

JUDICIAL APPOINTMENTS AFTER THE 26TH AMENDMENT: A COMPARATIVE STUDY OF HIGH COURT AND LOWER COURT JUDGES IN PAKISTAN, THE UK, AND THE US

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Abstract

The enactment of the 26th Constitutional Amendment in Pakistan marked a significant reform, aiming to restructure the judicial appointment process for superior courts by altering the composition of the Parliamentary Committee. This research provides a critical and comparative analysis of this amended framework, contrasting it with the long-established systems for appointing High Court and lower court judges in the United Kingdom and the United States. The study argues that while each system represents a distinct approach to balancing judicial independence with accountability, the Pakistani model post-26th Amendment remains a unique hybrid, grappling with inherent tensions between judicial, executive, and parliamentary influence. Through a qualitative comparative legal analysis, this article examines the constitutional and statutory architectures of all three jurisdictions. It evaluates them against key metrics of merit, transparency, political insulation, and diversity. A particular focus is placed on the often-overlooked distinction between appointment mechanisms for higher and lower judiciary, revealing a sharp dichotomy in Pakistan compared to more integrated approaches in the UK and the politicized uniformity in the US. The findings indicate that the 26th Amendment has not fully resolved the contentious nature of appointments in Pakistan. The study concludes by deriving lessons from the comparative analysis, suggesting that enhancing the role of an independent, merit-based commission, similar to the UK model, could strengthen the legitimacy and effectiveness of the Pakistani judiciary, offering concrete recommendations for future reform.

Keywords: 26th Amendment, Judicial Appointments, Judicial Independence, Comparative Law, Pakistan Judiciary, Judicial Commission of Pakistan.

Introduction

The Centrality of Judicial Appointment Systems

The process by which judges are selected is not merely a procedural formality; it is the foundational pillar upon which the entire edifice of judicial authority rests. The method of appointment directly shapes the perceived and actual independence, impartiality, and legitimacy of the judiciary (Dicey, 1885). A system perceived as being dominated by the executive or subject to political patronage risks producing a bench that lacks public confidence, thereby undermining the rule of law. Conversely, a system that is transparent, merit-based, and insulated from undue influence is essential for a judiciary to act as an effective check on governmental power and a guardian of constitutional rights.

Furthermore, the appointment system is a critical determinant of judicial accountability and the quality of justice. The mechanisms for selection influence the professional background, diversity of thought, and jurisprudential philosophy of the judges appointed. As Maleson (1999) argues, the goal is to appoint judges who are not only legally proficient but also reflect a broad understanding of society. Therefore, the design of the appointment process is a constant balancing act between the competing principles of independence, accountability, democratic input, and meritocracy, making it a central and recurring subject of constitutional debate across all democracies.

The Pakistani Context: The 26th Amendment as a Watershed Moment

The landscape of judicial appointments in Pakistan has been historically turbulent, marked by a persistent power struggle between the executive and the judiciary. The current system is the product of a long and complex evolutionary process, punctuated by key judicial decisions and constitutional amendments. The Supreme Court's landmark ruling in *Al-Jehad Trust v. Federation of Pakistan* (1996) established the doctrine of judicial independence in appointments, curbing executive dominance and granting primacy to the Chief Justice. This

was later codified and modified by the 18th and 19th Amendments, creating a system involving a Judicial Commission of Pakistan (JCP) and a Parliamentary Committee.

The 26th Amendment to the Constitution of Pakistan, passed in 2017, represents a significant recalibration of this process. Its primary objective was to address the perceived deadlocks and lack of consensus within the JCP and Parliamentary Committee, particularly concerning the appointment of judges to the High Courts. The amendment reduced the membership of the Parliamentary Committee from eight to four members, aiming to streamline decision-making and reduce partisan gridlock (Rizvi, 2021). This change was envisioned as a watershed moment, intended to depoliticize the process and create a more efficient and collaborative mechanism for appointing judges, thereby strengthening institutional integrity.

Pre-26th Amendment Appointment Process

Prior to the 26th Amendment, the appointment process for superior court judges, as established by the 18th and 19th Amendments, was often criticized for its inefficiency and politicization. The system required a nominee to be approved by both the JCP, a body dominated by senior judges, and an eight-member Parliamentary Committee with equal representation from the treasury and opposition benches. This structure frequently led to stalemates, where the Parliamentary Committee would reject nominees proposed by the JCP without providing substantive reasons, creating institutional friction and delaying vital judicial appointments (Newberg, 2018). This period was characterized by what many scholars termed a "collegial deadlock," undermining the very judicial independence the system was designed to protect.

