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Two Nations, two constitutions: Unraveling the threads of constitutionalism in Pakistan and India

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Abstract

Constitutionalism is an affirmation of the constitution, of law, and of human rights. To achieve this objective, the paper analyzes constitutionalism in two countries that have common historical linkages but a different constitutional experience; these are Pakistan and India. India and Pakistan are anniversary partners as both adopted their constitutions in 1950 and espoused secularism and federalism and, in theory at least, democracy; yet the two have followed vastly different trajectories. This paper uses an analytical method to evaluate the governance structures, judiciary as guardians of constitutionalism and an effective implementation of human rights. India: Nation and its judiciary of late has been upholding constitutional morality in a better way still through few important judicial pronouncements and PIL. In contrast, Pakistan's judiciary has been accused of backing despotic governments while at the same time, seeking judicial autonomy in the last few years. Further, it deciphers universal concerns in the contemporary society for example the role of technology and acculturation of culture practices with the law. Consequently, the study highlights the virtues and vices of constitutional practices in both nations; the strategies of improving democratic institutions, judicial responsibility, and cooperative regionalism for South Asian constitutionalism could also be pinned down.

Keywords: Constitutionalism, Judiciary in South Asia, Pakistan and India governance, Human Rights, Federalism and Democracy.



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1. Introduction

1.1. Definition and Importance of Constitutionalism

Constitutionalism as used as a doctrine is a proposition of legal thought that posits that government power is obtained and can further be constrained by a constitution. meaning that it safeguards the peoples' rights, checks on arbitrary governance power and the implementation of the rule of law bearing in mind well-defined checks and balances (Sajó & Uitz, 2017). This principle then relates to the notion of constitutionalism, showing the difference between constitutions that are enforced by law from those that are not. For the states such as Pakistan and India, constitution helped frame the political structure with a view to sharing power equitably amongst ethnic, religious as well as linguistic demographics of the state. Constitutionalism is not just the business of lawyers; it revolves around a well-formed legal framework that means something to those directly and indirectly involved, as well as enforcing institutions capable of realizing the values as well as ensuring compliance within the society (Choudhry, 2008).

1.2. Historical Context of Pakistan and India

The two countries that experienced such constitutional evolution are Pakistan and India where the impacts of colonial favored British rule. The constitutional history of these two countries were impacted by the rule that favored the British Government through the Government of India Acts of 1919 and 1935. However, India received a fairly integrated bureaucratic structure to create and pass the Constitution of 1950. Issues like central state regionalism, controversy on the place of Islam in the politics further, and political turbulence were some of the factors which saw it take time to adopt its first constitution in 1956 (Ziring, 2003).

1.3. Research Objectives and Questions

This article aims to address key questions regarding the practice of constitutionalism in Pakistan and India:

- a) How have historical, social, and political factors shaped the constitutional frameworks of both countries?
- b) What role do institutions such as the judiciary play in upholding constitutional principles?
- c) How do contemporary challenges, such as populism and federalism, impact constitutionalism in these nations?

Thus, in response to these questions this research aims at identifying the major advantages and list of weaknesses inherent in the constitutional systems of the Pakistani and Indian states. In the comparative analysis, recommendations are also made to other Multi-ethnic and Multi-Religious Societies that are facing similar challenges.

1.4. Methodology and Scope

The study uses a case comparative method involving constitutional provisions, legal precedents, constitutional changes as well as constitution making processes together with other literatures like peer reviewed articles and narratives of constitution making. The scope of the study includes:

- a) A historical overview of constitutional development in Pakistan and India.
- b) An examination of the structural features of governance and the judiciary's role.
- c) Analysis of the enforcement and practical application of fundamental rights.
- d) Exploration of contemporary issues, such as minority rights and federalism

2. Theoretical Framework

They help constitute the Pakistan and Indian constitutionalism through providing theoretical lexicons of governance and the rule of law and popular protection of fundamental rights. In this section, an understanding of the basic theoretical and conceptual ideas will be established to provide the background to the comparative study of the constitutional formation and difficulty in the two countries.

