

Constitutional Courts in Hybrid Regimes: Lessons from Türkiye for Pakistan's Federal Constitutional Court

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ABSTRACT

The formation of the Federal Constitutional Court of Pakistan through the 27th Constitutional Amendment begs some important questions concerning the role of specialized constitutional courts in hybrid political regimes. This article uses a comparative institutional approach by analyzing Türkiye and Pakistan, to assess the effect of constitutional court design on judicial autonomy. It claims that specialized constitutional courts do not necessarily enhance constitutionalism; but their autonomy is subject to their structures of appointment, jurisdictional transparency, and the political motives that surround them. Based on the constitutional experience in Turkey, the study concludes that institutional design can both facilitate constitutional adjudication and limit judicial independence at the same time. This article has added to comparative constitutional law by creating normative approach to evaluating constitutional courts in transitional and hybrid constitutional orders.

Keywords: Constitutional Courts, Hybrid Regimes, Judicial Independence, Comparative Constitutional Law, Pakistan-Türkiye Comparison.

Introduction:

The constitutional courts have become a more prominent part of contemporary constitutional governance, adjudicators of constitutional litigation, protector of fundamental rights, and the referee in the political wrangles among state organs. The constitutional situation in the world over the last 70 years has seen a significant move away on the diffuse constitutional review by regular supreme courts to special constitutional courts based on the Kelsenian tradition. The institutional design that was initially created on the continent of Europe has now been emulated in a wide range of different political regimes, including emerging democracies and mixed-regimes, where constitutional adjudication is regularly wrapped up in larger conflicts

over political power and institutional dominance.¹

The 27th Constitutional Amendment of Pakistan signifies one of the most significant constitutional changes in the legal history of the Pakistani country. The amendment realigns institutional forms of constitutional adjudication and rebalances institutional power by creating a Federal Constitutional Court which will adjudicate constitutional cases. This reform is not just a procedural adaptation, but it is a structural reorganization of judicial power that brings into serious doubt the constitutional governance in Pakistan as a whole, the issue of judicial independence and separation of powers and where constitutional governance is heading. The establishment of a specialized constitutional court will create a two-peak judicial system, which can change the traditional principles of constitutional interpretation and the hierarchy of institutions that are institutional in the Pakistani legal system.²

The rise of the Federal Constitutional Court of Pakistan should not be viewed in isolation but rather as a systemic global trend that is marked by the rise of constitutional tribunals which are specialized. Constitutional courts have been adopted in Germany as well as Austria and going towards Asia and South Africa, constitutional courts have been adopted as measures intended to promote constitutional supremacy and coherent interpretation of the constitution. Nonetheless, comparative constitutional scholarship is proving that political effects of such courts differ greatly based on institutional design and political context. Although in consolidated democracies constitutional courts tend to buttress the rule of law norms, in politically contentious or hybrid regimes they can act in other ways, either by supporting the will of the executive, or by reorganizing judicial review in inconsequential but significant ways.³

Judicial restructuring through constitutional amendment has been of interest with hybrid regimes, a form of political system where formal institutions of democracy are incorporated with an executive arm of government that is highly centralized. Governments can reform the courts or change the process of appointing judges or redistribute jurisdiction so as to re-establish the balance between judicial freedom and political responsibility, instead of directly abolishing judicial review. The case of Türkiye is an educative comparative case. Reforms in the Turkish Constitutional Court over time transformed the court and changed its composition and jurisdiction, which demonstrates the use of institutional design decisions to determine the nature of judicial behavior, interpret the constitution, and the overall balance between law and politics. An important analytic question brought about by such developments is whether it is the nature of specialized constitutional courts that makes them enhance constitutionalism or whether they have effects that mainly rely on the political environments in which they exist.⁴

It is also in this context that the new reform in Pakistan poses an interesting research

¹ Yam, J. (2022). *Constitutional courts in hybrid regimes* (Doctoral dissertation, University of Oxford).

² Bâli, A. (2013). Courts and constitutional transition: Lessons from the Turkish case. *International Journal of Constitutional Law*, 11(3), 666-701.

³ Reayat, N. (2025). Compliance with Supreme Court Judgments in Politically Important Cases by Authoritarian and Hybrid Regimes: Lessons from Pakistan. *Asian Journal of Law and Society*, 1-40.

