JUDICIAL INDEPENDENCE AND ACCOUNTABILITY: MAINTAINING THE BALANCE

Atta ullah SCJ, Mardan

Abstract

In a constitutional democracy, few institutions stand on a narrower ledge than the judiciary. Courts are expected to hold both elected and unelected officials to the law, yet judges themselves can send people to prison, impose heavy financial burdens, or strip officials of office and reputation. Because of this double role, judicial independence and judicial accountability are not decorative ideals; they are basic working conditions for the rule of law. If either is pushed too far on its own, it becomes dangerous. Independence without serious oversight can harden into impunity. "Accountability" without clear legal limits can easily become a polite name for political pressure.

This paper asks how a constitutional system can maintain this balance. Part I explains the basic concepts and notes the main international standards, especially the UN Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct. Part II turns to Pakistan. It looks at the 1973 Constitution, the Supreme Judicial Council and the Judicial Commission of Pakistan, and runs through some important cases – from Tamizuddin Khan and State v. Dosso to Asma Jilani, Nusrat Bhutto, Zafar Ali Shah and Iftikhar Muhammad Chaudhry. Part III compares Pakistan's approach with developments in Latin America, the United Kingdom, India, Nigeria, and Poland, particularly regarding judicial councils, appointments, and disciplinary systems. Part IV brings these strands together. It argues that recent constitutional amendments, especially the 26th and 27th, tilt the system too far towards political control, mainly by changing the composition of the Judicial Commission and by adding "inefficiency" as a vague new ground for removing judges. The paper ends by putting forward a model of "disciplined independence" for Pakistan: a judiciary appointed on merit, secure in tenure, removable only for clearly defined and serious reasons, and operating under transparent procedures and strong ethical norms.

Keywords: Judicial independence; Judicial accountability; Judiciary; Supreme Judicial Council; Judicial Commission of Pakistan; Constitutional amendments; Comparative law; Pakistan.

Introduction

Every modern constitution gives its judges a difficult job. On one side, judges must protect people from the state by applying the law, even when that means standing up to powerful political or military interests. On the other hand, judges themselves hold serious power over people's lives. A single judgment can send someone to jail, destroy a business, or change the course of a government. Because of this, two ideas keep appearing whenever we talk about courts: judicial independence and judicial accountability. Without independence, judges cannot realistically decide against the government when the law requires it. Without accountability, citizens will not trust the courts, and judges who misbehave or neglect their work will remain in place.

By "judicial independence," we usually mean that judges should decide cases only on the basis of law and evidence, and not because they are afraid of retaliation or eager to please a particular person or party. In practice, this requires institutional protections such as secure tenure, protection from arbitrary removal, stable salaries, and a degree of control over how courts are run. International instruments, especially the UN Basic Principles on the Independence of the Judiciary, make it clear that these protections exist not to pamper judges, but to protect litigants and the integrity of the system.[1] "Judicial accountability" is the other side of the coin. Judges are not meant to be untouchable. They must respect

the law, follow ethical and professional standards, and perform their duties with reasonable competence and diligence. Where they fail badly – for example, through corruption, extreme bias, or persistent neglect of work – there must be some way to respond. This is where codes of conduct, disciplinary bodies, and, in the extreme, removal procedures come in.

The Bangalore Principles of Judicial Conduct try to capture this link by listing six basic judicial values: independence, impartiality, integrity, propriety, equality, and competence and diligence.[2] These are clearly not only about "freedom from pressure"; they also describe what a judge ought to be like and how a judge should behave. The tension is obvious. Independence can be misused as a shield against any scrutiny. Accountability can be turned into a weapon against judges who annoy those in power. As Sandra Day O'Connor has argued, at least in the American context, properly designed accountability mechanisms can actually strengthen public confidence in courts and support independence rather than destroy it.[5] But this only happens if the mechanisms are clearly grounded in law.

This paper treats the problem as an institutional design issue. It examines how rules on appointments, tenure, discipline, and internal court governance shape judges' incentives. Part I provides the conceptual and international framework. Part II describes Pakistan's constitutional scheme and key cases since 1973. Part III turns to a few comparative examples. Part IV then analyses recent Pakistani reforms and suggests ways to move towards what I call "disciplined independence".