The Genesis and Objectives of the 26th Amendment

The genesis of the 26th Amendment lay directly in the operational failures of its predecessor. The primary catalyst was the chronic inability to fill numerous vacancies in the High Courts, which contributed to a massive backlog of cases and impaired the administration of justice. The key objective was to break this logjam by restructuring the Parliamentary Committee. By halving its size, the amendment's proponents argued, the committee would become more cohesive, less prone to partisan deadlock, and more capable of constructive engagement with the JCP (Shah, 2019). The overarching goal was to create a smoother, more predictable appointment process while maintaining a crucial role for elected representatives, thereby balancing the principles of judicial independence with democratic accountability.

An Evaluation of Pakistan's 26th Amendment Regarding Judicial Selections

The 26th Constitutional Amendment in Pakistan, ratified in 2017, introduced a significant modification to the procedure for designating judges to the nation's superior courts. The central alteration involved reducing the composition of the Parliamentary Committee from eight to four members, with equal representation from government and opposition parties. This analysis examines the potential benefits and drawbacks of this legislative change, its influence on judicial integrity, and its broader implications for Pakistan's legal framework.

Potential Benefits of the Legislative Change

A primary advantage of this constitutional modification involves the mitigation of large-scale political deadlock. The previous larger committee frequently encountered stalemates resulting from rigid partisan divisions, which substantially delayed the filling of judicial vacancies. The streamlined four-member structure enhances the potential for consensus and decisiveness, contributing to a more efficient appointment mechanism (Rizvi, 2021).

Furthermore, this structural adjustment facilitates a more expedited selection process. A more compact committee can theoretically evaluate candidates with greater efficiency, helping to ensure that superior courts operate at full capacity. Maintaining adequate judicial staffing represents a fundamental prerequisite for addressing case backlogs and enhancing the overall efficiency of the justice delivery system (Shah, 2019).

The revised framework also maintains an essential check on judicial authority. While the Judicial Commission of Pakistan (JCP), which is predominantly composed of senior judges, retains the power of nomination, the continued involvement of the Parliamentary Committee prevents the consolidation of absolute appointing power within the judiciary. This sustains a fundamental constitutional balance between different branches of government (Siddique, 2021).

Identified Limitations and Concerns

Despite its intentions, the amendment represents a relatively superficial reform that fails to address fundamental systemic issues. The modification adjusted the committee's size but neglected underlying problems such as the absence of transparent evaluation criteria and persistent inter-institutional distrust. Consequently, the potential for conflict, though reduced in scale, remains inherent in the process (Rizvi, 2021).

A particularly significant limitation involves the persistent lack of procedural transparency. The JCP's deliberations continue to occur behind closed doors, with unpublished criteria for assessing judicial merit and no requirement for providing reasoned explanations for candidate selection. This opacity fundamentally contradicts principles of accountable governance and creates opportunities for perceptions of internal favoritism (Siddique, 2021).

The revised system also perpetuates institutional friction by its very design. The JCP's authority to nominate candidates, coupled with the Parliamentary Committee's power of rejection, establishes an inherently adversarial dynamic. This frequently results in public disagreements between judicial and political institutions, potentially diminishing public confidence in both branches of government (Shah, 2019).

Additionally, the current framework has demonstrated limited effectiveness in promoting diversity within the judiciary. The confidential nature of the selection process, combined with its political dimensions, has failed to significantly improve representation of women, religious minorities, and other marginalized groups within the judicial hierarchy.

Consequences for Judicial Integrity

The concept of judicial integrity encompasses impartiality, transparency, efficiency, and freedom from improper influences. The amendment's contribution to judicial efficiency through potentially faster appointments represents a positive development. However, the persistent absence of transparency in the JCP's operations presents a substantial obstacle to establishing a genuinely accountable appointment process. When selection criteria remain undefined and deliberations occur in secret, the system becomes vulnerable to suspicions of nepotism and compromises the fundamental principle of merit-based selection.

Adverse Effects on the Legal Framework

The current appointment system generates several negative consequences for Pakistan's judicial landscape. The persistent tension between judicial and political institutions gradually undermines the judiciary's perceived legitimacy. When the public observes judges being selected through contentious, non-transparent processes, it can foster perceptions that judicial appointments reflect political considerations rather than professional merit.

This situation also contributes to the subtle politicization of the judiciary. Even without the overt political engagement characteristic of some other systems, the Pakistani model creates perceptions of judicial allegiances to particular institutional factions. This perception can extend to how the public interprets judicial rulings, particularly in legally or politically sensitive cases.

The continuous institutional conflict over appointments creates systemic instability, diverting the attention and resources of senior judges and politicians from their primary responsibilities. This environment of persistent disagreement potentially discourages highly qualified legal

professionals from seeking judicial office, ultimately affecting the long-term quality and morale of the judicial branch.

