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Judicial Appointments in the Superior Judiciary of Pakistan: A Comparative Analysis with the U.S.

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Abstract

Judges in the Superior Courts are supposed to be appointed without any controversy since these appointments are directly related to the independence of the judiciary. These appointments need utmost care and transparency. The 18th Amendment to the Pakistani Constitution was the turning point that completely altered Pakistan's system for appointing judges to the superior courts. The 18th Amendment introduced a new appointment mechanism. Through this amendment, the Judicial Commission of Pakistan and the Parliamentary Committee for Judicial Appointments were introduced which are responsible for the appointment of judges in the Higher Courts of Pakistan. The newly implemented procedure is still not satisfactory, and there are multiple issues that make the appointment of judges to Pakistan's superior courts controversial. The existing appointment system will be examined critically in this research paper, and its flaws will be highlighted. The appointment processes in Pakistan and the United States will be compared. The U.S. appointment system for the federal courts is more than 230 years old and still, in place. It will enable us to make suggestions for improving Pakistan's case. We will offer some recommendations at the conclusion of this research article.

Keywords: Appointment of Judges in Pakistan, Judicial Commission of Pakistan, 18th Amendment, Independence of Judiciary, Supreme Court of Pakistan, Separation of Pakistan.

I. Introduction

The appointment of judges has a direct impact on the judiciary's independence. The credibility of the Court itself is questioned if the appointment or elevation of justices is under fire. The Supreme Court of Pakistan (SCP), the Federal Shariat Court (FSC) and the five High Courts are the country's Superior Courts. The selection of judges for Pakistan's Higher Courts has frequently been the subject of heated debate. The system is opaque and only the hiring authorities know why a candidate is being considered for a position as a Justice. The recent promotion of High Court (HC) judges to the position of Supreme Court (SC) justices has received criticism from various regions of the nation ('JCP Meets Today under the Shadow of Strike Call by Bars', 2022) ('Lawyers Observe Strike against Elevation of Junior Judges to SC', 2022). The issue of appointment/elevation method has remained under criticism for a long time and several attempts have been made to make it error-free but so far Pakistan has not adopted an acceptable model that has met little to no criticism. The appointment of a judge is controversial, so such a situation would certainly also create controversy in court decisions. Appointments of justices in all Superior Courts have become a matter of discussion now (B. Shah, 2008).

The method of appointing judges in the SC through the Judicial Commission of Pakistan (JCP) was adopted after the 18th Amendment to the Constitution (Ali, 2021). Before this, Article 177 of the Pakistani Constitution of 1973 provided that the President would name SC judges after consultation with the Chief Justice of Pakistan (CJP) (Ali et al., 2021). When it came to appointing High Court judges, the President of Pakistan used to do so after consulting with the CJP, the Governor of the relevant province, and the concerned High Court Chief Justice (CJ would not be among those consulted if the appointment of the CJ of HC is being considered). (Ali et al., 2021) (A. Shah, 2009).

The model contained in the 18th amendment (and later the 19th amendment), still does not provide an accurate and satisfactory method of appointment/elevation of Justices/Judges in the higher courts of Pakistan. According to some critics this method needs improvement to preserve the credibility of court decisions (B. Shah, 2008). This may enhance the credibility of the sacred and respected institution of justice in Pakistan (Habib, 2021).

II. Literature Review

Pakistan was given the foundation for the appointment/elevation of Justices/Judges in the Higher Courts by the Government of India Act, 1935. The procedure for appointing/elevating judges to higher courts in Pakistan was left unchanged in 1956's, 1962's and 1973's constitutions.

The wording of the constitution created ambiguities and SCP interpreted the ambiguous articles of the 1973's Constitution. The SC interpreted the roles and powers of the CJP and the executive i.e. President, regarding the appointment/elevation of judges in the superior courts of Pakistan (*Al-Jehad Trust and 6 others v. Federation of Pakistan and 27 others*, 1996). This is the most significant case in Pakistan's judicial history as it shifted the main role regarding superior judicial appointment towards the judiciary.

To improve the appointment/elevation method, the method was institutionalized by the Eighteenth Amendment (Munir et al., 2021). However, the handling of powers and roles prescribed in the 18th amendment was challenged in the apex court and amendments were recommended by the SCP (*Nadeem Ahmed, Advocate and others v. Federation of Pakistan and others*, 2010). Consequently, the 19th Amendment was passed, giving more power and role to the judiciary (Ijaz, 2014). Many well-known lawyers and legal professionals have written about the current situation of appointment/elevation method. Senior Advocate of the SCP Hamid Khan, has covered this issue under the heading of "Appointment Process of The Judges: Cause of Decline in the Competence and Integrity of Judges" in his Book (Khan, 2023).

