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## Independence of Judiciary in Malaysia and Pakistan: The Way Forward

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### Abstract

*The provisions relating to the independence of the judiciary in the Islamic Republic of Pakistan and Malaysia are deficient and require reforms for securing the independence of the judiciary fully and more meaningfully. The purpose is to identify lacunas in the Constitutions of Pakistan and Malaysia relating to the doctrine of the independence of the judiciary and press for reforms. Comparative analyses of Malaysia and Pakistani constitutions have been made to press for reforms. Findings mandate revision of the Constitutions of Malaysia and Pakistan in the interest of independence of the judiciary and impartial decision-making. Results are very important in relation to proposing a solution for judicial discipline, quality of judgments, and justice according to law. Such conclusions drawn are the first of their kind after considering the constitution of Pakistan and Malaysia cumulatively.*

**Keywords:** Independence of Judiciary, Malaysia, Islamic Republic of Pakistan, Reforms, Constitution.

### Introduction

Independence of the judiciary implies that the judiciary should be free from external influences that may affect decision-making. It also means that the judiciary should be independent of the executive and the legislature. Article 10 of the Universal Declaration of Human Rights states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The definition of

independence of the judiciary is not found in international instruments. It is regarded as essential for impartial decision-making. What is independence of judiciary can be gleaned from looking at the constitutions where it is established. The Islamic Republic of Pakistan has prescribed a detailed scheme in the constitution for the independence of the judiciary. Similarly, the constitution of Malaysia has provisions to ensure the independence of the judiciary. Despite the presence of provisions relating to the independence of the judiciary in the constitutions of Malaysia and Pakistan, reforms are required to secure the independence of the judiciary fully. This research has ramifications in providing a guideline for the provisions relating to the independence of the judiciary around the world. The objective is to propose reforms relating to the independence of the judiciary in an impartial way that may satisfy the dictates of the doctrine of the independence of the judiciary.

## Methodology

The methodologies adopted for this research are doctrinal and comparative legal research. The doctrinal study involves studying legal provisions and analysing court decisions to find a coherent meaning of the law. Provisions relating to the independence of the judiciary in Malaysia and Pakistan have been analyzed comparatively for a better understanding of the independence of the judiciary in these countries while pressing for reforms. A comparative case study is a research method that involves analyzing and comparing two or more cases to draw conclusions about similarities and differences between them. It is often used in social sciences to explore how different variables affect outcomes in different contexts. In the present research comparisons of Malaysia and Pakistan have been drawn relating to the independence of the judiciary for a better understanding of the phenomenon while proposing reforms. The Constitution of the Islamic Republic of Pakistan has been chosen as a field of study for the independence of the judiciary in this research as courts in Pakistan have zealously guarded their independence while directing modification of the constitution accordingly to preserve the independence of the judiciary. Malaysia is randomly chosen as a sample study in comparison with Pakistan as it also inherited the British legal system like Pakistan after independence from the white colonists.

## Results

Results propose reforms to the constitution of Malaysia and the Islamic Republic of Pakistan for securing the independence of the judiciary fully and more meaningfully. Pakistan and Malaysia need to do away with the power of the President to pardon, remit, reprieve, suspend, and commute punishments. A merit-based judiciary induction system may be introduced in both countries with rigorous assessment and training to produce conscientious judges. It is proposed that the impeachment process for the judiciary may be streamlined by constituting a tribunal of retired judges to hear cases relating to the misconduct of judges. This tribunal inter-alia be mandated to impose costs wherein frivolous charges have been pressed against the judges. Moreover, such a tribunal should work independently of the executive. Mandatory timeframe for decision in such cases be provided. Contempt law may be reformed by curtailing such power to a case pending before the Court for whose obstruction imprisonment may be imposed but when the contempt relates only to the conduct in court proceedings i.e. demeanor etc., only nominal fines may be imposed. The findings propose that conduct of a judge may be discussed in parliament if supported by a resolution of 1/4<sup>th</sup> of the legislative assembly members as in the case of Malaysia. The practice of employment of retired judges on special tribunals should be discontinued.