1.1. Concept of Constitutionalism

These are dated back at Enlightenment period where writers or authors such as Locke and Montesquieu stressed on power separation, and rule of law together with check and balance systems respectively (Locke 1690, Montesquieu 1748). These principles make sure that governance is within the frame work of the law and that people's freedom is recognized.

In modern democracies, constitutionalism takes on multiple dimensions:

- a) Checks and Balances due the separation of powers.
- b) Frees enhance aspects of the protection of rights and liberties under the American constitution, bill of rights and India's part III of the Constitution.
- c) Oriented toward the procedures and organs counteracting the unjustified use of authority (Lutz, 2006 & Choudhry, 2008).

1.2. Post-Colonial Constitutionalism

In the post-colonial state, constitution is a dominant form of signification of sovereignty and modernity, seeks to create a nation while managing existing antagonisms (Tully, 1995). India's constitutional growth was relatively less. The promising dreams of post-colonial justice, equality and secularism are reflected by constitution of Pakistan 1956. Its framers wanted to provide a system that harvests unity in the cultural linguistic diverseness while disparaging colonial racism and social stratification (Austin, 1999).

2.3. Federalism and Constitutional Design

In fractal analyses, federalism is an important theoretical area in constitutionalism, especially in plural societies. The federal model proposed provides representation for the regions but at the same time it maintains the unity of the country (Watts, 1999). Whereas, in India, mechanisms such as the President's Rule under Article 356 make sure that central control takes over in such situations in a certain state. This model has been said to accommodate different regions and tame secessionist challenges as experienced in Punjab and the northeastern states. (Choudhry, 2008). The problem with the political structure in Pakistan is federalism that showed signs of centralism and regional inequity precisely between the Punjab-dominated federation core and a peripheral province such as Balochistan. (Malik, 2010).

2.4. Judicial Activism and Constitutionalism

Consequently, this paper will argue that judicial activism is crucial in balancing constitutionalism by maintaining that states' actions conform to the constitution. This theory gives considerable attention to legal activism by the courts, especially in dealing with the constitutional provisions and particularly with protection of human rights as well as checking the excesses of the other two arms of government (Tushnet, 2014). Whereas, Indian judiciary has come in for much criticism for its liberal construction of the Constitution especially as it relates to extension of fundamental rights. PIL has added democracy to the delivery of justice making it possible for the dominated to

challenge the state (Austin, 1999). Whereas, Judicial activism in Pakistan has moved in a cycle of either independence or obedience. Traditionalism, however, needs to be clearly defined so that it doesn't boil into the current problem of using courts to either resist authoritarianism such as the Lawyers movement of 2007 -2009 or legitimize military regimes through the doctrine of necessity (Ahmed, 2013).

2.5. Comparative Constitutionalism

Through positioning Pakistan and India into broader comparative analysis, this paper examines how historical and social conditions shape constitutionalism. The Constitution of India has been acclaimed for being fluidity or flexible. Some of the other forms of pressures, which affected it, include emergency rule between 1975 and 1977 as well as the problem of communal violence. While, Pakistan's constitutionalism has been very fragile for several factors including the military coups, underdeveloped and fragile democracies as well politicization of religion.

3. Historical Context of Constitutionalism in Pakistan and India

The historical antecedents of constitutionalism in the two countries of Pakistan and India are central to the evolution of their constitutional systems. These include civil law inherited from the British rule where the two countries got their independence from colonial masters. Nonetheless, the way leading to constitutional and state formations differed regarding political, religious, and cultural plates, which influenced the constitutional course.

3.1 Colonial Legacy and its Influence on Constitutionalism

Indeed, the British colonization has left its indelible marks on the constitutional system of both Pakistan and India. Both these territories were under the colonial rule and were governed through the GOI Acts 1858 – 1947 which enshrined some governmental structure however which were predominantly to perpetuate the colonial rule. Nevertheless, this Act still provide the sovereignty of the Britain over the India and Pakistan territories (Dudley, 2007). Whereas, In India the Government of India Act of 1935 provided the initial architecture of federalism in India but devoid of power and Indian political parties meaningful role in decision-making process of federalism (Metcalf & Metcalf, 2006).