The U.S. Constitution, in its Art. II (Section 2), provides the method of appointment of Justices/Judges in the SC of the U.S. and other federal courts of the U.S.

III. Appointment System of Judges in Superior Judiciary in Pakistan and the U.S.

(A) Appointment Mechanism in Pakistan

The current appointment method operative for the Judges of the SC, the FSC, and the HCs is the result of the 19th Amendment (The Constitution (Nineteenth Amendment) Act, 2010).

(A-1) Appointment of Supreme Court Judges

Article 177 of Pakistan's Constitution specifies the requirements for SC judges. One must be a Pakistani citizen and meet one of the following two requirements to be appointed as a SC judge:

a. Having served as HC judge in Pakistan for at least five years.

OR

b. Having a minimum of fifteen years' experience as an Advocate High Court in Pakistan.

The structure of the JCP is as follows:

The Judicial Commission for Supreme Court Judges' Appointment	
Chief Justice of Pakistan	Chairman
Four Seniormost Justice/Judges of SC	Members
The CJP will propose a former CJ or former Justice/Judge of the SC of Pakistan after consulting with the four seniormost justices of the SCP who are also members of the JCP. The position will be held for 2 years.	Member
Federal Law and Justice Minister	Member
Attorney General for Pakistan	Member
A Senior Advocate of the SCP, selected by the PBC (Pakistan Bar Council) for 2 years	Member

The JCP will include nine members for the purpose of making appointments to the SCP.

Clause (3) of the Art. 175A of the Constitution of Pakistan, 1973 has made it clear that the senior most judge of the SC after the CJP shall be the next CJP (The Constitution of Islamic Republic of Pakistan, 1973, art. 175A (3)).

The JCP follows the process outlined in the Judicial Commission of Pakistan Rules of 2010 for the appointment of Justices/Judges to the SCP. These regulations were created by the JCP in accordance with Clause 4 of Art. 175A of the 1973 Constitution of Pakistan (The Judicial Commission of Pakistan Rules, 2010). In this way, the process of the JCP for judges' appointment to the SC shall be as follows:

- (i) Nomination by the CJP against the vacancy.
- (ii) The Chairman JCP, upon receiving nomination, shall call a meeting of JCP.
- (iii) Then, commission will discuss and examine the nomination(s). JCP is required to recommend one candidate to the Parliamentary Committee for each vacant position of SC Judge.
- (iv) This determination is made by a majority vote of the commission's whole membership.
- (v) Afterwards, the nomination(s) which is made by the commission shall be forwarded to the Parliamentary Committee which shall proceed according to the rules.

The Parliamentary Committee on Judicial Appointment is constituted under clause (9) of Art. 175A of the Constitution, 1973. Parliamentary Committee's structure is as:

Parliamentary Committee on Judges Appointment			
4 members from Senate		4 members from National Assembly	
Two members from the Treasury Benches	Two members from the Opposition Benches	Two members from the Treasury Benches	Two members from the Opposition Benches

The total number of Parliamentary Committee members is eight. But, if the national assembly is dissolved, then the parliamentary committee would contain only the members of the Senate (Clause 10 of Art. 175A). In such special circumstances, the total number of the parliamentary committee shall be four.

The procedure of the parliamentary committee upon receiving a nomination from JCP of Pakistan shall be as follows:

- (i) The Parliamentary Committee may confirm, by Majority, nomination(s) made by the JCP within fourteen (14) days. And if the Parliamentary Committee does not confirm the nomination within fourteen days, then it will be deemed as if the Parliamentary Committee has confirmed the nomination(s). After the confirmation of nomination(s), the Parliamentary Committee will forward the name(s) to the PM who will forward the same to the President of Pakistan who shall appoint the judge(s).
- (ii) If the Parliamentary Committee may reject the nomination(s) by recording its reason(s). Such rejection can only be made if $\frac{3}{4}$ of the total membership of the Parliamentary Committee.
- (iii) If the rejection from the Parliamentary Committee is made, then the findings of the Parliamentary Committee shall be sent to the JCP which, afterwards, will send a new nomination(s).