## Meaning of the Concept, ‘Independence of Judiciary’

According to European Court of Justice in 1CJEU, “Combined Cases C-585/18, C-624/18, and C-625/18, ECLI:EU:C:2019:982, Judgment of 19 November 2019, para. 127”, to establish a court as

independent, regard must be had to the method of appointment of judges, their tenure guarantees against outside pressure, and how much it appears as independent. The impartiality of the judiciary is closely linked to the independence of the judiciary. While “the independence of the judiciary relates to institutional arrangements, impartiality relates to the state of mind of the court (the judge) towards the issues and parties in a case. No prejudice, preference, or bias is to be expressed in any way at hearings or otherwise” (*Perceptions of the independence of judges in Europe*). “Independence of judiciary” doctrine is an outshoot of the separation of power theory with the judiciary exercising checks over executive actions (Ahmed and Safdar, 2020). “Independence of the judiciary” is considered an essential feature of the constitution around the world and many a time forms part of the basic structure doctrine (Mir, 2015). In the constitutions of Malaysia and Pakistan, independence of the judiciary has been taken to mean independence from other organs of government. How it has been established in Pakistan and Malaysia will be seen in detail by looking at their respective constitutions and precedents.

### Independence of Judiciary in Pakistan

The preamble to the Constitution of the “Islamic Republic of Pakistan”, 1973 states that the independence of the judiciary shall be fully secured in Pakistan (Constitution of Pakistan, 1973). The objective resolution which forms the fundamental principles forming “the Constitution of Pakistan” also states that independence of the judiciary shall be fully secured in Pakistan (Pakistan, 1973) (Khan, 2020). Article 7 of the Constitution of the Islamic Republic of Pakistan, 1973 exempts the judiciary from the definition of the state (Pakistan, 1973). “Article 68 of the Constitution of the Islamic Republic of Pakistan states that no discussion shall occur in the parliament concerning the conduct of any Supreme Court or High Court judge in discharging his duties” (Pakistan, 1973). The remuneration of Supreme Court and High Court judges is paid from the consolidated fund under the constitution. The expenditures charged on this fund are not subject to voting in the parliament and provincial assemblies (Pakistan, 1973).

Article 175 (A) has been inserted in the “Constitution of Pakistan through the 18<sup>th</sup> and 19<sup>th</sup> amendments prescribing the appointment of Judges to the Supreme Court, High Courts, and the Federal Shariat Court. This Article commands that there will be a judicial commission of Pakistan for recommending the appointment of Judges to the Supreme Court, High Courts, and the Federal Shariat Court”. “The composition of the judicial commission of Pakistan comprises mostly senior judges accompanied by law ministers, advocate generals, and a senior advocate. The Commission through majority opinion of its total membership nominates to the Parliamentary Committee, individuals for appointments as Judges in the Supreme Court, a High Court, or the Federal Shariat Court”. “The parliamentary committee consists of members of parliament from the treasury and opposition benches. It is mandated by the constitution for the parliamentary committee to confirm the nominee/nominees of the judicial commission by a majority of its total membership within fourteen days of the nomination, failing which the nomination is deemed to have been so confirmed as proposed by the judicial commission” (Pakistan, 1973).

However, “the sole authority to initiate a hopeful's name, for consideration by the Judicial Commission, is with the Chief Justice of the jurisdiction, who is not mandated to give any reasons for his inclinations”. Neither he is obligated to give any public notice inviting applications.

The “initial case which discussed the constitutional amendments pertaining to judicial and parliamentary commissions is *Nadeem Ahmed Advocate v Federation of Pakistan*”. The petitioners, “in this case, made the following recommendations relating to the 18<sup>th</sup> amendment in the Constitution of Pakistan”, which were made the basis for asking parliament again to reconsider amendments to the constitution on the following terms.

- i. “That instead of two most senior judges of the supreme court being part of the judicial commission, the number should be increased to four most senior judges.
- ii. That when a recommendation has been made by the judicial commission for the appointment of a candidate as a judge, and such recommendation is not agreed/agreeable by the committee of the parliamentarians as per the majority of 3/4<sup>th</sup>, the committee shall give very sound reasons and shall refer the matter back to the judicial commission for reconsideration. The judicial commission upon considering the reasons if again reiterates the recommendation, it shall be final, and the president shall make the appointment accordingly.
- iii. That the proceedings of the parliamentary committee shall be held in camera and a detailed record of its proceedings and deliberations shall be maintained.”