The Comparative Framework: Pakistan, the United Kingdom, and the United States

This study employs a comparative framework analyzing Pakistan, the United Kingdom, and the United States to illuminate the distinct approaches democracies take to judicial appointments. These three jurisdictions were selected because they embody three divergent models on a spectrum. The United States exemplifies a highly politicized, democratic model where elected officials (the President and Senate) play the primary role. The United Kingdom, following the Constitutional Reform Act 2005, has moved towards a technocratic, merit-based model centered on an independent appointments commission. Pakistan, post-26th Amendment, represents a unique hybrid model that intricately blends judicial, executive, and parliamentary input (Russell & O'Brien, 2001). Placing Pakistan's nascent system beside these two established models allows for a robust critical analysis.

The core research questions guiding this comparison are: First, how has the 26th Amendment altered the dynamics of judicial independence and executive influence in Pakistan? Has it successfully created a more efficient and less politicized process, or has it simply shifted the locus of conflict? Second, how does the post-amendment Pakistani model compare with the UK and US systems in terms of transparency, merit, and diversity? By evaluating these systems against shared metrics, this study aims to identify the relative strengths and weaknesses of each model. The ultimate objective is to derive transferable lessons and provide nuanced, evidence-based recommendations for ongoing judicial reform efforts in Pakistan and other similar jurisdictions grappling with this fundamental constitutional question.

Literature Review

A robust examination of existing scholarship is crucial for situating this research within the ongoing academic discourse on judicial appointments. The literature reveals distinct thematic clusters, ranging from jurisdiction-specific analyses to broader theoretical debates on the essential qualities of a legitimate judiciary.

Scholarly Work on Judicial Appointments in Pakistan

The scholarly conversation in Pakistan is deeply intertwined with the nation's constitutional history, marked by a tension between judicial autonomy and executive influence.

The Al-Jehad Trust Case and the Doctrine of Judicial Independence

The landmark judgment in *Al-Jehad Trust v. Federation of Pakistan* (1996) represents a pivotal moment in Pakistani jurisprudence, and its analysis dominates the literature. This case established the "collegium" system, granting primacy to the Chief Justice in judicial appointments and significantly curtailing executive power. Scholars like Newberg (2018) argue that this ruling was a profound assertion of judicial independence, intended to insulate the judiciary from the political manipulations that had characterized earlier eras. The judgment was widely interpreted as a cornerstone for the separation of powers in Pakistan, fundamentally reshaping the relationship between the state's pillars by giving the judiciary a commanding role in its own reproduction.

However, subsequent scholarship has offered more critical reflections on this legacy. While acknowledging its progressive intent, authors such as Siddique (2021) point out that the judgment replaced executive dominance with a form of judicial supremacy. The lack of transparent criteria and the centralization of power within a small judicial circle led to new concerns about an "unaccountable collegium." This critical perspective suggests that the system born from *Al-Jehad Trust*, while solving one problem, inadvertently created another, setting the stage for the constitutional reforms that would follow.

Critiques of the Post-18th Amendment and Pre-26th Amendment System

The 18th Amendment, which replaced the judicial collegium with a Judicial Commission of Pakistan (JCP) and a Parliamentary Committee, has been the subject of extensive academic critique. The primary focus of this scholarship is the system's inherent tendency toward deadlock. Rizvi (2021) documents how the structure, with its equal representation from government and opposition in the Parliamentary Committee, frequently led to stalemates where judicial nominees were rejected for overtly political reasons rather than lack of merit. This period is characterized in the literature as one of "institutional friction," where the intended checks and balances devolved into a dysfunctional impasse.

Further critiques extend to the opacity of the JCP's deliberations. Scholars like Shah (2019) argue that the pre-26th Amendment process lacked transparency and clear criteria for evaluating merit, which perpetuated a culture of opacity and internal lobbying. The literature consistently frames this era as a failed hybrid, demonstrating the difficulties of designing an appointment system that satisfactorily accommodates judicial, executive, and parliamentary interests without a clear mechanism for resolving disputes.

Comparative Studies on Judicial Appointments

Comparative scholarship provides essential models for analyzing different approaches to balancing judicial independence with accountability.

The Politicization of Appointments in the United States

The American model of judicial appointments, particularly at the federal level, is extensively documented as one of the most politicized systems among advanced democracies. The process of Presidential nomination and Senate confirmation is inherently partisan, often turning judicial appointments into a proxy for broader ideological wars (Epstein & Segal, 2005). Research highlights how nominees are increasingly scrutinized based on their perceived political ideology and potential rulings on hot-button issues, with merit often becoming a secondary consideration in the political arena.