(A-2) Appointment of Federal Shariat Court Judges

The FSC is the Court in Pakistan whose core purpose is to see if there is any law contrary to the injunctions of Islam as established in the Quran and the Sunnah (*Objective And Functions - Federal Shariat Court of Pakistan*, 2017). The qualification of a FSC judge is given in Art. 203(C) clause (3) of the Constitution: a person is competent for the appointment as a FSC Justice if he is qualified to be appointed as the Justice of the SCP or he/she has remained a permanent judge of a HC. For the appointment of the judges in the FSC, the method is pretty much the same as the method adopted in the case of the Pakistan's SCP but there are some minor changes. These are as follows: The JCP, in addition to the main nine members, shall have the following two more members:

- i. CJ of Federal Shariat Court (FSC).
- ii. Puisne Judge of the FSC.

Appointment of Justices other than the CJ of the FSC, the CJ of the FSC shall initiate the procedure of appointment by sending a nomination to the chairman of the JCP and after this, all the procedures shall be followed as discussed for the appointment of the SC Judge.

The nomination of the CJ of the FSC shall be made by the CJP. This indicates that there is no legal need that the incoming CJ of the FSC to be the senior judge on the FSC. The senior most Judge of the FSC is not made a member of the JCP when the commission for the nomination of the CJ of FSC is formed.

(A-3) Appointment of High Courts Judges

Qualifications for a justice of a HC are given in Art. 193 of the Constitution of Pakistan which are as follows: -

A person not less than 45 years of age, and

- (i) Experience of minimum 10 years as an Advocate of the HC.
OR
- (ii) He is and has been a member of civil services for a term of minimum 10 years as given by law for this purpose (appointment as a justice of a HC) and has been a District Judge for a term of minimum 3 years.
OR
- (iii) He has not less than 10 years held a position as a judicial officer in Pakistan.

The JCP for the appointment of Judges five High Courts shall have the following additional members in addition to the members which have already been discussed in the appointment of the SC Justices/Judges: -

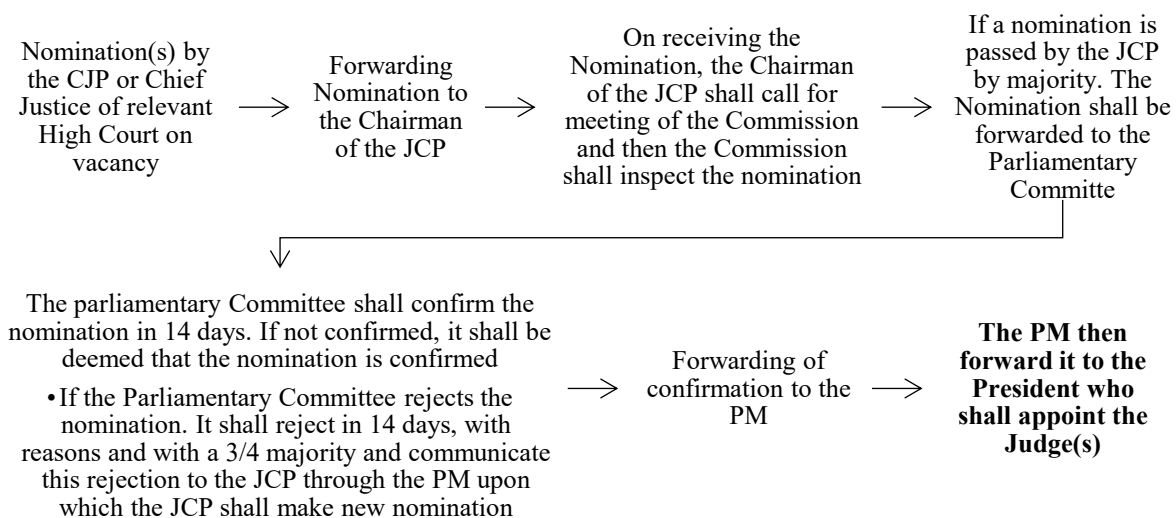
Additional members for the appointment Lahore HC	Additional members for the appointment in Sindh HC	Additional members for the appointment Peshawar HC	Additional members for the appointment Balochistan HC	Additional members for the appointment Islamabad HC
CJ of Lahore HC	CJ of Sindh HC	CJ of Peshawar HC	CJ of Baluchistan HC	CJ of Islamabad HC
The Most Senior Judge of LHC	The Most Senior Judge of SHC	The Most Senior Judge of PHC	The Most Senior Judge of BHC	The Most Senior Judge of IHC
Law Minister of Punjab	Law Minister of Sindh	Law Minister of Khyber Pakhtunkhwa	Law Minister of Baluchistan	

An Advocate having Experience of minimum fifteen years of Practice in HC, nominated by the Punjab Bar Council for two years	An Advocate having Experience of minimum fifteen years of Practice in HC, nominated by the Sindh Bar Council for two years	An Advocate having Experience of minimum fifteen years of Practice in HC, nominated by the K.P. Bar Council for two years	An Advocate having Experience of minimum fifteen years of Practice in HC, nominated by the Balochistan Bar Council for two years
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The CJ of the relevant HC is responsible for starting the appointment process when it comes to judges other than the CJ of a HC. The Puisne Judge of the HC shall not be a member of the JCP when High Court's Chief Justice's Appointment is planned, and the CJP shall launch the nomination process for the position.