In “*Munir Bhatti’s case* (PLD 2011 SC 407), a four-member bench decision held that the Parliamentary Committee has no authority to challenge proposals of the Judicial Commission” on the competence and fitness of candidates. It can only look into antecedents of candidates which are judicially reviewable. This shows that judicial appointments are almost judicially controlled on the pretext of “independence of the judiciary”.

Article 209 of the “Constitution of the Islamic Republic of Pakistan provides the procedure for the removal of the superior court judges. It authorizes the supreme judicial council to deal with cases relating to the capacity or conduct of superior court judges”. The Supreme Judicial Council comprises persons from the judicial branch only i.e., superior court judges (Pakistan, 1973). “Supreme Judicial Council in Pakistan has framed rules under Article 209 of the Constitution of Pakistan, 1973 to regulate its proceedings”. These rules also provide the grounds for the impeachment of superior court judges. However, no accountability of superior court judges on grounds of misapplication of law has been prescribed in such rules (Admin & Admin, 2020). Therefore, the removal of superior court judges is exclusively controlled by peers of the judiciary in the constitutional dispensation of Pakistan for the independence of the judiciary.

The retiring age for a Supreme Court and High Court judge is 65 and 62 respectively. This retirement age is above the normal retirement age for other government servants. The special procedure for the removal of a judge and exceeding retiring age has been prescribed in the constitution for the security of tenure of the respective judges under the independence of judiciary doctrine (Pakistan, 1973). The accountability and appointment of subordinate court judges are regulated by respective high courts under Article 203 of the “constitution of the Islamic Republic of Pakistan” (Pakistan, 1973). Each High Court in Pakistan makes its own rules of procedure under Article 202 of the constitution of Pakistan (Pakistan, 1973). Moreover, the Supreme Court of Pakistan and respective high courts are empowered to make “rules in relation to their working staff with the consent of the President of Pakistan” in the case of the Supreme Court and the Governor of the respective province in the case of High courts (Pakistan, 1973).

Article 204 of “the Constitution of the Islamic Republic of Pakistan, 1973, in relation to contempt of Court, stipulates that superior courts in Pakistan have the power to penalize any person for contempt of court and such power to punish for its contempt also includes the offense of scandalizing the court or bringing any judge of the superior court into hatred ridicule or contempt”. “Article 204 further postulates that doing anything which prejudices the determination of a matter before the court constitutes contempt of court” (Constitution of Pakistan, 1973). The above scheme is prescribed in the constitution of Pakistan to preserve the independence of the judiciary.

Article 175 of “the Constitution of Pakistan also declares that the judiciary will be separate from the executive” (Constitution of Pakistan, 1973). “Independence of the judiciary has been held to mean in the *Sharaf Faridi case*”:

“That every judge is free to decide matters before him in accordance with his assessment of facts and his understanding of the law without improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason”; and “That the judiciary is independent of the executive and legislature and has jurisdiction directly or by way of review”, over all issues of a judicial nature. This is a significant judgment on the independence of judiciary prescribing guidelines for judicial independence (*Government Of Sindh Through Chief Secretary Of Govt Of Sindh, Karachi And Others vs. Sharaf Afridi And Others*). It was declared in *Asad Ali vs. Federation of Pakistan*, that, “judicial independence is not an end in itself but is a means to promote impartial decision making (*Asad Ali vs. Federation of Pakistan*).

Special judicial allowance has been allowed to the court staff and judges across Pakistan in their pay and pensions respectively (*Muhammad Sher Shah and others vs. Government of N.W.F.P and another, Dawood Sigarand others vs. Government of Sind and others, Government of Punjab and others vs. Syed Riaz Ali Zaidi, Secretary Law and Prosecution Gilgit Baltistan and others vs. Aslam Khan and others*). The addition of special judicial allowance means that all the judges and court staff are entitled to three times more pay than other people working in similar governmental positions across Pakistan. This allowance has been added to the respective pays of the court staff and judiciary by the judiciary itself implying such powers of conferment from the independence of judiciary doctrine. (*Muhammad Sher Shah and others vs. Government of N.W.F.P and another, Dawood Sigar and others vs. Government of Sind and others, Government of Punjab and others vs. Syed Riaz Ali Zaidi, Secretary Law and Prosecution Gilgit Baltistan and others vs. Aslam Khan and others*).

Article 45 of the Constitution of Pakistan grants the President of Pakistan the power to pardon, commute, reprieve, remit, suspend, etc. any sentence passed by any court of law (Constitution of Pakistan).