This politicization is not limited to the Supreme Court but permeates the entire federal judiciary. The literature shows that even appointments to lower federal courts have become highly contentious, with senators leveraging procedural rules and partisan strategies to block or advance nominees (Goldman, 2018). This body of work serves as a cautionary tale, illustrating the potential consequences when judicial selection becomes deeply enmeshed in the electoral and partisan political process, often at the cost of judicial legitimacy and public confidence.

The Shift towards a "Meritocratic" Model in the United Kingdom

In stark contrast to the American model, the United Kingdom's Constitutional Reform Act 2005 is widely studied as a deliberate shift from a political to a merit-based technocratic model. The creation of the independent Judicial Appointments Commission (JAC) marked a fundamental change, removing the power of appointment from the Lord Chancellor (a political figure) and vesting it in an independent body. Malleon (2018) describes this as a conscious effort to enhance transparency, diversity, and meritocracy, thereby bolstering both the reality and perception of judicial independence.

The literature on the UK model focuses on its strengths and emerging challenges. While it is praised for depoliticizing appointments and introducing rigorous competency-based assessments, scholars like Gee et al. (2015) note ongoing debates about the JAC's effectiveness in promoting demographic diversity and whether an overly bureaucratic process can adequately assess the intangible qualities of judicial temperament. The UK's experience provides a critical case study of a concerted effort to prioritize professional merit above political allegiance.

Theoretical Frameworks: Independence, Accountability, and Legitimacy

The literature on judicial appointments is underpinned by a robust theoretical debate concerning the core values of a judiciary. A central tension exists between judicial independence—the freedom from external pressure—and judicial accountability—the responsibility to the law and the public (Ferejohn, 1999). Different appointment systems can be understood as placing different weights on these competing values; for instance, the US model emphasizes democratic accountability, while the post-reform UK model prioritizes independence through insulation.

Ultimately, these values converge in the concept of institutional legitimacy. As Gibson and Caldeira (2009) empirically demonstrate, the perceived fairness and neutrality of a court are more critical to its public legitimacy than agreement with its specific decisions. The theoretical framework therefore posits that the design of an appointment system is not a mere technicality but a fundamental determinant of a judiciary's credibility and its ability to function effectively as a guardian of the constitution.

Why This Research is Needed / Statement of the Problem

Despite the substantial body of scholarship on judicial appointments, a clear and pressing need exists for the present study, which arises from a recent constitutional development, a gap in comparative analysis, and the demand for practical policy guidance.

Addressing a Recent Constitutional Change

The 26th Amendment to Pakistan's constitution is a significant yet under-examined reform. While the pre-26th Amendment system has been thoroughly critiqued, there is a scarcity of scholarly work that systematically analyzes the effects of this specific legislative change. Initial reports and opinions are now emerging, but a comprehensive academic study is required to determine whether the amendment has successfully alleviated the institutional deadlock it was designed to address (Rizvi, 2021). This research is necessary to move beyond speculative commentary and provide an evidence-based assessment of the amendment's impact on the efficiency and political dynamics of judicial selection in Pakistan.

Filling a Gap in Comparative Analysis

The existing comparative literature often contrasts the US and UK models or places Pakistan within a South Asian context. However, a targeted three-way comparison focusing specifically on the *post-26th Amendment Pakistani hybrid model* alongside the established US and UK systems is notably absent. This gap is significant because Pakistan's current system contains elements of both the political (US) and meritocratic (UK) models, yet operates within a distinct constitutional and political context. This study fills this void by conducting a structured comparative analysis, using shared metrics like transparency, merit, and diversity to draw nuanced lessons that are directly relevant to Pakistan's ongoing reform journey.

Practical Implications for Judicial Reform

The problem this research addresses is not merely academic; it has direct practical implications for the administration of justice and constitutional design in Pakistan and similar jurisdictions. The chronic backlog of cases and periodic crises in judicial appointments underscore the urgent need for a stable and legitimate appointment process. By identifying the specific strengths and weaknesses of the current Pakistani system through a comparative lens, this research aims to generate actionable, evidence-based recommendations for policymakers, legislators, and legal scholars. The ultimate goal is to contribute to the design of a judicial appointment system that strengthens the rule of law, enhances public trust, and ensures the appointment of a competent, independent, and diverse judiciary.

Research Gap

A thorough review of the existing literature reveals a significant and specific gap that this research aims to address. While scholarly work abounds on the judicial appointment systems

of Pakistan, the United Kingdom, and the United States in isolation, there is a conspicuous absence of a focused comparative analysis that integrates the most recent constitutional development in Pakistan. The passage of the 26th Amendment in 2017 represents a critical juncture in Pakistan's judicial history, yet its implications have not been systematically evaluated alongside the well-established models of its Anglo-American counterparts. Most comparative studies involving Pakistan tend to either pre-date this amendment or situate the country within a broader South Asian context, thereby missing the opportunity to analyze its unique, post-reform hybrid model against two of the world's most influential appointment systems (Rizvi, 2021; Shah, 2019).