Part I – Conceptual Framework

A. Different layers of independence: "Judicial independence" sounds simple, but it actually has several layers. Huchhanavar suggests three broad types: institutional independence, individual independence, and internal independence.[3] This is a useful way to structure the discussion. Institutional independence is about the judiciary as a whole. Are courts a separate branch of the state? Can the executive arbitrarily close a court, reduce its budget, or change its jurisdiction for political reasons? Are judicial salaries and conditions of service secure? If not, judges always know that someone else holds real power. Individual independence focuses on each judge's position. Can a particular judge decide a particular case without worrying about personal consequences: demotion, transfer to an unattractive station, being passed over for promotion, or being targeted in the media at the instigation of powerful actors? Secure tenure, fair transfer policies, and basic procedural protections in disciplinary matters all support this level of independence. Internal independence looks inside the judiciary itself. Even if courts are protected from outside pressure, senior judges and chief justices can sometimes exert strong informal influence. They may control which judge sits on which bench, who gets high-profile cases, or who gets moved to a more desirable posting.[3] If this control is used wisely, it can help with administration. If used badly, it becomes another form of pressure.

International standards recognize these different aspects. The UN Basic Principles, for example, state that judges must be able to act "without fear, favor or prejudice" and must decide matters on the basis of facts and law, "without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".[1] Regional courts in Europe have added that national courts must have "complete autonomy" in performing their judicial functions.

The basic idea is that judicial independence is not a personal perk; it is a structural safeguard. It exists so that courts can be relied on to say what the law is, even when it is inconvenient.

B. What accountability is – and is not: If independence is about saying "no" to improper pressure, accountability is about answering for serious failures. An accountable judge is not a judge who changes decisions to please others. An accountable judge is one who can be asked to explain and, in extreme cases, can be sanctioned or removed for genuine wrongdoing or gross neglect. Accountability mechanisms look different from country to country. Some systems rely mostly on internal, peer-based checks: codes of

conduct, internal discipline, and senior judges acting as gatekeepers. Others create judicial councils with mixed membership – judges, lawyers, sometimes lay representatives or members of Parliament – to handle appointments and discipline. In a few places, impeachment by Parliament remains the formal means of removing judges, though it is rarely used in practice.

The Bangalore Principles help provide concrete content for what accountability entails. They emphasize not only independence and impartiality, but also integrity (honesty and uprightness), propriety (avoiding conflicts of interest and inappropriate behavior), equality (treating all parties fairly), and competence and diligence (doing the job properly and in a timely way).[2] Failures on these fronts can legitimately trigger disciplinary action, provided the procedures are clear and fair. There are, however, well-known pitfalls. Torrijo, looking at Latin American practice, notes that when judicial evaluation relies heavily on crude numbers – such as how many cases a judge disposes of in a given period – judges may feel pressured to clear cases quickly rather than decide them carefully.[4] In other words, the wrong kind of accountability can distort behavior.

C. Independence and accountability working together: It is tempting to think of independence and accountability as a kind of seesaw: more of one automatically means less of the other. Recent work in international law and comparative constitutional law suggests that this picture is misleading. The UN Special Rapporteur on the independence of judges has repeatedly said that accountability mechanisms should be designed to "safeguard" independence rather than undermine it.[8] In other words, if judges know that there are fair and transparent systems in place to deal with genuine misconduct, but that they cannot be punished simply for making unpopular decisions, they may actually be more willing to decide cases impartially.

Duan's survey of disciplinary mechanisms across countries shows that, in practice, the real problem has often been the opposite: systems that protect independence so strongly that almost no judge can be disciplined at all, even for serious wrongdoing.[7] This has been a complaint, for example, in debates in Canada and India about how to deal with judges accused of misconduct. A more promising approach treats rules on appointments, tenure, discipline, and internal governance as parts of one larger framework.[3] For example:

If appointments are controlled mainly by politicians, judges may feel they owe their positions to particular parties or leaders.

If disciplinary rules include vague grounds like "inefficiency" or "loss of confidence", they can be used to threaten judges whenever they displease those in power.

If all discipline is left to senior judges with no transparency, there is a risk of both self-protection and internal pressure.

The basic lesson from international standards and comparative practice is that strong judicial independence and real accountability can exist together if both are rooted in clear law and transparent processes. The next Part asks how far Pakistan's system achieves this.