### **Independence of Judiciary in Malaysia**

The court structure in Malaysia is like that of Pakistan. It consists of a subordinate judiciary and an appellate structure constituting high courts, the court of appeals, and federal courts (Constitution of Malaysia). “The judges of the superior courts in Malaysia are appointed by the King/ Yang di-Pertuan Agong of Malaysia on the advice of the Prime Minister after consulting with the conference of rulers” (Constitution of Malaysia). “The Prime Minister of Malaysia is also required to consult the relevant Chief Minister and Chief Justice of the Federal Court or High Court for this purpose” (Constitution of Malaysia). The tenure of office of a judge of the superior court in Malaysia is till the age of 66 years (Constitution of Malaysia). The judge of a superior court in Malaysia can be removed from office on grounds of misconduct or breach of the code of ethics through a tribunal constituted by Yang di-Pertuan Agong. Such a tribunal consists of peers of judges only. The proceedings for such misconduct are to be initiated by the Prime Minister of Malaysia (Constitution of Malaysia). The superior courts in Malaysia are also empowered to punish for their contempt (Constitution of Malaysia). Moreover, discussion relating to the conduct of any judge of the superior court can only be initiated through a resolution of the 1/4<sup>th</sup> of the members of the legislative assembly (Constitution of Malaysia). Like the case of Pakistan, the King of Malaysia has the power to pardon punishment of offenses but only in relation to discretionary punishments i.e., punishments not covering the rights of Allah Almighty (Constitution of Malaysia).

The salary of the superior court judiciary in Malaysia is paid from the federal consolidated fund (Constitution of Malaysia). The salaries of judges in Malaysia are determined by an independent body known as the Judicial Appointments Commission. This ensures that judges are not influenced by financial considerations when making decisions. In the case of *Public Prosecutor v. Kok Wah Kuan* [1981] 1 MLJ 212, the Federal Court of Malaysia held that the independence of the judiciary was an integral part of Malaysian Constitution. In the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat* (2017), The Malaysian Supreme Court emphasized that Courts should be free from pressure of other government organs.

### Analysis and Reforms

The constitution of Malaysia and the Islamic Republic of Pakistan have provisions securing the independence of the judiciary, however, there is a lot of scope for reforms in both countries. Independence of the judiciary has been consistently held to mean separation from direct or indirect control of executive and legislature (*Government Of Sindh Through Chief Secretary Of Govt. Of Sindh, Karachi And Others vs. Sharaf Afridi And Others*) (Constitution of Pakistan, 1973). The President's power in Malaysia and Pakistan to pardon, remit, reprieve, suspend, commute, etc. punishments of offenses is in contradiction to the dogma of independence of the judiciary. The appellate power from the decisions of the judiciary can only be conferred on the judiciary itself and such power in the hands of the executive from the decisions of the judiciary is an anomaly. Therefore, both Pakistan and Malaysia may do away with the power of the President to pardon punishments.

The judiciary controls the "appointment of Superior Court judges in Pakistan" (Constitution of Pakistan, 1973). In contrast, the appointment process of the superior judiciary in Malaysia is controlled by the executive as discussed above. The executive's control of the appointment process of judges conflicts with the doctrine of the independence of the judiciary. The "Islamic Republic of Pakistan" and Malaysia need to strengthen the appointment process of the judiciary ensuring compliance with the "independence of judiciary" doctrine. Both countries prescribe direct elevation as the mode of appointment for a superior judiciary. Independence of the judiciary may not be ensured unless merit prevails through a rigorous selection process and training to promise the assembly of conscientious judges. Therefore, a merit-based judiciary induction system may be introduced in both countries with rigorous assessment and training to produce conscientious judges. This proposed project may be controlled by the judiciary itself guaranteeing transparency. Moreover, such inductions may be subject to judicial review. The impeachment process of the superior judiciary in Malaysia and Pakistan is primarily controlled by the judiciary itself. The literature outlines four key methods of judicial appointments: "(a) single-body appointment mechanisms"; (b) "professional appointments"; (c) "cooperative appointment mechanisms"; and (d) "representative appointment mechanisms" (Khan, 2023). Single body mechanism means appointment by a single institution like executive appointments of judges in Malaysia. In the professional mechanism, peer judges appoint judges. This has the downside of negatively affecting the independence of the judiciary because appointed judges can be influenced by peers. The cooperative method involves two institutions jointly approving judicial appointments like in Brazil where nominations for President are confirmed by the Senate. In "the representative method, two or more institutions independently appoint a certain amount of judges" e.g. Mongolia where a certain amount of judges are appointed by the judiciary and certain by the parliament (Khan, 2023). Countries like South Africa have an independent body comprising individuals from all walks of life to appoint judges. However, such a mechanism if supplemented with merit-based exams will have the effect of ensuring capable people's appointments.