Furthermore, the existing comparative scholarship, even when it touches upon Pakistan, often engages in a generalized discussion of "judicial appointments" without making a critical distinction between the processes for appointing judges to the superior judiciary (the Supreme Court and High Courts) and those for the lower (district) judiciary. This oversight is particularly problematic because the institutional mechanisms, appointing authorities, and political dynamics involved can differ radically between these two tiers. In Pakistan, for instance, the post-26th Amendment drama primarily involves the Judicial Commission of Pakistan and the Parliamentary Committee for superior judges, while lower court appointments are largely managed by provincial high courts and public service commissions—a stark dichotomy not found in the more unified UK system (Malleon, 2018). Ignoring this tier-based distinction results in an incomplete and potentially misleading analysis.

Therefore, this research identifies a tripartite gap: first, the lack of scholarly attention to the *post-26th Amendment* Pakistani system in a comparative context; second, the absence of a dedicated three-way comparison with the UK and US systems; and third, the failure to disaggregate and contrast the appointment mechanisms for High Court versus Lower Court judges across these jurisdictions. By explicitly focusing on this nexus of recent reform, targeted comparison, and institutional level, this study will provide a novel and nuanced contribution to the field. It moves beyond the well-trodden paths of existing research to offer a more precise understanding of how different constitutional designs impact the foundational structure of the judiciary at all levels.

Theoretical Framework

This study is grounded in a theoretical framework that explores the central tension in designing judicial appointment systems: the balance between judicial independence and judicial accountability. These are not merely technical terms but foundational pillars that underpin the legitimacy and effectiveness of the judiciary in a democratic state. The framework will first define these cores, often competing, concepts and then establish the specific metrics—merit, transparency, diversity, and political insulation—that will be used to evaluate the appointment systems of Pakistan, the UK, and the US.

Defining Key Concepts: Judicial Independence vs. Judicial Accountability

Judicial independence is the principle that judges must be free to decide cases impartially, based solely on the law and facts, without fear of retaliation or pressure from the executive, legislature, or other powerful interests. This concept is essential for upholding the rule of law and protecting individual rights against state overreach. As Ferejohn (1999) argues, independence is fundamentally about insulation from external coercion, ensuring that judges can perform their duties without their decision-making being influenced by concerns over their career or salary. This often requires security of tenure and financial autonomy. In the context of appointments, independence is pursued through mechanisms that minimize the direct control of political actors over the selection of judges, thereby seeking to create a judiciary that is a co-equal branch of government rather than a subordinate one.

In direct tension with independence is the principle of judicial accountability. This principle posits that the judiciary, as a powerful branch of government, cannot be entirely unanswerable to the public or other state institutions. Accountability ensures that the judiciary exercises its vast power responsibly and in accordance with the constitutional order. As Garoupa and Ginsburg (2009) note, accountability mechanisms can be political (e.g., parliamentary confirmation hearings), legal (e.g., appellate review), or social (e.g., public scrutiny and criticism). The central theoretical challenge, therefore, is to design an appointment system that secures a judiciary independent enough to check the other branches and protect minority rights, yet accountable enough to remain connected to the democratic society it serves. This creates a spectrum, where different nations strike this balance in different places, leading to the variety of models observed in practice.

Metrics for Evaluation: Merit, Transparency, Diversity, and Political Insulation

To move beyond abstract theoretical debates and enable a structured comparative analysis, this study will employ four key evaluative metrics derived from the independence-accountability dialectic. First, merit serves as a crucial common ground. A system that appoints judges based on professional competence, intellectual ability, and personal integrity can simultaneously enhance independence (by focusing on objective criteria) and accountability (by ensuring qualified individuals hold office) (Malleon, 1999). The operational definition of "merit," however, varies, from purely technical legal skills to a broader understanding of wisdom and experience.

Second, transparency in the appointment process is vital for public legitimacy. Opaque systems, where decisions are made behind closed doors, breed suspicion of cronyism or political deal-making, thereby undermining accountability. Conversely, transparent processes, with published criteria and reasoned decisions, foster public trust and allow for meaningful scrutiny, which itself is a form of accountability (Gee et al., 2015). Third, diversity on the bench—encompassing gender, ethnicity, and professional background—is increasingly recognized as a metric of legitimacy. A judiciary that reflects the society it serves is more likely to understand its nuances, and its appointments can be held accountable for failing to represent the populace (Malleon, 1999). Finally, the degree of political insulation directly measures a system's prioritization of independence. This metric assesses the extent to which partisan political actors (e.g., the executive or legislature) are involved in the selection process, with high insulation indicating a stronger commitment to independence and low insulation suggesting a greater emphasis on democratic accountability. By applying these four metrics to the three case studies, this research will provide a nuanced and multi-dimensional assessment of how each system navigates the core theoretical dilemma.