3.2 Independence and Early Constitutional Challenges in India

After India got its independence in 1947, official business was taken over by Indian National Congress formed the constitution of the nation. Breakdown of the task was big due to ethnic, linguistic, religious, regional and other diversities of India (Chakrabarty, 2014). India adopted a new constitution between 1947 and 1950 which took effect in the year 26th of January 1950 and its objectives was to conduct justice, liberty and equality and affirm fundamental rights (Austin, 2010). The Constitution adopted a unitary state with federal elements, parliamentary democracy as a dominant form of government and secularism although 90% of the population can be considered as religious.

3.3 Pakistan's Early Constitutional Development

This Pakistan's first constitution, the Constitution of 1956, was passed in response to high political power. It was informed by two ways in which Pakistan was constructed; the arrival of the country with an Islamic background as well as the demand for effective democracy (Jalal, 1995). While, The Constitution of 1973 was significant Benchmarked because it sought to bring together the role of Islam and democracy by proving the Islamic provision, and at the same time, promulgating parliamentary democracy. Nevertheless, Pakistan can hardly be attributed a stable

constitutionalism due to the repeated overthrows and constant presence of the military authorities as well as the conflict between secular and religious powers (Rashid, 2008).

3.4 Constitutional Struggles in Pakistan: Military Rule and Political Instability

Democracy was again dethroned and threw it to the wall by several subsequent military regimes that started attacking constitutionalism. The Constitutional year of 1973 is considered important because it gave Pakistani the chance to have parliamentary form of democracy. The political instability persisted for decades, and military governments weakened the principles of constitutional democracy (Khan, 2005).

3.5 Constitutional Consolidation in India: Stability and Adaptation

The constitutional growth in India post-independence can be said to be fairly typical, thanks to the well-grounded democracy that is espoused by the Indian Constitution. India's approaches and responses that have been adopted in challenging situation such as, internal insurgency and regional movement has been one of the highlights of constitutionalism in India (Singh, 2007). While, Indian Constitution has been amended many a times to notch up the ideals of the constitution to the emerging Political and Social realities. But, it has remained largely preserved in general form, holding on to the principles of democracy, federalism and secularity (Sharma, 2012).

3.6 Comparative Constitutional Evolution

Some of the cross-border differences bringing out the African element include the comparative analysis of the constitution making in Pakistan and India. However, India got off better than Pakistan due to its commitment to the principles of democracy and secularism say in building a robust constitutional order. On the other hand, Pakistan was on the contrary a country that had her constitutionalism under threat from Religious and Politics interplay which saw the country experience often militarily coups and constitution changes (Lahiri, 2004).

4. Structural and Institutional Analysis

This means that constitutionalism in India and Pakistan needs a study based on the structures and institutions of the two countries. These frameworks show how politics, law and governance work together in construction of the constitutional and institutional settings of both countries. Although they both inherited a similar British colonial experience by the time they attained independence their institutional structures and constitutional procedures were vastly different.

4.1. The Structural Framework of the Constitution

India's constitution when adopted in the year 1950 provided for a strong center on the parliamentary form of democracy. The federalism between the central government and the states minimizes the autonomy of central control of the legislative powers that remain in New Delhi's highly centralized fashion in India. This centralization is most visible with reference to Article 356 by virtue of which the center can assume the administration of a State in case of a proclaimed Emergency (Bhatia, 2016). The nature of the center province relationship of this polity especially in the aftermath of military take overs and regional conflicts leads to constitutional convention that sometimes centralizes political authority over the provinces as provided by (Haqqani, 2005).

4.2. Federalism and the Division of Powers

It was a significant characteristic of constitutionalism in both India and Pakistan that central and provincial – or state – powers were distributed. India is a federation with having well spelt out division of powers between the Union and the States in regards to legislative, executive and judicial

spheres. As it has been established from the analysis of the Indian constitution both the center and the state's share powers highlighted by the fact that the two exercises enumerated powers. (Shankar, 2014). Indian federalism can thus be understood to be predominantly Union-centered where considerable Degree of control is vested in the Center over state especially during emergent situations or else through Article 356 (President's rule). In contrast, Pakistan's federalism is more acrimonious at times is often conflict ridden; The provinces are the units of federation under the 1973 Constitution of Pakistan; however, provincial political authority has remained restricted due to political imbalance, military governments and executives' attempts to strengthen the center (Jalal, 2013).