From the above, we understand that it is not necessary that the Puisne Justice of HC must be the new (upcoming) C.J. of that High Court. There are high chances that a Puisne High Court Justice will become the upcoming CJ of that HC, but it is not a legal/Constitutional requirement.

A short/concise sketch is prepared in the following to understand the appointment mechanism:



(A-4) Acceptability

The current appointment method's acceptability is a contentious issue, with some arguing it's right and others suggesting improvements. In the 2011 *Munir Hussain Bhatti* case, the Supreme Court ruled that the Parliamentary Committee cannot technically evaluate a judge recommended by the JCP, and only investigates matters which are in its purview. Parliamentary Committee can only on very strong reasons/grounds reject JCP's proposal (*Munir Hussain Bhatti and others v. Federation of Pakistan and another*, 2011).

The SC's interpretation of the new appointment procedure has undermined Parliament's goal of establishing checks and balances in judicial appointments, resulting in a reversal of the process and reverting to the previous position which was before 18th Amendment (Ijaz, 2014). The current

appointment method's acceptability is negatively impacted by the lack of transparency, particularly in the initial appointment of judges in the HCs (Azmat, 2019).

Other than the initial appointment in the HCs, there have been instances where the elevation of judges in the SCP faced criticism. For instance, the elevation of Justice Muhammad Ali Mazhar faced huge condemnation because he was at the fifth number on the seniority list of the Sindh High Court (SHC) to the SC. The PBC including other Provincial Bar Councils and HC Bar Councils protested against this appointment (Iqbal, 2021). A similar reaction was seen in the case of Justice Ayesha A. Malik. The reason behind this was the overlooking of senior judges as Justice Ayesha A. Malik of the LHC was at the number 4 spot in the seniority list (Reporter, 2022).

(B) Appointment Mechanism in The United States

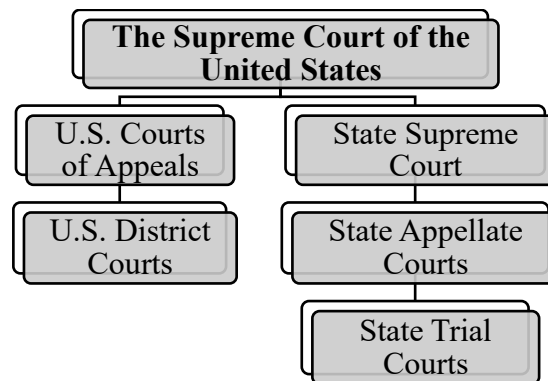
The World Justice Project, which is an autonomous organization, ranked the U.S. in its Rule of Law index at 26th place and it ranked Pakistan at 129th place out of 140 countries (Rule of Law Index, 2022).

The U.S. court system is basically running two parallel systems as follows:

- (i) Federal Courts
- (ii) State Courts

Federal and state courts have jurisdiction based on federal and state laws respectively, with federal courts addressing federal matters and state courts addressing state laws. The ultimate authority in both court systems is the SC of the U.S. (*The U.S. Court System*, 2022).

Following is the hierarchy of these two court systems: -



Other than these two court systems there are other courts which have special jurisdictions such as the U.S. Bankruptcy Courts, U.S. Court of International Trade, and others (Hartnett, n.d.).

The appointment method in state courts varies, while federal courts follow a single system as per the U.S. Constitution. Judges in federal courts can only be impeached by a 2/3rd Senate majority due to corruption and misconduct, requiring serious charges (Tushnet, 2011).

The appointment of the judges of the federal courts is to be made by the President as prescribed in Article II of the U.S. There are mainly three types of federal courts which are as follows:

Sr. No.	Name of the Court	Number of Courts	Number of Judges
1	The SC of the United States	One (1)	Nine (9) (Including the CJ of the SC of the U.S.) (One CJ + Eight Associate Justices)
2	The Court of Appeals (Also known as Circuit Courts)	Thirteen (13)	There are currently 179 Judges in the Courts of Appeal.
3	District Courts	Ninety-Four (94)	There are over 670 judges in the district courts in the U.S.