⁴ Ünlü, H. (2024). The Institutionalization of the Constitutional Court in Turkey. *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, 6(2), 508-520.

puzzle. What are the reasons behind the formation and the institutional consequences of the formation of such reforms through the establishment of hybrid regimes with specialized constitutional courts? Should these courts be viewed as instruments of recalibration of the contentious political orders, or should they be viewed as an attempt to specialize and undertake adjudication of the constitution and its efficiency? To answer these questions, it is necessary to shift the analysis of doctrines to the comparative institutional approach that places Pakistan in the context of broader tendencies in constitutional development.

This paper examines the process of the creation of the Federal Constitutional Court in Pakistan based on a comparative study with the experience of constitutionalism in Türkiye. It states that, in the hybrid regimes, specialized constitutional courts are neither naturally protective nor necessarily harmful to constitutionalism, but their effects are a matter of the interplay between institutional design, appointment systems and current political incentives. Based on the lesson of Türkiye, the article is an indication that constitutional courts can progressively become politically restricted institutions in case structural protections of autonomy are not strong.

Research Questions:

There are three main research questions guiding the study:

What are the political and institutional interests behind the establishment of the specialized constitutional courts in hybrid regimes?

What impact of institutional design does judicial independence and constitutional adjudication have?

What are the learning points of the experience in Türkiye to the future development of the Federal Constitutional Court in Pakistan?

The article is structured in the following way. Part I is the formation of the conceptual framework of the constitutional courts and hybrid regimes. Part II explores the transformation and institutional change of Turkish Constitutional Court. Part III examines the 27th Constitutional Amendment in Pakistan and the Federal Constitutional Court design. Part IV will conduct a comparative institutional inquiry and then conduct a normative assessment of constitutional court independence in hybrid systems. This is followed by a conclusion about what the general implications of this should be to comparative constitutional law and democratic constitutional government.

Methodology Statement

The methodology used in this study is the doctrinal and comparative methodology of the constitution. The review is based on close reading of the texts of the constitution and the provisions of the amendments, as well as comparative institutional appraisal of the constitutional courts functioning in the hybrid political regimes. It follows a qualitative approach of legal reasoning by relying not on empirical quantitative methods but on constitutional jurisprudence, scholarly literature and analysis of institutions. The comparative design is concerned with functional parallels between Türkiye and Pakistan to determine the impact of institutional design on the relationship between judicial independence and constitutional trial results.

Conceptual Framework

This part of the study constructs the theoretical building blocks that required in examining the creation and operation of special constitutional courts operating in politically disputed settings. Instead of making an assumption about the constant empowerment of constitutionalism by constitutional courts, modern comparative legal scholarship focuses on the fact that the independence, actions and constitutional influence of judicial bodies are embedded within overall political frameworks that influence them. Interpretating the Federal Constitutional Court of Pakistan thus involves having to interact with three concepts that are intertwined and are hybrid regimes and constitutional governance, theory of specialized constitutional court and constitutional court as an instrument of institutional power.⁵

Hybrid Regimes and Constitutional Governance

The idea behind a hybrid regime is that political regimes are systems of formal democracies that engage in unremitting authoritarianism. Contrary to consolidated democracies, where political competition takes place on a stable constitutional basis, or even authoritarian regimes, where institutions of democracy are mostly absent, hybrid regimes are found in the middle ground, in which political contestation is accompanied by strong executive power, institutional asymmetry, and limited accountability mechanisms. Elections can be conducted regularly and constitutional structures can be formally maintained but political authority is unevenly shared in the form of legal, administrative or institutional privileges taken by ruling classes.⁶

Scholars often term such systems as competitive authoritarianism, in which there are democratic processes, but that are designed in a systematic fashion to include the incumbents as a favored party. Formally, courts, legislatures, and oversight institutions act within the boundaries of the constitution but over time they can have their independence restricted by law reforms as opposed to outright abolishment. Constitutional change in this respect is usually not a revolution but rather an institutional redesign. Restructuring of the judiciary is an especially appealing device, as the former enables governments to transform constitutional supervision without giving rise to the illusion of legality and constitutional permanency.