4.3. The Role of the Judiciary

India and Pakistan share the common fact that the judiciary is a strong advocate of constitutionalism; however, the kind of power and judicial autonomy has a vast disparity. In the case of Pakistan, the judiciary has a slightly different experience here with the executive arm of the government. In military regimes the judiciary served as a tool for propping up the military rule and for supporting military coup and constitutional changes which allowed autocratic rule in the countries of General Zia ul Haq and General Pervez Musharraf (Ginsburg & Moustafa, 2008).

4.4. The Legislature: Composition and Functioning

India and Pakistan follow the system of having both the houses of parliament, but the structure and their workings are very different because of the different polity of both the countries. In India, the Parliament consists of two houses: The Lok Sabha (House of the People) and the Rajya Sabha (Council of States) is the structure of the Indian parliament. The Lok Sabha is made up of directly elected members drawn from all over India so as to ensure representation in parliament. (Rajagopal, 2014). While, The Pakistan has also a bicameral system comprising of the National Assembly and the Senate. The National Assembly votes directly through general elections and represents the people while the Senate votes for the provinces and act as a brake on legislation likely to favor the majority. However, the parliamentary system of Pakistan has been interrupted time to time by military coups and the National Assembly has been dissolved with the suspension of the Constitution (Rashid, 2008).

4.5. Constitutional Amendments and Flexibility

The power of constitutional amendment is the key to rational response to political, social, and economic changes. India and Pakistan both countries provide the provision of constitutional amendments but it can be seen that the nature as well as the procedure of constitutional amendment in the two countries is not same. In Article 368, India has adopted a rigid constitution with provision to amend the main framework but with conditions attached. The Indian constitution has been amended over one hundred and twenty-five time since it was adopted in 1950, due to the dynamics of India (Choudhry, 2016). Law making through amendment have been exercised by the Indian Parliament to look into social justice concerns like reservation of seats for the backward class of people and the affirmative action in the favor of Dalits (Ziring, 2003).

5. Fundamental Rights and Individual Freedoms

Rights and freedoms belong among the cornerstones of constitutional states, as they protect the persons from infringement of their dignity and prevent power misuse. These rights exist in both India and Pakistan, however, the approach to their definition, the ways in which they are protected, the issues surrounding the process are somewhat different. This section looks at the supreme law of these rights and the laws that underpin them and the realities of the citizens in both countries.

5.1. Constitutional Guarantee of Fundamental Rights

The Constitution of India provides the fundamental rights in Part III of the Constitution spans from Articles 12-35 where citizens have rights to equality, freedom of speech, protection against the entries of the arrest and affect. Indian Constitution has been used as legal reference to legal lawyers and in the formulation of civil, political and social-economic rights. While, Constitution of Pakistan Part II (Article 8-28) also provides for fundamental rights including the right of equality (Article 25), freedom of speech (Article 19), protection against discrimination (Article 27) and so on. Pakistan's Constitution provides for Islamic provisions especially provisions relating to the supremacy of Shariah makes difficult the universal applicability of charter of fundamental rights (Siddique, 2019).

5.2. The Scope of Fundamental Rights in India and Pakistan

Although both countries provide for the same sort of rights as general liberties and freedoms, they do so in practice with slightly differing ranges of protection. Besides asserting civil liberty in India, the Constitution also provides laws dubbed the affirmative action towards social justice. However, Pakistan has not stuck to the principles of fundamental rights especially in case of minority and women. Leading the religious persecution in the name of blasphemy law is Section 295-C, Pakistan Penal Code and has been a gross violation of religious minorities such as the Christians and Hindus despite the constitutions provision on equality. Academician have pointed at this paradox, relating the existence of Islamic provisions in the Constitution to equality for all citizens (Jamil, 2020 & Zia, 2021).