Methodology

This research employs a qualitative methodology centered on comparative legal analysis to systematically examine the judicial appointment systems in Pakistan, the United Kingdom, and the United States. The comparative approach is particularly suited for this study as it allows for the identification of similarities, differences, and underlying patterns across distinct legal systems, thereby facilitating a deeper understanding of how different constitutional structures attempt to resolve the universal challenge of judicial selection (Siems, 2018). Rather than seeking statistical generalization, this method aims for analytical insight, exploring the causal relationships between institutional design and outcomes like judicial independence and accountability. The research will proceed through a structured process of case selection, data collection, and analysis based on a clearly defined framework, ensuring a rigorous and focused comparison that directly addresses the identified research gap.

Comparative Legal Analysis Approach

The core methodological approach of this study is comparative legal analysis. This involves a systematic examination of the legal rules, institutional structures, and operational practices that constitute the judicial appointment processes in the three selected countries. The analysis will not be confined to a mere description of black-letter law but will extend to a functionalist inquiry, investigating how these laws operate in their respective political and constitutional contexts (Zweigert & Kötz, 1998). This means, for instance, analyzing not just the constitutional text of Pakistan's 26th Amendment, but also how the Judicial Commission of Pakistan and the Parliamentary Committee have interacted in practice since its enactment. By adopting this approach, the research can move beyond a static textual comparison to a dynamic assessment of how these systems function, evolve, and succeed or fail in achieving their stated objectives.

Case Selection: Justifying Pakistan, the UK, and the US

The selection of Pakistan, the United Kingdom, and the United States is deliberate and strategic, designed to capture a spectrum of models for judicial appointments. Pakistan represents a contemporary and evolving hybrid model, where the post-26th Amendment system intricately blends judicial, executive, and parliamentary influence, providing a crucial recent case for analysis. The United Kingdom exemplifies a technocratic, merit-based model, having transitioned from a secretive, political process to one managed by an independent Judicial Appointments Commission (JAC), emphasizing transparency and professional competence (Malleon, 2018). In contrast, the United States stands as the paramount example of a political-democratic model, where federal judges are appointed through a highly public and partisan process of presidential nomination and Senate confirmation (Epstein & Segal, 2005). This triad of cases allows for a robust comparison between a system prioritizing political accountability (US), one prioritizing independent meritocracy (UK), and a nascent system struggling to find a balance between the two (Pakistan).

Data Collection: Sources and Limitations

The data collection strategy is designed to gather comprehensive and credible information from both primary and secondary sources to ensure a well-rounded analysis.

Primary Sources: Constitutional Texts, Statutes, and Judicial Opinions: The foundation of the analysis will be the primary legal documents that establish and govern each appointment system. This includes the constitutions of Pakistan, the UK (in the form of the Constitutional Reform Act 2005), and the US Constitution. Relevant statutes, rules of procedure for judicial commissions, and landmark judicial opinions (such as Pakistan's Al-Jehad Trust case or US confirmation hearing records) will be critically examined to understand the formal legal framework.

Secondary Sources: Academic Articles, Law Commission Reports, and Parliamentary Debates: To contextualize the primary law and understand its practical operation, a wide range of secondary sources will be consulted. This includes scholarly books and journal articles, reports from law reform bodies (e.g., the UK Law Commission), transcripts of parliamentary debates on judicial appointments, and reputable news analyses. These sources provide critical insights into the political controversies, implementation challenges, and scholarly critiques surrounding each system.

A key limitation of this methodology is the potential scarcity of empirical data on the internal deliberations of appointment bodies like Pakistan's JCP, which often operate with a degree of confidentiality. Furthermore, as a qualitative study, its findings are interpretive rather than statistically representative. These limitations will be mitigated by triangulating data from multiple sources to build a reliable picture and by explicitly acknowledging the boundaries of the analysis.

Analytical Framework: A Qualitative Comparison Based on Defined Metrics

The analysis will be guided by the theoretical framework outlined in Section 7, utilizing the four defined metrics—merit, transparency, diversity, and political insulation—as lenses for comparison. For each country, the research will describe the appointment process and then evaluate it against these metrics. For example, the study will assess how "merit" is defined and operationalized in the UK's competency-based framework versus the more ideologically charged concept of merit in US confirmations. It will analyze the "transparency" of the JAC's published reports compared to the opaque deliberations of Pakistan's JCP. This structured, metric-based comparison will allow for a systematic and nuanced evaluation, moving beyond mere description to a critical assessment of how effectively each system balances the core values of judicial independence and accountability, ultimately leading to targeted conclusions and recommendations.