Under hybrid regimes, constitutional governance is therefore highly political. Courts are not simply bystanders and only interpreters of constitutional norms but instead they are actors in larger games about institutional power. The independence of the judiciary can vary as per the political demands, methods of appointment and region of jurisdiction. As a result, reforms to the constitution that involve changes in the organization of the judiciary have to be analyzed not through the lens of doctrine alone but of the institution as well, that is, in terms of how legal reforms shift power among the political players.⁷

This discussion overlaps with the theoretic difference between political

⁵ Choi, G. H. (2016). Judges and their allies: The synergy between the constitutional court and judicial support networks in Turkey. *Berkeley Undergraduate Journal*, 29(2).

⁶ Muhammad, S., & Raza, M. (2023). *A Frozen Democratic Transition: Pakistan's Hybrid Regime and Weak Party System* (pp. 369-396). Bloomsbury Publishing.

⁷ Oldenburg, P. (2017). Loyalty, disloyalty, and semi-loyalty in Pakistan's hybrid regime. *Commonwealth & Comparative Politics*, 55(1), 82-103.

constitutionalism and legal constitutionalism. Legal constitutionalism puts the courts at the core of the constitutional enforcement making the judicial review the main guard against governmental overreach. In this model, autonomous courts serve as rights and constitutional guardians. Political constitutionalism, in its turn, understands democratic institutions, especially legislatures and political procedures, as the primary means to settle constitutional conflicts. The judicial power is thus restricted to avoid over judicialization of politics.

The models are frequently mixed in hybrid regimes. The governments can defend the reforms of the judicial system by claiming that they are necessary to restore democratic accountability or curb judicial activism, a defense that can be presented by using political constitutionalist arguments. Critics however claim that these reforms can in some cases undermine institutional checks as judges lose their independence. The constitutional order that has emerged between judicial supremacy and real parliamentary accountability is not genuinely representative of greater judicial supremacy or completely representative of parliamentary responsibility, leading to structurally ambiguous constitutional court system, where the constitutional courts are subject to conflicting legal and political demands.⁸

This tension is important to understand since the creation of the specialized constitutional courts in the hybrid regimes cannot be judged only on the basis of the constitutional text. Rather, their performance is determined by the interaction between institutional design and political incentives, to make or break the performance of courts as efficient constitutional watchdogs or as limited players in the game of politicized constitutionalism.

Theory of Specialized Constitutional Courts

The centralized constitutional review, institutionalized in the model of Kelsenian, is the source of specialized constitutional courts, which were first established in Austria at the beginning of the twentieth century. Hans Kelsen suggested that constitutional interpretation be recommended to a special court different to the usual courts in order to achieve standardization in the interpretation of the constitution, and to eliminate the possibility of the existence of different constitutional decisions throughout the judiciary. This is a centralized system in contrast to the American system of diffuse judicial review where all courts have constitutional interpretive power.

The institutional benefits of constitutional courts spreading throughout Europe and later the Global South were perceived. To begin with, specialization facilitates doctrinal coherence, since interpretation of the constitution is confined in one expert organization. Second, constitutional courts represent constitutional supremacy because they are placed in a special location in the constitutional order. Third, centralized review offers an organized process of adjudicating institutional conflicts among government arms.

The three main functions of specialized constitutional courts are functional. The former is constitutional guardianship the safeguarding of constitutional boundaries and preservation of separation of powers. Constitutional courts control the law,

⁸ Salman, M. (2021). Changing nature of competition in the weak party system of hybrid regime in Pakistan.

executive activity, and, in certain cases, even constitutional amendments in order to make them conform to the norms. The second role is the protection of rights especially by constitutional complaints or fundamental rights adjudication. The individual access to constitutional justice has been broadened in numerous constitutional courts, which has reinforced the right discourse in domestic jurisdiction. The third role is the political conflict arbitration whereby the courts seek to settle disputes among political institutions, electoral controversies, or federal conflicts and hence stabilize government in constitutional governance at times of political turmoil. But experience shows that these functions are not necessarily achieved. Appointment structures, jurisdictions design, rules of access, and politics are crucial in achieving institutional outcomes. This means that even the adoption of a constitutional court does not ensure enhanced constitutionalism, but institutional performance will be dependent on the political conditions around the institution.⁹