In Pakistan, any person can file a complaint with the supreme judicial council relating to the conduct of any judge. However, there is no time frame for the completion of proceedings in such

cases therefore, cases are mostly not taken up. Furthermore, the permissibility of filing impeachment proceedings with any person increases the risk of frivolous petitions to harass judges (SC Judge Justice Iqbal Hameedur Rehman resigns). In the case of Justice Iqbal Hameed ur Rehman, he was constrained to retire following a petition against him for his removal before the supreme judicial council. The facts of the case go as that “Justice Iqbal Hameed ur Rehman as Chief Justice Islamabad High Court made” certain appointments directly pursuant to powers given to him under Article 209i.e., rule-making power of high courts in “Constitution of the Islamic Republic of Pakistan” read with the establishment rules of Islamabad High Court that provided for unlimited powers to Islamabad High court Chief Justice to appoint any person. The case came before Supreme Court in public interest litigation wherein employees of the High Court having grudges against the directly appointed employees also became a party (“*Ch. Muhammad Akram v. Registrar, Islamabad High Court, and others*”). An erroneous decision declaring the direct appointments as illegal followed pursuant to which a reference was filed by an advocate against “Justice Iqbal Hameed ur Rehman consequently retired pursuant to filing of reference”. However, the supreme court decision declaring the appointments as illegal was later overruled by “the Supreme Court of Pakistan itself” (*Gul Tiaz Marwat v Peshawar High Court etc.*). It is therefore proposed that the impeachment process for the judiciary requires proper streamlining. This may be done by constituting a tribunal of retired judges independent of the executive, to hear cases relating to the misconduct of judges. This tribunal inter-alia be mandated to hear and impose damages where in frivolous charges have been pressed against the judges. Further, a mandatory time period provided for decisions in cases of impeachment of judges is provided so that such cases do not go unnoticed as in the case of Pakistan. As has been said earlier, the independence of the judiciary postulates is only for ensuring impartial judicial decision-making. “*Loh Kooi Choon v. Government of Malaysia*” (1977), The Federal Court in Malaysia ruled that the removal of a judge from office required a tribunal and due process. It emphasized the importance of an independent judiciary as a safeguard against abuse of power. Therefore, the doctrine should be enforced to promise impartial decision-making. In this regard training of judges is extremely essential. If we look at the example of Pakistan, then we notice that the subordinate court judges are inducted without any formal training. The subordinate court judges in Pakistan are empowered with unlimited pecuniary jurisdiction under West Pakistan Civil Courts Ordinance, 1962. This has the effect of empowering such judges with the tremendous responsibility of holding complete trials at the first instance which are subject to appeal. To ensure the independence of subordinate court judges which also implies impartial decision-making, it is imperative that judges are adequately trained. The training should ensure that judges do not trespass the mandate of law and strict methodologies set up through precedents of superior courts. In this regard, therefore rigorous training needs to be introduced which produces the desired judges while the rest that are not up to mark are left behind. This is even more imperative as enhanced pay for judicial dispensation has been held as sine qua non for judges. As the judges draw more salaries than other organs of the state so impartial judicial decision-making ensuring the quality of judgments must be induced from them. In the “*case of Justice Shetty v. Union of India (AIR 1991 SC 573)*”, the Supreme Court of India held that adequate pay and other benefits were necessary to ensure the “independence of the judiciary”. The Court emphasized that judges must be insulated from economic and other influences that could compromise their impartiality and integrity and that higher salaries and better working conditions were necessary to attract and retain the best candidates for judicial positions.

Similarly, in the United Kingdom, the Senior Salaries Review Body (SSRB) regularly reviews the salaries of judges and senior public officials to ensure that they are fair and appropriate. In its 22nd Report (2013), the SSRB recommended an increase in judicial salaries, noting that it was necessary to ensure the recruitment and retention of high-quality judges and to maintain “public confidence in the independence and impartiality of the judiciary”.