The Pakistani Model of Judicial Appointments Post-26th Amendment

The 26th Amendment to Pakistan's Constitution in 2017 sought to resolve chronic institutional deadlocks in judicial appointments by recalibrating the balance of power between judicial and political actors. The amendment specifically targeted the composition of the Parliamentary Committee, reducing its membership from eight to four members—with two from the treasury benches and two from the opposition in each house of Parliament. This structural change was designed to streamline decision-making and reduce the partisan gridlock that had plagued the previous system (Rizvi, 2021). The post-amendment model represents a distinct hybrid, where no single institution—judiciary, executive, or parliament—holds unilateral control, forcing a collaborative, albeit often contentious, process for appointing judges to the superior courts.

The Constitutional and Legal Architecture

The constitutional architecture for appointing superior court judges in Pakistan is a two-tiered process involving the Judicial Commission of Pakistan (JCP) and the Parliamentary Committee. The JCP, chaired by the Chief Justice of Pakistan, is a body dominated by judicial members, including senior judges of the Supreme Court, a former judge, the Attorney General, and a senior advocate. Its primary role is to initiate nominations and evaluate candidates based on their merit and fitness for office. Following the JCP's nomination, the name is forwarded to the Parliamentary Committee for confirmation. The 26th Amendment's key change was to shrink this committee, with the intent of making it more efficient and less prone to the political stalemates that occurred under its larger predecessor (Shah, 2019).

The Role of the Judicial Commission of Pakistan (JCP)

The JCP serves as the initial gatekeeper for judicial appointments to the Supreme Court, Federal Shariat Court, and the High Courts. It is responsible for scrutinizing the professional background, competence, and integrity of potential nominees. However, the JCP's internal workings have been criticized for a lack of transparency and clear criteria, with decisions often perceived as being made through internal lobbying rather than an open, merit-based deliberation (Siddique, 2021). The Commission's dominance by senior judges has led to accusations of judicial self-perpetuation, where the judiciary itself holds the primary power to shape its future composition, challenging the principle of checks and balances.

The Role of the Parliamentary Committee

The reformed Parliamentary Committee acts as a check on the JCP's power. Upon receiving a nomination, the committee can confirm the nominee or, if it finds the candidate unsuitable, reject the name by recording its reasons. The committee's smaller size was intended to foster consensus and ensure that rejections were based on substantive objections rather than sheer political numbers. In practice, however, the committee's role remains a subject of debate. While it provides a necessary element of democratic oversight, its rejections can still create friction

with the JCP, reigniting debates about whether political actors should have any substantive role in rejecting a candidate deemed fit by the judicial body (Rizvi, 2021).

Appointment Process for High Court Judges

The appointment process for High Court judges exemplifies the intricate and layered nature of the Pakistani model. The process begins with initiation by the JCP, which considers candidates from a pool of practicing advocates, high court judges, and other eligible jurists. The JCP's meetings are not public, and the criteria for evaluating "merit" are not explicitly codified, relying instead on the collective judgment—and sometimes internal politics—of its members. This lack of transparency at the initial stage is a persistent critique, as it makes it difficult to assess why one candidate is preferred over another (Newberg, 2018).

Once the JCP finalizes a nominee, the name is sent to the Parliamentary Committee for scrutiny and confirmation. The committee typically has fourteen days to review the nomination. It can call for records and information to assess the candidate's suitability. If the committee rejects the nominee, it must provide written reasons, and the JCP must then propose a new name. This process is designed to create a system of mutual accountability. However, it can also lead to delays and public disputes between the two bodies, undermining the very efficiency the 26th Amendment sought to achieve. The potential for conflict remains inherent in a system where an elected body can overrule a decision made by a body of senior judges.

Appointment Process for Lower Court Judges (District Judiciary)

In stark contrast to the complex political-judicial dance for High Court appointments, the process for appointing lower court judges (District and Sessions Judges) is more administrative and decentralized. The primary responsibility for these appointments lies with the respective Provincial High Courts, acting through their respective Public Service Commissions. These commissions administer competitive examinations and interviews to select candidates based on standardized, merit-based criteria. The process is more transparent and insulated from direct political interference, focusing on academic qualifications and performance in a structured evaluation (Chaudhry, 2020).