Constitutional Courts as Instruments of Power

Although the constitutional courts are frequently described as the impassive protectors of constitutional order, recent literature has started to acknowledge constitutional court duality of the powers of judicial empowerment and judicial containment. Judicial empowerment will arise when the institutional design increases the independence, power, and legitimacy of the courts, which can thus limit the actions of the political actors. On the other hand, judicial containment occurs where reforms restrict judicial independence by establishing institutional obstacles subtly i.e. by means of appointment control, jurisdictional fragmentation or procedural constraints. This process is summarized by the term constitutional capture, which explains how under certain conditions the constitutional institutions are formally maintained but technically restructured to the benefit of the major political interests. Instead of removing judicial review, the political players can reform courts in such a way that constitutional checks and balances are predictable or politically controllable. The amendments to the constitution creating new courts can, therefore, increase the complexity of institutions and reduce the substantive independence at the same time. The institutional design theory offers analytical tools in order to learn these outcomes. Factors like the chances of appointments, tenure safety, independent budgetary freedom, jurisdictional and access control altogether define whether courts are independent or rather politically limited. The comparative study of the constitution reveals that the minor design decisions can have major long-term effects on the judicial behavior and constitutional stability.

These generalized understandings are the analytical basis of the later comparative study of Turkiye and Pakistan. Using this frame the article assesses the Federal Constitutional Court of Pakistan as judicial specialization to enhance constitutional governance or institutional redesign driven by the nature of hybrid political regimes.¹⁰

⁹ Comella, V. F. (2011). The rise of specialized constitutional courts. In *Comparative constitutional law*. Edward Elgar Publishing.

¹⁰ Farinacci-Fernós, J. (2021). Constitutional courts as majoritarian instruments. *ICL Journal*, 14(4), 379-397.

Turkish Constitutional Court

Historical Development

The Turkish Constitutional Court (Anayasa Mahkemesi) had been created under the 1961 Constitution, which was created in response to military intervention and aimed at ensuring that there were no excesses of majoritarianism in the future of parliamentary rule. The court was an institutionalized initiative inspired by European Kelsenian model, to establish constitutional supremacy into Turkish political system. It had a centralized constitutional review, that is, the power to declare legislation that does not comply with constitutional ideals as invalid, unlike other courts.

Since its establishment, the Court has played the role of protector of secular constitutionalism with an underlying ideology of the Turkish Republic. In the second part of the twentieth century, it enjoyed ample jurisdiction over political existence, such as the ability to disband political parties that were considered unconstitutional secularist or nationalist. During this time, the Court acted as a proactive institutional force that was consistent with bureaucratic and military guardianship frameworks that aimed at ensuring that the Kemalist constitutional order would be maintained. The institutional prestige and relatively well-insulated mechanisms of appointment, made the Court, which could act decisively with the politically sensitive issues.¹¹

Institutional Transformation after Political Reforms

During the constitutional and political reforms at the beginning of the twenty-first century, the constitutional court of Turkey changed its institutional position. Changes that were brought through amendments created changes in the process of judicial appointments, which gave the executive and parliament more power in the selection of the judiciary. Although these reforms were formally explained as democratizing their reform to diversify the judicial representation, they were slowly rebalancing the relationship between judicial independence and political responsibility.

The jurisdiction of the Court was extended and realigned. The constitutional complaint mechanism on an individual basis led to increased availability of constitutional justice and increased publicity of the Court as an institution that upheld rights. Simultaneously, the development of political forces created a rise in executive and judiciary tension, specifically with constitutional adjudication more intersecting with governmental power, electoral validity, and use of emergency powers.

These reforms also demonstrate that the institutional design changes that can transform the judicial power can be done by alterations in the structure of appointment, specifically the procedure and jurisdiction, and will not be done by formally repealing the constitutional review. The Court was still constitutionally strong, but its operational independence was more and more adjusted as far as political conditions were concerned.¹²

¹¹ Arslan, Z. (2002). Conflicting paradigms: Political rights in the Turkish constitutional court. *Critique: Critical Middle Eastern Studies*, 11(1), 9-25.

¹² Bâli, A. (2013). Courts and constitutional transition: Lessons from the Turkish case. *International Journal of Constitutional Law*, 11(3), 666-701.

Judicial Behavior in a Hybrid Regime

The Turkish example shows that constitutional courts working in the hybrid regimes tend to resort to strategic compliance patterns. Instead of always challenging political powers, courts can strike a balance between institutional survival and constitutional implementation and make rulings that will not directly challenge the institutions, but instead will not alter their legitimacy. Judicial review is thereby discriminatory instead of being uniformly aggressive.