Overall, the principle that judges should be adequately compensated is widely recognized as essential to the maintenance of an independent and impartial judiciary, and courts and other bodies have recognized the importance of providing judges with sufficient pay and benefits to ensure their continued service to the public.

The increased spending on the judges by the government necessitates that such spending is not done foolishly compromising the integrity of the judiciary. Presently, there is no efficient training system in Pakistan resulting in a low-quality judiciary. Therefore, it is proposed that a training model be introduced in all democracies ensuring qualified and conscientious judges. If such judges fail to live up to the mark, then the same should be dealt with through efficient impeachment processes. The impeachment process for judges has been stricter in all major democracies i.e., India, England, and U.S prescribing a rigorous process of impeachment through the parliament. Such a model is followed in countries like Malaysia and Pakistan. However, the judges are circumscribed by law e.g., article 175 of the constitution of Pakistan limits the jurisdiction of courts to law only. The breaches in law mostly go unnoticed due to a lack of effective monitoring and impeachment. It is proposed that a retired judges' tribunal with open proceedings and public display of decisions rendered on judicial misconduct be formed to oversee judicial actions. Presently, High Courts supervise subordinate courts in Pakistan under Article 202 of the constitution of Pakistan which has so far failed to uplift the judiciary. A retired judge's tribunal with enhanced jurisdiction relating to cases of judicial misconduct including trespasses in law may ensure more effective accountability.

In relation to the power of contempt of court, it is suggested that such powers may be exercised cautiously. That, when the contempt is in relation to a matter pending before the Court imprisonment may be given but when the contempt relates only to the conduct in court i.e., demeanor, etc. then only nominal fines may be imposed. This will guarantee to the upholding of fundamental rights as enshrined in the constitutions of Malaysia and Pakistan. The constitution of the Islamic Republic of Pakistan as discussed supra, prohibits discussion in the legislative assemblies with respect to the conduct of any judge in the performance of his duties. The Malaysian constitution allows such a discussion if the resolution is supported by 1/4<sup>th</sup> of the members of a legislative assembly. The judiciary is the ultimate arbiter in a democracy while parliament is supreme. Therefore, both these propositions need to be reconciled for any provision in relation to a discussion in the legislative assemblies with respect to the conduct of any judges in the performance of duties. In this regard, the constitution of Malaysia has more appropriate provisions than Pakistan. Pakistan on the same lines may provide in the constitution that the conduct of any judge may be discussed if supported by 1/4<sup>th</sup> of a member's resolution of a legislative assembly. Moreover, the breach may be provided with requisite punishment, because in Pakistan, it has become the norm to discuss the proceedings of the court in the parliament (Desk, 2023).

Pakistani law in all special tribunals like banking courts, custom tribunals, environmental tribunals, etc. prescribes the appointment of retired judges. Moreover, political appointments are also given to them. Such a practice is counterproductive to the independence of the judiciary as the appointing government might sway judges for benefits. Moreover, other competent individuals get barred from such vacancies. It is therefore recommended that in the interest of the independence of the judiciary, such a practice should be discontinued.

In several judgments of the Supreme Court of Pakistan, "namely, *Mir Alam Gul v. Ismail* (PLD 1990 SC 926)", "*Muhammad Siddiqui v. Government of Pakistan*" (PLD 2005 SC 186), "*Malik Muhammad Mumtaz Qadri v. State*" (PLD 2016 SC 146) and "*Shahzada Aslam v. Muhammad Akram*" (PLD 2017 SC 142), the Supreme Court has affirmed that, "The constitution of Benches of this Court is the sole privilege and prerogative of the Hon'ble Chief Justice of Pakistan envisaged under Order XI of the Supreme Court Rules, 1980..." and that a party to the case had no say in this regard (Raza & Says., 2023). The Supreme Court (Practice and Procedure) Act, 2023 regularized