Part II – Pakistan's legal framework and jurisprudence

A. The Constitutional scheme: Pakistan's 1973 Constitution gives the judiciary a clear place within the state's structure. Article 175(3) states that "the Judiciary shall be separated progressively from the Executive", intended to end the old colonial practice of executive officers exercising judicial powers. Article 209 sets up the Supreme Judicial Council (SJC), made up of senior judges, to look into the capacity and conduct of judges of the superior courts and, where appropriate, to recommend their removal to the President. Combined with the specific tenure and retirement provisions, this means that judges of the Supreme Court and the High Courts can only be removed through the SJC process and only on grounds of "misconduct" or "incapacity".[6] In 2010, the Eighteenth Amendment created the Judicial Commission of

Pakistan (JCP) through Article 175A. The JCP was tasked with recommending appointments to the Supreme Court and High Courts. Initially, it was chaired by the Chief Justice of Pakistan, and its membership was dominated by judges, with a smaller number of representatives from the bar and the executive. A parliamentary committee could review names put forward by the JCP, but had limited power to reject them. This structure was often described as a form of judicial self-governance. The idea was that judges, who know the work best, would have the leading say in deciding who joins the higher judiciary and in policing serious misconduct, while political actors would have a voice but not a veto. On paper, this is not an unreasonable attempt to balance independence and accountability.

B. Case law: between deference and assertion: The lived history of Pakistan's courts is more complicated. In practice, the superior judiciary has sometimes stood up to those in power and sometimes bent the knee. In Federation of Pakistan v. Maulvi Tamizuddin Khan (1955), the Federal Court upheld the Governor-General's dissolution of the Constituent Assembly.[11] In simple terms, the Court allowed the executive to dismiss the very body tasked with framing the Constitution. This decision is widely seen as having tilted the constitutional balance in favor of the executive at a critical moment.

In State v. Dosso (1958), the Supreme Court went even further. It treated General Ayub Khan's coup as a successful "revolution" that had created a new legal order, which the Court then accepted as valid.[12] By adopting Hans Kelsen's theory of revolutionary legality, the Court gave future coup-makers a powerful precedent: if you take control and hold it, the law will recognize you. There was later an attempt to pull back.

In Asma Jilani v. Government of Punjab (1972), the Supreme Court overruled Dosso and held that the earlier martial law regime was unconstitutional.[13] This judgment is rightly celebrated as a strong statement of constitutional supremacy, but it did not completely close the door to the doctrine of necessity.

In Nusrat Bhutto v. Federation (1977), the Court faced a military takeover again.[14] It put more emphasis on protecting fundamental rights, but in practical terms, it still accepted the fact of the regime. In Zafar Ali Shah v. Pakistan (2002), the Court validated General Musharraf's 1999 coup on the basis of necessity and allowed him to amend the Constitution in certain respects.[15] In both cases, the Court tried to limit the regime's powers, but the basic pattern was that coups were eventually legitimized.

The picture looks different in the 2007–2009 period. When President Musharraf tried to suspend Chief Justice Iftikhar Muhammad Chaudhry, there was an intense reaction from the bar and sections of civil society. The movement that followed is often described as a turning point. In Iftikhar Muhammad Chaudhry v. Pakistan (2009), the Supreme Court restored the Chief Justice and held the suspension invalid.[16] Many Pakistanis saw this as the moment when the judiciary finally asserted its independence against an overmighty executive.

C. The 26th and 27th amendments and current concerns: In the twenty-first century, the courts have increasingly become the stage on which big political questions are fought out: electoral disqualification, constitutional amendments, emergency powers, and so on. At the same time, the SJC has been criticized for doing too little and for acting in an opaque way when it does act. References against judges have sometimes been filed but rarely carried through to removal, and the standards applied have not always been clear from the outside.

The 26th Constitutional Amendment, which came into force in 2024, has given this debate new urgency. It made three major changes:

- It altered the composition of the JCP by adding more political and non-judicial members, which had the effect of making judges a minority.

- It introduced “inefficiency” as a new ground on which the SJC can recommend the removal of a judge.
- It created a parliamentary committee with a role in the selection of the Chief Justice of Pakistan.

International bodies, including the International Commission of Jurists, expressed concern that these changes could seriously undermine the judiciary's independence by placing appointments and tenure more directly under political control.[10] The 27th Amendment, instead of undoing this shift, largely reinforced it. Against this backdrop, the question is how Pakistan can protect both independence and accountability in a way that is defensible in principle and workable in practice.