The result of this dynamic is selective constitutional scrutiny with judges aggressively safeguarding some rights or procedural commendation and restraint in matters with high political stakes. Adjudication can reveal an increased level of political sensitivity in that it is sensitive to the institutional weaknesses in a competitive yet asymmetrical political context. This behavior does not imply the judicial desertion of constitutional values, rather, it will be adaptive measures influenced by institutional structure and political influences.

This situation in the Turkish Constitutional Court, in particular, offers an instructive analytical point: The autonomy of the judiciary is never based purely on constitutional text but the product of the interaction between an institutional design and political structure. The transformation of the power over appointments, jurisdiction, and political environment affects the exercise of constitutional courts in many aspects.¹³

Pakistan's 27th Constitutional Amendment and the Federal Constitutional Court Constitutional Background

Before the 27th Constitutional Amendment, the Supreme Court of Pakistan was the focal point of constitutional adjudication in this country. The Court had to take control of the essential rights enforcement, constitutional interpretation, and inter-institutional disputes, through the original jurisdiction and broad interpretive doctrines. In the long run, such a concentration of constitutional jurisdiction established the Supreme Court as a very powerful interfering player in the constitutional order in Pakistan, and especially through the public interest litigation and through the suo motu proceedings. The reform that created a Federal Constitutional Court was born in the argument over judicial efficiency, institutional specialization and judicial perceived overreach. Advocates claimed that a specialized court will increase uniformity of doctrine and decrease the pressure on the Supreme Court, and this would have brought Pakistan in line with global practices of centralized constitutional adjudication.¹⁴

Institutional Design of the Federal Constitutional Court

Federal Constitutional Court is one of the major reassignments of constitutional power. The amendment places certain types of constitutional conflicts with a special judicial authority, thus decoupling the constitutional adjudication task with the overall appellate roles of the Supreme Court. This division of jurisdiction brings about institutional differentiation that aims at encouraging constitutional interpretation

¹³ Varol, O. O., Dalla Pellegrina, L., & Garoupa, N. (2017). An empirical analysis of judicial transformation in Turkey. *The American Journal of Comparative Law*, 65(1), 187-216.

¹⁴ Tariq, M., Akhter, S., & Sajid, A. (2025). The 27th Constitutional Amendment and Federation of Pakistan. *Policy Journal of Social Science Review*, 3(12), 1-08.

specialization.

The amendment also implements new systems of appointing people thus redefining the method of appointing judges of the constitutional court. The decisions made in institutional design in terms of nomination, confirmation, and tenure have a direct impact on the perceptions of judicial independence and legitimacy. Moreover, the interaction between the Constitutional Court and the Supreme Court also forms a new judicial system, where two institutions of the highest judicial level are also a part of the same constitutional system.¹⁵

Structural Innovations and Constitutional Risks

The greatest innovation brought by the amendment is the introduction of a dual apex court system, where there is an institutional separation in the constitutional and ordinary judicial power. Although specialization can help to sharpen the doctrines, it also brings the issue of constitutional fragmentation (e.g. possible overlapping jurisdiction, and lack of uniformity in interpretation).

It has also been argued that comparative constitutional experience cautions against newly established constitutional courts, on the grounds that they are exposed to dangers of institutional politicization, especially where the processes of appointment are more exposed to politics or where institutional restructuring of this or that balance of power is underway. The success of the Federal Constitutional Court will thus not only be based on the constitutional design but also on institutional protection in practice.

Combined, the Turkish and Pakistani experience provides evidence of one of the central analytical hypotheses: the institutional design has a strong influence on judicial autonomy. Constitutional courts established or refashioned in ambivalent political settings can both reflect ideals of constitutional specialization and threat to political readjustment of judicial authority.¹⁶

Comparative Institutional Analysis: Türkiye and Pakistan

Variable	Türkiye	Pakistan
Appointment design	Executive-dominant plural formal inputs	with Politically mediated appointments with parliamentary–executive role
Judicial independence	Formally protected, functionally constrained	Institutionally evolving; safeguards contested
Political environment	Competitive authoritarian / hybrid regime	Transitional hybrid constitutional order
Jurisdiction scope	Centralized review + complaint	Newly centralized constitutional jurisdiction separated from Supreme Court

¹⁵ Awan, M. H., & Mushtaq, M. (2025). The Supreme Court of Pakistan as a federal court an analysis. *Journal of Climate and Community Development*, 4(2), 26-36.