A judge nominated by the President of the U.S. gets, afterwards, sanctioned by the Senate. In this way, the judges of the federal courts are appointed (*The Judicial Branch*, n.d.).

The power of appointing judges in the federal courts is shared by both i.e., the executive and the legislature in the U.S. This power is shared independently from each other and agreement of both the sharers is necessary. If a nomination is rejected by the Senate, then the president has no power to appoint a judge on its own (Tripathy, 2016). The appointment of federal courts judges, despite appearing simple from the U.S. Constitution, involves various complications and scrutiny by various government departments.

Judges are appointed in federal courts of the U.S. through a process that begins with a vacancy and can be divided into following two parts (CHEUNG Wai-lam, 2000):

1. Nomination by the President of the U.S.
2. Confirmation by the Senate

(B-1) Nomination by the U.S. President

It is right to say that the executive and the legislature share power in the appointment of judges in federal courts in the U.S. but here one thing is worthy to mention that no person can be appointed in the federal courts of the U.S. other than the person that has been nominated by the U.S. President. The Senate has only the authority to agree or disagree on the nomination by the President for the judicial position. The Senate cannot nominate a person for this post. However, there are other factors present which are influencing the President like the opinion of senators, views of the President's political party, etc. (Beattie, 2016)

There are several procedures which are followed before making of nomination by the President of the U.S. The Department of Justice (DOJ) makes recommendations to the President about the appointment of judges in the federal courts. In the DOJ, there is an Office of Policy Development (OPD) which primarily holds the responsibility of selecting persons who will be nominated by the President. This Office of Policy Development does many things before making a nomination such as interviewing the potential nominee and taking the opinions of prosecutors regarding the reputation of the potential nominee.

After the primary evaluation, the candidate is evaluated by different Government and independent Agencies/Organizations. The main organizations are as follows:

- (i) Federal Bureau of Investigation (FBI)

(ii) American Bar Association (ABA)

These two organizations' reports are critical for any candidate.

The Department of Justice collaborates with the White House Office and considers recommendations from House of Representatives and senators. After receiving satisfactory FBI and ABA reports, the Department of Justice sends a formal recommendation to the President. If approved by the President, the recommendation is sent to the Senate, where DOJ sends all investigation reports to the Senate.

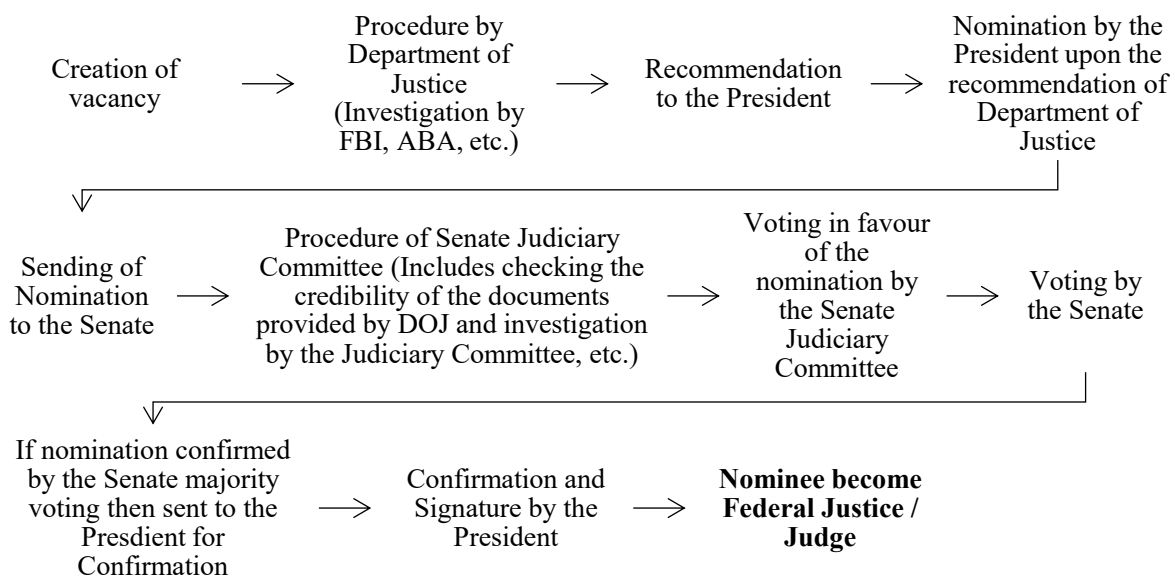
(B-2) Confirmation of Nomination by the Senate

There is a Committee in the Senate for judicial appointments, known as 'Senate Committee on the Judiciary' or 'Judiciary Committee' (*U.S. Senate: Committee on the Judiciary*, n.d.). Initially, the Judiciary Committee does scrutiny. Usually, the recommendation of this Committee is given importance in the voting of the Senate. This Committee has its own investigation procedure. It also looks into the investigation reports provided by DOJ. This committee holds confirmation hearings, and these hearings are open to the public. In this confirmation hearing, the views of the promoters and opposers are taken.