Part III – Comparative Perspectives

No foreign system can be copied wholesale, and Pakistan has its own particular history. But looking briefly at how other countries have tried to handle similar problems can still be helpful. Here, I focus on four broad examples: Latin America, Poland and the European Union, the United Kingdom, and the contrasting experiences of India and Nigeria.

A. Latin America: Judicial councils and “performance”: Many Latin American countries have created judicial councils as part of broader reforms. In Brazil, the Conselho Nacional de Justiça (CNJ) supervizes administrative and disciplinary matters for the judiciary. In Argentina, the Consejo de la Magistratura plays a key role in appointing and evaluating judges.[4] These councils are meant to reduce direct executive control, introduce a degree of democratic input, and ensure that judges are not left to police themselves in complete isolation. Their membership is usually mixed: judges, lawyers, academics, and representatives from the executive or legislative branches.

Torrijo’s study, however, shows that design details matter a great deal.[4] In some countries, councils have made the system more transparent, publishing decisions, reasons, and disciplinary outcomes. In others, political actors have found ways to dominate the councils, turning them into instruments of pressure rather than independent oversight bodies. One recurring problem has been an over-emphasis on simple performance figures – for example, the number of cases disposed of. Used carefully, data can help spot courts that are badly underperforming. Used crudely, it can encourage judges to clear their dockets at the expense of careful legal reasoning. The Latin American lesson for Pakistan is that mixed councils can help balance independence and accountability, but only if their composition prevents single-party control and if their criteria and procedures are clear and publicly known.

B. Poland and the European union: Tenure under pressure: Poland’s reforms since 2015 show how quickly judicial independence can be undermined by formal legal changes that, on the surface, might look technical. Lowering the retirement age for judges, altering the Supreme Court's structure, and changing the composition of the National Council of the Judiciary all raised serious concerns in Europe. The Court of Justice of the European Union held that these measures violated EU law, and the UN Special Rapporteur on the independence of judges called them a serious threat, particularly the forced early retirement of many Supreme Court judges.[8] Poland’s case underlines a simple but important point: secure tenure is a cornerstone of judicial independence. If the political branches can adjust retirement ages to remove unwanted judges or restructure courts to dilute their influence, formal guarantees lose much of their meaning. Pakistan is not subject to EU law, of course, but the underlying lesson – that tampering with tenure and appointments in the name of “reform” can cross a line – is still relevant.

C. The United Kingdom: Independent appointments and internal discipline: The United Kingdom has moved over time towards a more structured and independent appointments process. The Constitutional Reform Act 2005 created the Judicial Appointments Commission (JAC) and established a separate

Supreme Court. Vacancies are advertised, candidates are assessed under published criteria, and the role of Ministers is limited and regulated. Disciplinary matters are handled by the Judicial Conduct Investigations Office, with appeals to an independent tribunal. Political branches have extremely limited room to affect individual judges' careers. The UK approach shows that it is possible to limit political influence over individual appointments and discipline without removing all democratic input into the overall design of the system. The key tools are clear rules, open processes, and published reasons.

D. India and Nigeria: Two different dangers: India and Nigeria, both with common-law systems and colonial legacies, illustrate different kinds of danger. In India, the Supreme Court has, through the "collegium" system, taken firm control of appointments to the higher judiciary. The National Judicial Appointments Commission (NJAC), which would have given the executive and Parliament greater power over appointments, was struck down in 2015 on the grounds that it would undermine judicial independence. Under the Indian Constitution, removal of superior court judges is possible only through impeachment for "proved misbehavior or incapacity"; there is no separate ground of "inefficiency" or similar performance-based ground. This gives Indian judges strong protection against political interference, but the system has been criticized for being too opaque, with appointments decided behind closed doors by a small group of senior judges.

Nigeria, on the other hand, has seen cases where disciplinary and anti-corruption processes appear to have been used to put pressure on senior judges. Reports linked to the 2019 suspension and resignation of the Chief Justice raised serious questions about political motives.[7] Here, the danger is not over-isolation, but rather that "accountability" becomes a label for political attacks.