5.3. Right to Equality and Non-Discrimination

The right to equality of one and all has been committed by India through article 14 of Indian constitution which states that, equality before the law and equal protection of the laws. This provision has been given a judicial interpretation to exclude discrimination in its direct and indirect form of which caste discrimination as evident in the *Indra Sawhney v. Union of India* (1992). Affirmative action in India is another area where legalism in India values social justice for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. Pakistan's constitution also has provisions that under section 25 no one can be discriminated against before the law. However, this holds a worrying history of religious intolerance that Continue Reading Often, it has violated these constitutional provisions. From jobs to education to liberty, Pakistani Hindus and Christians remain discriminated against even with embalmed constitutional safeguards.

5.4. Freedom of Expression and Press

The Indian judiciary has over the years safeguard this freedom from infringement particularly in the *Indian Express Newspapers Ltd v. The Press s in India* (1985), in which the apex court elaborated about the freedom of the press as being fundamental to democracy. However, the passage of hate speech laws and its selective implementation has become a subject of concern regarding diminishing free speech in India. However, the Pakistan Electronic Media Regulatory Authority (PEMRA) has actually acted as an authority policing media content especially in political, religious and military affairs (Siddiqi, 2018).

5.5. Protection from Arbitrary Detention and Torture

India and Pakistan both have provisions in their constitution that safeguards people's rights against things like torture and arbitrary arrest. India's Fundamental Right Regulation 21 assures that no individual shall be deprived of life or liberty of the individual without the legally permissible method. Amnesty International as well as the Human Rights Commission of Pakistan have given

real examples of torture and custodial deaths where there is no justice for the law enforcers involved (Amnesty International, 2017).

6. Constitutional Amendments and Political Stability

Changes in the provisions of a state's Constitution also feature considerably in the development of legal and political systems of the state. Amendments to a constitution have been made across time both in India and Pakistan, numbers of them, sometimes brought about by changes of political climates, social pressures and even national disasters. This section will discuss the Indian and Pakistan constitution amendments; ways through which the amendments have impacted political stability, governance and democracy.

6.1. Constitutional Amendments in India

It has been amended more than 100 times since the formation of constitution in year 1950, and every new change has brought in adaptation of new political, social and economic condition of this country. The Constitution Yugoslavia's making of changes to the Constitution is provided under Article 368 of the Constitution allowing the Parliament procedural changes. As has been pointed out, there are many of these amendments but they are perceived by scholars in general as the effort to adapt to the changing political environment with regard to prevailing challenges. However, in India, it is criticized that some amendment, like the 47th Amendment (1984) including the validation of the action taken by the government during Emergency period have sometime impaired democratic value and/pro restricted political right (Kumar, 2020). In a larger context, many of the amendment have helped India mark its journey in the path of political stability and a society that is becoming more and more diverse, however, the issue as to whether the country has been more centralized or decentralization has been a debatable issue.

6.2. Constitutional Amendments in Pakistan

The Constitution of Islamic Republic of Pakistan has been made in 1973 but it has been amended several times to fit the ongoing political and social unrest, extra-constitutional intervention of armed forces and shifting nature of social map of the country. To some extent, the political situation in Pakistan is more instable in contrast to India, since political power was seized by the military multiple times, there were authoritarian regimes as well as unlawful removal of civilian governments. The kind of change was witnessed in the 18th Amendment (2010) wherein Pakistan aimed at reinforcing the constitutional structure of federalism in the country. This amendment was a marked move in strengthening provincial autonomy through elimination of the 17th amendment (2003) which given formidable presidential authority that many observers held as military hegemony of civil politics regional (Hasan, 2011). They also amended provision of the 18th Amendment affecting the selection of the Prime Minister and other high authorities of the Government of Pakistan which has enhanced and institutionalized the democratic accountability.