If Senate Committee on the Judiciary rejects a nomination, it dies and is returned to the President. If the Senate Committee thinks fit, it may after declining a nomination, send it to the floor (in the Senate) with an unfavorable recommendation. The Senate Committee on the Judiciary may accept or reject the nomination made by the President. If it is accepted, then it will be put in the Senate and the Senate may with a majority vote accept or reject the same. Usually, when the Senate Committee on the Judiciary votes in favor of nomination, the Senate also confirms the nomination. The Senate may confirm the nomination with or without floor debates. If any nomination is controversial then there are high possibilities of floor debates and vice versa (CHEUNG Wai-lam, 2000).

When the nomination is confirmed by the Senate, the same is confirmed by the President and the appointment procedure of a federal court judge is completed.

The whole procedure can be understood in short from the following chart:



(B-3) Acceptability

The main flaw in the appointment method is “politicized appointment”. The President may nominate candidates aligned with their party, while senators also influence federal judge appointments, with senators' opinions being given significant weight in the nomination process (Beattie, 2016).

The second issue is the delay in receiving Senate consent, as the Senate often takes a long time to grant sanction in this regard (CHEUNG Wai-lam, 2000).

Regardless of these issues, The U.S. appointment method is considered strong and reliable due to its unparalleled transparency, making it nearly impossible for the executive and legislature to politicize the appointment process (Tripathy, 2016). Moreover, The U.S. Constitution offers exceptional security for tenure and salary, allowing judges to make decisions impartially and without fear, ensuring a fair and secure system.

IV. Comparison between Judicial Appointment Method of Pakistan and the U.S.

(A) Role of Executive

The current appointment system in Pakistan's Superior Courts grants the executive no power, making them a mere rubber stamp with no other options.

The President holds the most significant power in the U.S. when it comes to appointing judges for Federal Courts. While the President and Senate share powers, the President is the most influential in this matter, as the nomination of the candidate is made by the President, and only the nominated person can be approved by the Senate.

(B) Role of Legislature

The role of the legislature in the appointment of judges of the Superior Courts shows the presence of separation of powers and checks & balances in a state/country. In several countries like Pakistan, U.S., Brazil, and Russia, the role of the legislature can be seen (Plascencia, 2015). In Pakistan, the 19th Amendment reduced the legislature's crucial position in the appointment scheme, and the Parliamentary Committee's power was further curtailed in a petition against the committee's decision to extend the probation period of LHC judges, ultimately defeating the legislation's goal of establishing a system of checks and balances.

In the U.S., we observe a proper and strong role of the Senate in the appointment procedure. After the nomination is done by the President of the U.S. it must be confirmed by the Senate. Without confirmation by the Senate, no person can be appointed as a federal judge. The appointment system of the U.S. does not only provide a sense of separation of powers but also provides a check on the powers of the President in this regard.

(C) Role of Judiciary

The Constitution of Pakistan grants the judiciary significant power in appointing judges of Superior Courts. The Judicial Commission of Pakistan (JCP) is given the authority to create rules for the commission's procedure, known as the Judicial Commission of Pakistan Rules, 2010. These rules give the CJP, CJ of FSC, and CJs of HCs broad powers in the appointment procedure. The majority of JCP members are from the judiciary. The role of the Parliamentary Committee is practically minimal.

The U.S. Judiciary does not directly participate in the appointment of Federal Court Judges, despite the influence of the opinions of judges, particularly those from the U.S. Supreme Court.

(D) Transparency

Transparency is inevitable for everything which includes public interest. The Pakistani Constitution mandates that JCP and Parliamentary Committee meetings are conducted in private, with the record kept secret. Candidates' merits and demerits are kept confidential, with only the JCP and Parliamentary Committee knowing why they are confirmed, raising questions about the credibility of the process.

The Department of Justice compiles reports for Senate confirmation, which are publicly available, except for some highly private reports. The appointment of federal court judges in the U.S. is transparent, with all voting proceedings and debates conducted on the Senate floor, accessible to the public. This ensures that the appointment of federal judges is fair and transparent.