¹⁶ Sabeehullah, M., Rehman, T. U., & Saeed, A. (2025). Revisiting the 26th Constitutional Amendment: Implications for Democracy and Federalism in Pakistan. *Journal of Political Stability Archive*, 3(3), 1559-1569.

Variable	Türkiye	Pakistan
Executive influence	Gradual expansion through appointment reforms	Potentially significant institutional redesign via

Institutional Design and Judicial Independence

Analytical Focus	Türkiye	Pakistan
Appointment impact	Increased executive leverage over time	Independence dependent on implementation practice
Tenure security	Strong formally, politically sensitive context	Structurally defined but institutionally untested
Institutional autonomy	Adaptive rather than absolute	Contingent on early jurisprudence

Constitutional Courts under Political Pressure

Pattern	Türkiye	Pakistan (Projected)
Judicial behavior	Strategic compliance	Likely cautious institutional positioning
Activism vs restraint	Selective activism	Early-stage restraint probable
Political sensitivity	High in regime-critical cases	Expected in constitutional disputes involving state power

Risks of Jurisdictional Fragmentation

Issue	Türkiye	Pakistan
Dual authority conflict	Limited (clear hierarchy)	Possible overlap with Supreme Court
Interpretive coherence	Maintained through centralized model	Risk of competing constitutional interpretations
Institutional clarity	Relatively settled	Structurally developing

Lessons from Turkish Experience (Predictive Insights for Pakistan)

Lesson	Implication for Pakistan
Appointment design shapes behavior	Safeguards needed to preserve autonomy
Courts adapt to political incentives	Judicial strategy may prioritize institutional survival
Jurisdictional clarity stabilizes authority	Clear boundaries essential between apex courts
Gradual institutional change matters	Long-term practice more decisive than constitutional text

Normative Evaluation

The creation of the Federal Constitutional Court in Pakistan poses a critical normative issue of whether the reform is a real attempt to expose the constitutional adjudication or whether it could recreate institutional weaknesses witnessed in other hybrid regimes. The experience with similar constitutional courts around the world shows that the effectiveness of specialized constitutional courts is difficult to measure by their formal constitutional adoption and is rather conditioned by the existence of structural guarantees of judicial independence. The problem, however, is not the adoption of a constitutional court model in Pakistan, but rather the fact that instead of imprinting adequate guarantees against politicization, it did exactly what other constitutional courts have done, i.e., mimic their institutional design.¹⁷

Appointment Mechanisms

One of the main issues is associated with appointment mechanisms which throughout history become the most decisive factor that forms judicial independence. In jurisdictions where the authority to make appointments is consolidated in the political branches of power, the court can eventually absorb political pressures via the process of adjudication that is either incautious or timid. Plural appointment system- whereby more than one institutional actor including judiciary, legislature, executive and other possible independent commissions are involved in the appointment process- can help to reduce control by one political state. Practical experience indicates that institutional balance in appointment does not remove politics but instead allocates it such that it helps to increase the legitimacy of the judiciary and minimize the image of institutional capture.¹⁸

Tenure Security

Tenure security also means a lot as it safeguards the judges against any form of political pressure both directly and indirectly. A set, non-renewable terms, insurance against arbitrary ousting, and financial freedom are all elements of decisional liberty. Absent believable tenure assurances, constitutional judges can place an institutional survival over constitutional enforcement especially where a politically sensitive dispute is involved. What the Turkish experience demonstrates is that formal protections are not necessarily sufficient when other political forces provide indirect enticements to restraint the judiciary.

Jurisdictional Clarity

Another demand is in relation to clarity in jurisdiction. The establishment of a two-tier judiciary system in Pakistan brings about the prospect of contest of interpretation between the Supreme Court and the Constitutional Court. The duplicative jurisdiction or vague jurisdiction of the appellate authority may undermine the constitutional coherence and encourage institutional competition. The clear constitutional definition

¹⁷ Berkman, A. U. (1979). Administrative Reforms in Pakistan and Turkey: A Comparative Analysis. *Journal of South Asian and Middle Eastern Studies*, 2(4), 3.

¹⁸ Sohail, A. (2025). Islamization under Islamic and Secular Constitutions: The Case of Pakistan and Türkiye. *ResPublica: Undergraduate Journal of Political Science*, 7(1).

of power is thus necessary to avoid the fragmentation of constitutional interpretation and to have predictability of the legal system.