the powers in this regard and shifted the same to a committee of senior judges. However, this legislation is sub-judice before the supreme court of Pakistan regarding its constitutionality. This legislation in Pakistan also regulated the suo-motto powers of the Chief Justice of Pakistan by mandating it to be exercised by a committee of judges. This legislation was a good development in Pakistan in the context of the independence of the judiciary as it fosters the cause of impartial decision-making. The Supreme Court of Pakistan annulling its effect till the decision of the case on grounds that only constitutional amendment is required in this regard seems unjustified as the Constitution of Pakistan doesn't directly regulate the constitution of benches and suo-moto powers. Such discretion has been implied from the constitution and resultantly ordinary legislation can clarify the matters in this regard. Recently, the constitutionality of military courts in Pakistan is sub-judice before the supreme court. The decision out coming would have ramifications for the independence of the judiciary as in cases before military courts complainant and judge are the same. The "case of District Bar Association (Rawalpindi) v Federation of Pakistan", (PLD 2015 SC 401), wherein the constitutionality of military courts with a sunset clause was upheld also casts a shadow on the independence of the judiciary in Pakistan as an implied acknowledgment from the judiciary comes forth regarding their incapacity to decide cases independently. An independent judiciary should be able to control the executive for the enforcement of its decisions. In this regard it is proposed that the oath of office of executive authorities whether military or civil should entail besides conforming to the Constitution, to act in accordance with judicial decisions. The purpose of the independence of the judiciary doctrine is to ensure impartial decision-making. However, the judiciary as in the case of Pakistan where military takeovers are justified by the constitution despite the constitutional bar doesn't appear independent. In this regard, judiciaries need to ensure the effective exercise of appellate jurisdiction with strengthened accountability mechanisms. Presently, Supreme Judicial Council and member inspection teams are redundant in Pakistan due to the non-exercise of their jurisdiction against peer judges. Moreover, their jurisdiction does not provide taking cognizance of violations of law and disciplinary actions pursuant thereto. This requires appropriate attention of the lawmakers.

In the case of Pakistan, despite the safeguard relating to the independence of the judiciary in place, the judiciary has remained hostage to the executive and the occupying military rulers. Since the creation of Pakistan, the judiciary initially succumbed to the executive in the *Molvi Tameez-ud-Deen* case by holding the dissolution of the constituent assembly as valid. (*Molvi Tameez-ud-Deen vs. Federation*). After this, there was no stopping with judiciary in Pakistan and it even justified military takeovers leading to constitutional breakup on flimsy grounds as state necessity (*Zafar Ali Shah vs. Pervez Musharraf*). The courts in Pakistan playing in the hands of the powerful is still evidenced leading to an erosion of the rule of law. This beckons that judicial independence be regulated through commensurate accountability as proposed with an effective supreme judicial council so that judicial integrity and the rule of law are sustained.

Independence of the judiciary is provided in world constitutions like that of the Islamic Republic of Pakistan and Malaysia for impartial judicial decision-making. In the case of Pakistan as mentioned above it has been jealously guarded. However, the results have not come forth (*Pakistan ranks 129 out of 140 in the rule of law index - world justice project*). In such a scenario, it is proposed that the legislature and courts should come out of strict requirements of the doctrine as observed and may look at other alternatives for yielding to the purpose of judicial independence e.g., accountability of the judiciary by an independent ombudsman comprising professionals from different walks of life (Quddus, 2019). The justice sector has lacked in Pakistan also due to the bar politics. Judges fail to procure lawyers' attendance due to many reasons primarily the threat of bar politics. In this regard, it is necessary that judicial independence be strengthened through proper legislation by empowering judges to procure the attendance of lawyers on time or decide cases finally so that cases are not delayed unduly like the cases of Pakistan where cases even take up a lifetime of an individual.

## Conclusion

The independence of the judiciary is indispensable for impartial judicial decision-making. Pakistan and Malaysia have provisions in their constitutions that are related to the independence of the judiciary however, reforms are also required to progress more for securing the same fully. Highlighting the case of Pakistan, it is seen that judicial independence is compromised due to a strong executive to which judges comply for their interests. It is, therefore, necessary that appropriate reforms as suggested be introduced in law so that judges feel both fearless and accountable. In this regard, the appointment, and removal process of the judiciary requires streamlining in accordance with the doctrine of the independence of the judiciary. While introducing changes to judicial independence dispensation as present in Malaysian and Pakistani legal regimes, the objective of impartial judicial decision-making in accordance with the law should be in sight. Contempt powers of the court should not be employed to harass litigants and need to be amended in this regard to support fundamental rights. Moreover, the Practice of reappointment of judges after retirement should be discontinued being manifestly against the judicial independence doctrine.

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