Taken together, these examples show that both extremes are dangerous: a judiciary that is so insulated that it effectively answers only to itself, and a judiciary that is so exposed to political pressure that independence becomes theoretical.

Part IV – Analysis

The material above suggests that Pakistan's challenge is not unique. Many countries are struggling to find a workable balance between judicial independence and accountability. Some basic patterns, however, do emerge, pointing towards what I have called "disciplined independence". On appointments, the composition and voting rules of the Judicial Commission of Pakistan matter directly. Under the original Article 175A, the JCP was chaired by the Chief Justice and contained a majority of judges. Political actors and the bar were present but did not dominate. After the 26th Amendment, judges became a minority, and politicians gained a much stronger voice. This change risks appointments being driven more by party loyalty than by merit and may encourage judges to think about how their decisions will play with those who control the Commission rather than about what the law requires.

On discipline, the introduction of "inefficiency" as a ground for removal is a serious concern. Previously, the Constitution spoke only of "misconduct" and "incapacity", which, while not perfectly clear, at least suggested serious wrongdoing or genuine inability. "Inefficiency" could mean heavy dockets, detailed judgments, delayed decisions, or simply unpopular rulings. Without a tight definition, it offers too much room for arbitrary or selective use. At the same time, no one seriously argues that judges should be free of any scrutiny. The SJC's record shows that real questions remain about how to handle allegations of misconduct and how to make its work more transparent and predictable without turning it into a political show. The comparative material points towards clear, narrow legal standards, public rules of procedure, and decisions that are reasoned and, as far as possible, made available to the public in anonymized form. Finally, ethical culture and transparency are crucial. Independence is not just a question of who appoints judges or who can remove them. It is also about everyday habits: declaring conflicts of

interest, recusing when necessary, explaining decisions in clear language, and accepting that public criticism – when made in good faith – is part of democratic life.

Conclusion and recommendations

Taken together, Pakistan's experience and the comparative examples in this paper show that judicial independence and accountability are not rival values but mutually dependent ones. A court that is afraid of the executive cannot protect rights or uphold the Constitution; a court that cannot answer for serious misconduct, bias, or neglect will eventually lose public confidence. Pakistan's history – from Tamizuddin Khan and Dosso to Asma Jilani and Iftikhar Muhammad Chaudhry – illustrates both sides of this story. The more recent 26th and 27th Amendments shift the balance again, by giving political actors a stronger hand in appointments and by inserting "inefficiency" as a vague new ground for removal. Unless they are handled with great care, these changes risk turning "accountability" into a tool for disciplining independent judges rather than disciplining judicial misconduct.

In light of this, a few straightforward directions for reform emerge. First, the composition and voting rules of the Judicial Commission of Pakistan should be revisited so that judges once again occupy a central place, whether through clear judicial majority or supermajority rules that require judicial agreement before any appointment can proceed. This would still leave room for participation by the executive, Parliament, and the bar, but would reduce the risk that partisan interests can dominate the process.

Second, the grounds for removal in Article 209 should be narrowed and clarified. Ideally, Pakistan would return to "misconduct or incapacity" alone. If "inefficiency" remains in the text, it should be tightly defined in ordinary law and treated as an exceptional, evidence-based ground, not a convenient label for unpopular decisions or slow disposal in overloaded courts. The Supreme Judicial Council's procedures should be made clearer and more transparent, with published rules, basic information about how cases are handled, and reasoned outcomes that can be scrutinized without turning every reference into a political spectacle.

Third, more openness is needed regarding appointments and discipline in general. Publicizing vacancies, setting out general selection criteria, and giving at least brief written reasons for key decisions would go some way towards reassuring the public that independence is not a mask for favoritism. Anonymized or redacted summaries of SJC decisions would similarly show that serious misconduct is not being ignored, while protecting privacy where appropriate.

Finally, a stronger internal culture of ethics and professionalism is essential. Building on the Bangalore Principles, the judiciary and the bar should work together to develop and enforce a realistic code of conduct, backed by regular training and by a more open attitude to recusal and disclosure. If judges see independence as a duty to meet higher standards, rather than as immunity from criticism, then accountability will be felt as part of their professional identity rather than only as an external threat.

None of these steps will solve every problem, but taken together they point towards the kind of "disciplined independence" this paper has argued for: a judiciary secure enough to decide cases according to law, and accountable enough to command and deserve the trust of the public it serves.

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