(E) Separation of Powers and Checks and Balances

In the judicial system of Pakistan, we have observed that the inclusion of judges in the Higher Courts of Pakistan is mainly done by the JCP, and the commission is mainly handled by the judiciary. Parliamentary Committee, practical role of it is not worthy enough. Besides judiciary and legislature, the executive is altogether devoid of any control over the appointment of Justices/Judges in the Superior Courts.

The U.S. federal court system's judicial appointments scheme effectively implements checks & balances and separation of powers. Both the executive and legislature have separate authority in the appointment mechanism, requiring collaboration for judicial appointments. This system demonstrates the proper application of these doctrines, ensuring a fair and efficient process in the federal court system.

(F) Concentration of Powers in One Hand

Pakistan's Constitution provides a sense of checks & balances in the shape of JCP and the Parliamentary Committee on Judicial Appointments but the source of power in this regard is CJP. The appointment procedure for the following appointments is initiated by the CJP by making nominations:

- (i) Appointment of a Supreme Court Justice.
- (ii) Appointment of CJ of Federal Shariat Court.
- (iii) Appointment of CJ of any High Court.

The nomination is forwarded to the JCP and the chairman of the JCP is CJP. It is upon CJP that when he wants to call the meeting of the JCP for the appointment. The judges (other than the CJs) of the FSC and HCs are nominated by the respective CJs of Courts and the nominations are sent to the JCP. The most influential individual in the appointment process is the CJP.

In the U.S., the appointment process for Federal Court Judges involves two phases, each with its own value and importance. Both the President and Senate share power, and no individual is individually sufficient for appointment in the federal judicial system.

V. Issues/Problems in the Appointment in the Superior Judiciary of Pakistan

From all the discussion in this research article we have discovered some evident problems, as follows, which are present in the current appointment model of Pakistan:

(A) Executive as a Rubberstamp

The President is playing its role only as a rubber stamp. Any nomination confirmed is forwarded to the President of Pakistan and he has no option other than accepting the nomination.

(B) Insignificant Parliamentary Committee

The Parliamentary Committee has assumed the role of a post office that can no longer (practically) refuse a nominee due to ruling of the Supreme Court of Pakistan on Parliamentary Committee's role and power.

(C) Excessive participation of the Judiciary

Judicial Commission of Pakistan (JCP), when appointing/elevating judges in the SC, has nine members and out of these nine members six are justices (five in-service and one retired). Other than this, in the current scheme of appointment, the decision of the JCP is final as the Parliamentary Committee's role has been minimized.

(D) Lack of Transparency

The appointment/elevation scheme lacks transparency. Only the members of the JCP and members of the Parliamentary Committee know why a candidate has been given priority over other candidates as the proceedings of the JCP and Parliamentary Committee are kept secret.

(E) Lack of Separation of Powers

The judiciary's control over appointing judges is a controversial issue in Pakistan, with some arguing that judges favor their relatives and chambers during appointments or elevations, a result of a lack of separation of powers and checks and balances, which is detrimental to the judiciary's reputation.

(F) Dominance of Chief Justice of Pakistan in JCP

The Chief Justice of Pakistan (CJP) plays a crucial role in the appointment/elevation of judges, as it holds the chairmanship of the JCP and is the Chief Justice of Pakistan. This influential position influences fellow justices' attitudes and opinions. The procedure for the JCP cannot begin without the chairman's call for a meeting. Only CJP can nominate a person for appointment in the SC, making him more powerful (Omer, 2022).

(G) Seniority versus Merit: Lack of Consistency

There is inconsistency in the appointment regarding seniority and merit (Gardezi, 2021). There are several examples in which a junior justice of a High Court is elevated as a SC Justice. Such a situation raises questions regarding the competency of senior judges. It is only the decision of JCP which makes a justice more qualified than other justices while ignoring the seniority criteria.

(H) Favouritism/Nepotism

When justices are elevated in the SCP while ignoring the senior judges of the HC, suspicions arise that the Judges are obliging their favorites or close ones. Criticism was faced by the Judiciary in the case of Justice Muhammad Ali Mazhar. He was a junior judge in the SHC (Sindh High Court) and four senior judges were ignored for his appointment as a SC judge. CJ of the SHC was also ignored who was the most senior CJ of all HCs (Usto, 2021). Other than the elevation of judges in the SCP, the appointment of judges in HCs is also facing the same criticism. Justice Sajjad Ali Shah also pointed out this issue that the judges of the higher courts used to get their close relatives appointed as Attorney

General or Advocate General and then from there they are elevated as judge in the High Court (Habib, 2017). It has been observed that most of the appointments are done from the following sectors: -

- Chambers of HC/SC Judges.
- Firms of renowned Lawyers.
- Office bearers of the Provincial Bar Councils and their near ones.

