuss the proper constitutional role of all state institutions in a democratic system. Strong constitutionalism requires every institution, including the military, judiciary, executive, and Parliament, to exercise only those powers given by the Constitution while respecting the constitutional responsibilities of others. Civilian supremacy and mutual institutional respect remain essential for strengthening constitutional governance in Pakistan. Overall, constitutional developments since 2008 present a more encouraging picture than many earlier periods of Pakistan's constitutional history. Democratic continuity, important constitutional reforms, stronger provincial autonomy, and greater public awareness of constitutional rights have contributed to constitutional progress. At the same time, constitutionalism remains a continuing process rather than a completed achievement. Political polarization, institutional tensions, judicial controversies, and debates over constitutional reforms continue to test Pakistan's constitutional system. The experience of this period shows that a written constitution alone is not enough. Lasting constitutional stability requires respect for constitutional supremacy, judicial independence, democratic accountability, federalism, the rule of law, and civilian supremacy by every institution of the state. (Rizvi, 2000; Hamid Khan, 2023; Talbot, 2012; Zafar, 2021).

Why Constitutionalism Has Repeatedly Failed in Pakistan

Pakistan's constitutional history shows that the country's constitutional problems have not been caused by the absence of a written constitution. Since independence, Pakistan has adopted three permanent constitutions and introduced many constitutional amendments. However, political instability, military rule, constitutional crises, and conflicts between state institutions have continued. This shows that Pakistan's main problem has been the failure to follow constitutionalism rather than the failure to make constitutions. (Hamid Khan, 2023; Talbot, 2012).

One of the main reasons for this failure has been the repeated intervention of the military in politics. Military takeovers in 1958, 1977, and 1999 removed elected governments and stopped the normal constitutional process. These interventions weakened democracy and reduced the role of Parliament. They also created the belief that political problems could be solved through extra-constitutional actions instead of elections and constitutional procedures. As a result, the principle of civilian supremacy remained weak. (Hasan Askari Rizvi, 2000; Hamid Khan, 2023).

The judiciary has also played an important role in Pakistan's constitutional history. The courts are expected to protect the Constitution, but in some important cases, such as *Federation of Pakistan v. Maulvi Tamizuddin Khan*, *State v. Dosso*, *Begum*

Nusrat Bhutto, and Syed Zafar Ali Shah, the courts accepted governments that came to power outside the Constitution. Although the Supreme Court later restored the principle of constitutional supremacy in *Asma Jilani v. Government of Punjab*, these different approaches reduced public confidence in the judiciary. (Newberg, 1995; Hamid Khan, 2023).

Another reason for weak constitutionalism has been the concentration of power in the executive and the weakness of democratic institutions. Many governments tried to increase executive powers, while political parties often remained divided and focused on political rivalry instead of democratic cooperation. Political disputes were frequently taken to the courts instead of being resolved through Parliament. At the same time, constitutional values were often ignored for political interests, preventing the development of a strong constitutional culture. (S. M. Zafar, 2021; Jalal, 1995; McIlwain, 1947).

There has also been a clear gap between the Constitution and its implementation. Although the Constitution guarantees democracy, fundamental rights, judicial independence, federalism, and the rule of law, these principles have not always been followed in practice. However, democratic continuity since 2008, the Eighteenth Constitutional Amendment, and the Lawyers' Movement have strengthened constitutional governance and increased public awareness of constitutional rights. (Constitution (Eighteenth Amendment) Act, 2010; Hamid Khan, 2023).

Conclusion

Pakistan's constitutional journey from 1947 to the present demonstrates a clear distinction between the existence of a written constitution and the practice of constitutionalism. Throughout its history, Pakistan has adopted three permanent constitutions, introduced numerous constitutional amendments, and established constitutional institutions designed to promote democratic governance, protect fundamental rights, and regulate the exercise of state power. Despite these constitutional developments, the country has repeatedly experienced military interventions, constitutional suspensions, political instability, judicial controversies, and institutional conflicts. This study therefore concludes that Pakistan's constitutional challenge has never been the absence of constitutions; rather, it has been the repeated failure to uphold constitutionalism in both law and practice. (Hamid Khan, 2023; Talbot, 2012).

The historical analysis presented in this article demonstrates that constitutional instability has resulted from a combination of political, institutional, and judicial factors. Military intervention repeatedly interrupted democratic governance and weakened civilian supremacy. Political actors often prioritised immediate political interests over constitutional principles, while constitutional amendments were, at times, used to consolidate political authority rather than strengthen democratic institutions. Similarly, judicial decisions validating extra-constitutional governments created uncertainty regarding the supremacy of the Constitution and reduced the effectiveness of constitutional safeguards. These developments collectively prevented the gradual evolution of a stable constitutional culture. (Newberg, 1995; Hasan Askari Rizvi, 2000; Hamid Khan, 2023).

The study also reveals that constitutionalism depends not merely upon the quality of constitutional documents but upon the conduct of constitutional actors. A constitution may provide an effective legal framework, yet constitutionalism cannot flourish unless the legislature, executive, judiciary, military, and other public institutions consistently exercise their powers within constitutional limits. Respect for constitutional supremacy, democratic accountability, judicial independence, federalism, protection of fundamental rights, and the peaceful transfer of political power are essential elements of constitutional governance. Pakistan's constitutional experience confirms that constitutional texts alone cannot prevent constitutional crises if these fundamental principles are not observed in practice. (McIlwain, 1947; S. M. Zafar, 2021).

At the same time, Pakistan's recent constitutional developments provide cautious grounds for optimism. Democratic continuity since 2008, the peaceful transfer of power through successive elections, the strengthening of provincial autonomy under the Eighteenth Constitutional Amendment, and greater public awareness of constitutional rights indicate that constitutional governance has gradually become more stable than in previous decades. Nevertheless, continuing debates concerning judicial reforms, civil-military relations, political polarization, and constitutional amendments demonstrate that constitutionalism remains an evolving process rather than a fully established constitutional reality. Sustained constitutional progress therefore requires institutional maturity, political tolerance, and unwavering commitment to constitutional values by all organs of the state. (Hamid Khan, 2023; Talbot, 2012).

Recommendations

Based on the findings of this research, several recommendations may strengthen constitutionalism in Pakistan.

1. All state institutions should strictly adhere to the principle of constitutional supremacy, ensuring that no individual or institution exercises authority beyond constitutional limits.

2. judicial independence should be protected while maintaining transparency and accountability within the judicial system.
3. Parliament should be strengthened as the principal forum for resolving political disagreements through democratic debate rather than institutional confrontation.
4. All political actors should respect electoral mandates and constitutional procedures, thereby discouraging extra-constitutional methods of political change. Fifth, constitutional education should be promoted within educational institutions, the legal profession, and public service to cultivate greater public understanding of constitutional rights, responsibilities, and democratic values.
5. Constructive cooperation among the legislature, executive, judiciary and other constitutional institutions should replace institutional rivalry, strengthening public confidence in constitutional governance.

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