Nevertheless, such changes have not been made continuously and independently; most amendments to the Pakistan's constitution have been in response to particular conflicts at a given time. The 21st Amendment (2015) bill was passed in the backdrop of national security and granted the military courts power to try terrorism related cases (Rizvi, 2016). The 26th amendment of the Constitution of Pakistan, 1973, the fifteenth amendment of the Constitution, was enforced on 21st October, 1984. The constitutionality of any law or a substantial question of law as to the interpretation of the Constitution, shall be heard and decided by such constitutional benches having under Article 184, original jurisdiction as well as under Article 185 of the original appeal jurisdiction. In addition, such benches shall also exercise, further, the advisory jurisdiction of the Supreme Court under Article 186. Such matters will be heard and disposed of by a bench of not

less than 5 members, constituted by the Committee, consisting of the three most senior judges of the Court. Under constitutional benches, they will also have the power to make rules for their practice and their procedure. The amendment also directs these benches to transfer all the pending appeals, petitions and review applications under the article.

6.3. Impact of Amendments on Political Stability

The impact of the constitutional amendment for political stability of India and Pakistan has been conditioned by the political systems as well as socio-political environment. While in India the amendments are frequent, although occasionally it is provoked by controversies, they are an essential factor that has contributed to the politicization of the political system (Bhat, 2018). While, in Pakistan, the failure of democratic reforms throughout the period of persistent military interventions, the abuse of the central authority by authoritarian governments, has brought about certain constitutional changes that have a negative influence on the improved functioning of the democracy (Hasan, 2011).

6.4. Challenges in Constitutional Reforms and Political Stability

The twin question of whether or not constitutional reforms have produced political stability in India and Pakistan remains a problem. The major issue faced mostly in India is to maintain federal structure and unity because structures of country are so diverse. For instance, reform measures undertaken to increase the autonomy of states like the 73rd and 74th Amendments have been sometimes met stiff opposition from both the ruling and the opposition parties and from regional elites because decentralization undermines their authority (Pillai, 2017). While, Pakistan's difficulties are somewhat more closely related to civil-military relations and the role of the military within the internal political processes. Even considering the initiatives made by the 18th Amendment, the power of armed forces in the country is still one of the major politico-stabilization hindrances.

7. Contemporary Challenges to Constitutionalism

India along with Pakistan have their scientific modern-day hurdles to their constitutional systems governance by political social and economic factors. These challenges tend to occur because of changes in socio-political environment, tension in region, and emerging contribution of non-state players.

7.1. Political Polarization and Erosion of Democratic Norms

In India, people discuss the decline of democracy and erosion of liberalism and constitutionalism with reference to net pivotalization and the rise of populism under Prime Minister Narendra Modi's Bharatiya Janata Party regime (Chhibber & Verma, 2018). The same phenomenon is observed in Pakistan, which has been experiencing deep political polarization, due to the actions of the newcomer such as Imran Khan and the constant influence of PPP and PML-N (Zahid, 2020).

7.2. Judicial Independence and Its Constraints

Legal impartiality retains considerable concern in both India and Pakistan. In India, there has been a fungus growth of executive interference with judicial functioning despite a sound judiciary. The government interference in this aspect has continuously progressed and more especially after the nullification of the National Judicial Appointments Commission (NJAC) in 2015 as unconstitutional by the apex court of India (Agarwal, 2019). While, In Pakistan, there is a check and balance issue since the country's judicial system has been a little influenced by the military and other political forces. The articulation of the military above the common judicial system,

mainly through the judicial activism that occurred in the nineties and up to the early years of this century, has resulted in decisions that reflect the military's aspirations rather than the provisions of a constitution (Hasan, 2011, Rizvi, 2016).

7.3. National Security Concerns and Constitutional Balance

In India, a major controversy that emerged with regard to constitutional position of Jammu and Kashmir is when the Article 370 was abrogated in 2019. This strategy has been received critically due to the possibility of its going against the federal provision in the Constitution and secondly, the intervention has been said to be going against the autonomy that was promised to the state of Jammu and Kashmir (Ganguly, 2020). While, Various measures regarding national security put down and adopted in Pakistan have constitutionalized themselves to the extent of depriving people of their basic liberties. The practice of military tribunal to try civilian for terrorism offences as given under the 21st Amendment (2015) shows that the question of protection of national security is in continues contradiction with the constitution of Pakistan (Rizvi, 2016).