Constitutional Culture

In addition to institutional mechanical factors is the higher aspect of constitutional culture. The courts are functioning in normative settings that are influenced by political practice, expectations of legal professions, and popular adherence to constitutionalism. Even the best-designed institutions might find it hard to be independent in situations that do not entrench constitutional norms in society. On the other hand, design flaws can be balanced by a robust constitutional culture that enhances the legitimacy of judicial authority and the acceptance of constitutional restraints on the exercise of political authority in the society.¹⁹

Normative Framework for Constitutional

Based on these deliberations, this paper suggests a normative framework of constitutional court independence among hybrid regimes comprising of four mutually reinforcing conditions, namely, pluralized powers of appointment, secure judicial tenure, coherent jurisdiction, and conducive constitutional culture. The model is not limited to Pakistan, but it provides an overall analytical framework on how to assess newly constituted constitutional courts in the systems under transition. The framework lays stress on the fact that both institutional design and political environment should be evaluated not separately, but jointly.²⁰

Implications for Comparative Constitutional Law

The Pakistani experience has been added to the wider discussion of comparative constitutional law on the topic of diffusion and adaptation of constitutional courts in the Global South. Constitutional courts are brought out as institutional fixes to enhance rule of law and protection of rights in most emerging democracies. Nevertheless, the comparative scholarship is more than ever demonstrating the fact that institutional transplantation rarely yields the same results across jurisdictions. The law institutions move across the borders, although their operations are transformed by the political situation inside the country.

Pakistan is experiencing a broader trend in which hybrid regimes adopt judicial redesign strategies as opposed to the dismantling of the institutions. Governments can either recalibrate appointment processes, redistribute judiciary, or abolish the judicial review. These changes do not change the constitutional form, but it may change the constitutional substance. This phenomenon makes it complex to assume traditionally that the development of democratization is promoted in constitutional courts.

The analysis is also relevant to the literature on democratic backsliding that has been paying more attention to gradual institutional change as opposed to a sudden collapse in the constitution. The constitutional courts can turn into the arena in which the

¹⁹ Yilmaz, I. (2019). Nation building, Islamic law and unofficial legal pluralism: The cases of Turkey and Pakistan. *Legal pluralism in Muslim contexts*, 49, 109.

²⁰ Berkman, A. U. (1979). Administrative Reforms in Pakistan and Turkey: A Comparative Analysis. *Journal of South Asian and Middle Eastern Studies*, 2(4), 3.

political contention is resolved with the help of judicial means, and the line between the constitutional protection and the political concession is destroyed. Pakistan is therefore a key case in point by showing the influence of institutional design decisions on the behavior of the judiciary in the changing democratic frameworks.

On a larger scale, the moral of the story is that constitutional courts cannot be judged based on their formal authority only. They are effective and require interaction between the institutional architecture, political incentives, and constitutional culture. This understanding can be used to develop the comparative constitutional scholarship based on the integration of the institutional and the political point of view with the doctrinal analysis.

Conclusion

This paper has suggested that the constitution making of specialized constitutional courts in hybrid regimes should be conceptualized as an institutional design and not as legal reform. The above comparative analysis of Türkiye and Pakistan indicates that constitutional courts are not necessarily constitutionalism guardians who are neutral. Rather, they depend on the dynamic between the systems of appointment, jurisdiction, and politics.

The general conceptual point which can be put forward here is that constitutional courts in hybrid regimes do not generally fulfill the role of independent watchdog, but rather as an institution which serves as a result of the incentives introduced in its structure. Judicial independence remains conditional instead of being automatic. The institutional changes perceived to enhance constitutional adjudication also can reestablish constitutional regulation under the conditions of a certain distribution of power between political participants.

In the case of Pakistan, there is no definitive way forward of the Federal Constitutional Court. Its institutional quality most probably will not be defined by the text of the constitution itself but by the formative judicial practice, the relationship between courts, as well as the evolution of constitutional norms within the wider political system. One of the more pessimistic forecasts is that the Court will be able to gain legitimacy and independence depending on whether the institutional safeguard is turned towards pluralism and stability or towards political solidarity. The case of Pakistan will therefore provide a valuable trial case on the role of constitutional courts in the modern hybrid constitutional orders.

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