It is rarely seen that a lawyer who does not belong to such well-known background is appointed as a judge in HC (Usto, 2016).

(I) Direct Appointments in the Supreme Court of Pakistan

Article 177 (2) (b) of the Constitution of Pakistan provides provision for the direct appointment of any citizen of Pakistan who has 15 years of experience as an HC advocate. But, since the creation of Pakistan, not a single appointment has been done in the SCP directly (Reforming the Judiciary in Pakistan, 2008). The Supreme Court of Pakistan (SCP) has never seen direct appointments due to a lack of proper criteria and mechanisms, such as invitation of applications, as all justices are elevated from the High Courts.

VI. Conclusion and Recommendations

All the discussion shows that there is an absolute necessity of making important changes in the appointment mechanism. Mr. Muneer A. Malik, while delivering a speech, asserted that independence of the judiciary is directly related to the appointment of judges, hence it should be done with great care and responsibility.

(A) Recommendations

Based upon the above discussion, following recommendations are suggested:

(A-i) Reasonable Role of Executive

For keeping a balance of power in the institutions of state there must be a reasonable role of the executive in the appointment of judges for maintaining Separation of Powers and Checks and Balances.

(A-ii) Effective Parliamentary Committee

The doctrine of Separation of Powers and Checks and Balances should be strictly followed in institutions to ensure fairness and cooperation. The Parliamentary Committee, as the representative of the entire Pakistani Parliament, should maintain its importance and have reasonable powers in the appointment scheme.

(A-iii) Decrease in the Absolute Powers of JCP

The JCP is the decisive appointer of the judges in the superior courts in Pakistan. The dominance of one institution over other institutions is not good for any country. So, there must be a decrease in the powers and authority of JCP and the Judiciary must acknowledge the existence of other state institutions in appointment mechanism.

(A-iv) Transparency in the Judicial Appointment Process

The current appointment scheme is vague, and it provides no information regarding the qualities and merit of a potential candidate. All the proceedings of the JCP and Parliamentary Committee are held secretly. Such an unclear situation raises many questions. The appointment procedure should be clear

and transparent. For this purpose, guidance can be sought from the procedure of appointment mechanism of the U.S. Federal Court Judges, discussed above.

(A-v) Appropriate Nomination Process

The nomination for a judge of the SC, CJ of High Courts, and CJ of FSC is made by the CJP. For other judges of the HCs and FSC, nominations are made by the concerned Chief Justice. Such concentration of powers in one hand is fatal. When candidates are nominated by the CJ of the SCP or other Higher Courts (High Courts and FSC), the JCP has no option other than to approve or reject the nomination. Favouritism/Nepotism is the main concern which is raised by such a procedure of nomination. The procedure of nomination must be reviewed. There must be a system in which the nomination is not controlled by only one man only.

(A-vi) Initiation of Process without Delay

The delay in the judicial appointments is also a concerning issue. Keeping in mind the quantum of pendency of cases, any vacancy should be filled as soon as the vacancy is created. We have observed many occasions when delay in the initiation of the process has been seen. A proper structure should be introduced which regulates the process without delay.

(A-vii) Effective Consultation

We see less inter-institutional consultation which is detrimental. The consultation procedure should be taken seriously and the recommendations and suggestions from one institution to another should be taken positively and patiently.

(A-viii) Introduction of Competitive Exams for Direct Appointment

The direct appointment in the superior judiciary, especially at the level of High Courts, should be done through competitive exams to see the ability of a potential candidate. The induction of lawyers in the higher judiciary only based on the recommendation of the CJ creates many obscurities and doubts.

(B) Concluding Statement

No country or civilization can outlast without an honest and independent judiciary. The honesty and competency of the Judiciary are inseparably linked with the appointment procedure. The appointment procedure is the first critical step which should be taken with great care and caution. Sadly, the procedure for appointing judges in Pakistan is under criticism. In today's world, the judiciary is playing a very important and crucial role which not only resolves matters between two parties but also safeguards fundamental rights and checks the actions of Parliament and the Executive. In such circumstances, an appointing system with loopholes creates the stature of the Judiciary weak. So, the best and approved method of appointment must be adopted for making the Judiciary respectable and irreproachable.

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