7.4. Role of Non-State Actors and the Threat to Constitutional Sovereignty

The expanded involvement of non-state actors – armed insurgent groups, political fanatics, and international actors – could be a problem for constitutionalism in both countries as well. The ever-rising terrorism in India especially by Lashkar- e-Taiba and JeM particularly in Kashmir region means that the government of India has adopted harsh security laws including the Unlawful Activities Prevention Act (UAPA) (Pandey, 2020). Likewise, in Pakistan, non-state actors like the TTP and Baloch separatists have also increased the existing security threats the state has had to implement measures that are constitutional and counter to these protections (Sattar, 2017).

7.5. Social and Economic Inequalities

A second ongoing issue with constitutional is social and economic injustice common in both Indian and Pakistan societies. High inequality in, and between, states, compounded by caste, and leading to all kinds of unjust discriminations, seems to have negated social justice as provided in the Indian Constitution (Deshpande, 2020). Like in Pakistan, feudalism, gender discrimination and ethnic politics in the country have contributed to unequal society to merit the article of equality before law in the constitution of Pakistan (Hasan, 2011).

7.6. Constitutionalism in the Digital Age

Finally, the era of the digital is the modern threat to constitutionalism in the topics of data protection, freedom to speak, digital security. In India, for example, despite the liberal democratic culture, people are fearful that government institutions would suppress their freedom through surveillance and enforcement of prepared digital control (Nath, 2019). What has been labeled as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (2021) offers regulations of social media and has been widely received critically as a threat to freedom of speech (Bhat, 2021). While, In Pakistan the PECA 2016 has triggered a debate on the governments capacity to monitor and regulate content on internet which is viewed as a tool of repression in the country (Rizvi, 2021).

8. Lessons and Recommendations

In the case of Indian and Pakistani constitutionalism, the above subject emerged in political, social, and historical circumstances. Nonetheless, both the United States and Australia have followed different trajectories; still, this does not prevent the countries from having similar objectives and concerns regarding legal prospects of the improvement of constitutional models.

8.1. Lessons from Comparative Constitutionalism

I. The Importance of Political Stability for Constitutionalism

India and Pakistan have both experienced periods of pre-selector – political instability which stretched the elasticity of their constitutions. It is in this regard that the endurance of Indian democracy amidst political instabilities though from time to time threatening the principles of constitutionalism establishes that political stability is a crucial condition that cements democracy and its institutions. In contrast, Pakistan's replayed political instabilities and military obtrusions reflect the paramount importance of civil supremacy over the military and the absence of autonomous political institutions that guarantee political structures' adherence to the Constitution (Hasan, 2011).

II. Secularism and the Role of Religion in Constitutionalism

Both countries have a problem of secularism. India which has a clear constitutional provision to be a secular state has had certain difficulties preventing religion from becoming to some extent influential to state activities (Chhibber & Verma, 2018). Religious groups in India and Pakistan have tended to encroach on politics and have threatened constitutionalism since religious diversity is imperative in the two nations.

III. The Need for Judicial Independence

Second on the list of liberal legalisms values that we have is independence of the judiciary. Justice delivery system is part of the key constituent of constitutionalism. Complacency of India's powerful judiciary, however, has been issues of judicial appointments and controversy between the executive retailing judge and judiciary; suggesting that the rule of law requires entrenchment of institutionalized judicial independence (Agarwal, 2019). In Pakistan there are political interference and military's control over judiciary and the judiciary power that has abbreviated the judicial independence in the country.

IV. Balancing National Security and Fundamental Rights

India, and Pakistan both faced with issues of national security having to encroach on constitutional provisions of the Right of Freedom of Speech. The use of security laws including the Armed Forces (Special Powers) Act (AFSPA) in India and counter terrorism approaches of Pakistan military for counter insurgency operations are the dual challenges of constitutional protection of rights and security (Pandey, 2020 & Zahid, 2020).

V. Dealing with Regional Diversity and Autonomy

Both countries have to cope with their multilingual and multiethnic and regional demography. India is an exemplary Federal structure but fixing problems of regional self-governance particularly in some state like Jammu and Kashmir remains problematic (Gandhi & Varshney, 2012). In the same regard, Pakistan had its fair share of having the federal structure that is threatened by the process of power concentration and regional autonomist struggles (Zahid, 2020).

8.2 Recommendations for Strengthening Constitutionalism

I. Strengthening Democratic Institutions and Governance

In order to enhance the applicability of constitutionalism in the two nation namely India and Pakistan it is inevitable to bolster the strengthened of democracy. This is enhanced through promoting good governance, free and fair election, sound electoral accountability as well as proper check and balances between the executive, legislature and the judiciary. Furthermore, both

countries needed to focus on the institutional changes that would advance and ensure transparency of the electoral democracy (Chhibber & Verma, 2018; Rizvi, 2016).

II. Promoting Judicial Independence and Accountability

This must be supported through the selection processes of judges in both countries, which should be done in a professional, and merit basis in order protect the independence of the judiciary. As illustrated in NJAC example in India, powerful ruling caused the necessity of the reforms of the judicial system to share power between the judiciary and the executive to some extent (Avasarala, 2020). Pakistan should focus on independent judiciary in order to reduction of political influence by removing military power judiciary in Pakistan (Rizvi, 2016).

III. Reaffirming Secularism and Strengthening Minority Rights

Both countries need to re-establish secularism in their constitutions and give protection to religious minorities. Religious discrimination is not forbidden in India, but the freedom of religion is protected by the Indian constitution and the influence of religious political parties threaten (Jaffrelot, 2020).

IV. Protecting Fundamental Rights and Civil Liberties

It becomes very important for both India and Pakistan to enhance the protection of human rights. In India protecting the right of freedom of expression as well as ensuring that all stand equal in the eyes of the law will further entrench democratic and constitutionalism (Avasarala, 2020). Especially in Pakistan, it is important to carve out security laws so it should not be against fair trial or freedom of speech. Both countries must shape clear and measurable boundaries on the executives' emergency powers and national security laws to make sure that such special powers shall not be abused.

V. Fostering National Dialogue on Federalism and Regional Autonomy

India and Pakistan need to have decentralized system of government that will take cognizance of regional differences but will still uphold the sovereignty of the nations. Pakistan needs to address the Balochistan and Pashtun issues for social and constitutional order to remain as is. Fostering a constructive cooperation of the executive and the regional authorities together with addressing the variation of concerns and demands of various communities will guarantee the sustainability of their respective charters.

VI. Addressing Socio-Economic Inequality Through Constitutional Means

The state's socio-economic imbalance in both countries can only be redressed through amendments to the constitution. India has to re-focus its policy of positive discrimination with a view to fighting discriminations based on castes and classes alike (Deshpande, 2020). Measures that are laid down by constitution which provide equal rights of education, healthcare and employment shall assist in minimizing social conflict and strengthening the authority of the state.

VII. Adapting Constitutional Frameworks to the Digital Age

So, both India and Pakistan should take appropriate amendments to their constitution for the demands of digital era. This is short for data protection, addressing cybersecurity issues, and free speech online. The cyber laws of both countries should be made more amenable to the constitutional provisions and the international human rights regimes respectively (Nath, 2019 & Rizvi, 2021).

Conclusion

Therefore, in this article while comparing the Indian and the Pakistani constitution this research paper has been able to point out important similarities and differences that define the two political systems. India has been comparatively stronger as it has a robust and well-developed constitutionalism that has plied on democratization, judicial independence and secularism. Pakistan, on the other hand, has received more interferences in the democratic process; military coup and political crisis have unfavorable influences in the construction of a stable constitutional order. In this context, although Pakistan has experienced some positive changes while implementing the constitutional amendments including the 18th Amendment for restoring provincial autonomy and de-powering the military and Terrorism and national security issues in the country have in most occasions challenged the outright protection of constitutional rights thus giving rise to legal and constitutional questions.

Altogether, as both India and Pakistan have embraced constitutionalism, the ways to their full disclosure are still very uncertain. These constitutional and institutional problems, therefore, require sustained reform, and promotion of democratic culture so that the constitutions of both countries continue to provide political stability for the protection of human rights as well as democratic governance.

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