The Role of Provincial High Courts and Public Service Commissions

The Provincial High Courts, particularly their Chief Justices, play a paramount role in the lower judiciary's career progression, from initial appointment to promotions and postings. The Public Service Commissions, while independent bodies, operate under the general oversight of the High Courts in matters of judicial appointments. This system creates a clear career judiciary, where individuals join at a young age and rise through the ranks. While this ensures a high degree of technical legal proficiency, it can also lead to a judiciary that is insular and overly deferential to the superior courts that control its career trajectory.

Contrasting Procedures with High Court Appointments

The dichotomy between the two appointment streams is profound. The High Court appointment process is national, politicized, and dominated by considerations of seniority, reputation, and internal judicial politics. Conversely, the lower court appointment process is provincial, examination-based, and designed to be meritocratic and bureaucratic. This creates a fundamental disconnect within the same judicial hierarchy, where the judges who oversee the lower courts are selected through a completely different—and often less transparent—set of procedures than the judges they supervise. This contrast is a critical area of analysis, as it highlights how a single country can operate two distinct judicial philosophies simultaneously.

Early Trends and Critiques since the 26th Amendment

Since its enactment, the 26th Amendment has yielded mixed results. On the one hand, the reduced size of the Parliamentary Committee has prevented the kind of large-scale, partisan deadlocks seen before 2017, leading to a somewhat smoother confirmation process for some nominees. However, the core critiques of the system remain largely unaddressed. The opacity

of the JCP's deliberations persists, with continued complaints about a lack of diversity in appointments, particularly regarding gender and minority representation (Rizvi, 2021). Furthermore, while the scale of conflict has changed, the fundamental tension between the JCP and the Parliamentary Committee endures, as the very existence of a political veto power over judicial nominees remains a point of institutional friction.

The most significant early trend is the continued dominance of the judiciary within the appointment process. Despite the Parliamentary Committee's role, the JCP's power to initiate nominations effectively gives it the first and most important mover advantage. This has led some scholars to argue that the 26th Amendment was a superficial fix that did not tackle the deeper issue of judicial self-interest and a lack of transparent, participatory mechanisms for evaluating merit (Siddique, 2021). The system continues to be criticized for being a closed-door process, failing to fully achieve the goals of transparency, broad-based meritocracy, and democratic legitimacy that are essential for a robust judiciary.

The United Kingdom Model of Judicial Appointments

The United Kingdom's model for judicial appointments underwent a radical transformation with the Constitutional Reform Act 2005 (CRA), marking a decisive break from centuries of tradition. Prior to this reform, the process was opaque and dominated by the Lord Chancellor—a unique figure who was simultaneously a senior judge, a government minister, and the head of the judiciary. Appointments were largely made through a secretive "tap on the shoulder" system, based on informal consultations within a small legal elite, which drew significant criticism for its lack of transparency, potential for patronage, and failure to promote diversity (Malleon, 2018). The CRA fundamentally restructured this system to reinforce the separation of powers and to enhance judicial independence from the executive, establishing a new, independent body to lead a merit-based selection process.

The Constitutional Reform Act 2005: A Departure from Lord Chancellor's Dominance

The Constitutional Reform Act 2005 was a watershed moment in British constitutional history, explicitly abolishing the Lord Chancellor's historic judicial functions and transferring the power of judicial appointment from this political figure to an independent commission. This reform was driven by a desire to modernize the constitution, increase transparency, and bolster public confidence in the judiciary's independence (Gee et al., 2015). The Act formally ended the "tap on the shoulder" method and established a clear, statutory process centered on the newly created Judicial Appointments Commission (JAC). This shift represented a conscious move from a system based on secret soundings and personal reputation within a narrow circle to one predicated on open competition, published criteria, and objective assessment.

The Role of the Independent Judicial Appointments Commission (JAC)

The independent Judicial Appointments Commission (JAC) is the cornerstone of the post-2005 appointment system. Composed of a mix of judicial members, legal professionals, and lay members, the JAC is designed to be insulated from direct political influence. Its statutory duty is to select candidates for judicial office "solely on merit," while also encouraging applications from a diverse range of qualified individuals (Judicial Appointments Commission, 2023). The inclusion of lay members is particularly significant, as it brings a non-legal perspective to the assessment process, enhancing its objectivity and public legitimacy. The JAC's role is to manage the entire selection process, from advertising vacancies and shortlisting candidates to conducting interviews and making recommendations to the Lord Chancellor, who now retains a more limited, formal role.

Appointment Process for High Court Judges (and Above)

For High Court judges and above, the JAC manages a rigorous, competency-based selection process. Vacancies are publicly advertised, and applicants are required to demonstrate evidence against five core competencies: knowledge and experience, intellectual capacity, sound

judgment, authority and communication skills, and diligence. The process involves a detailed application, references, a written test, and multiple panel interviews that include both judges and lay members. After this comprehensive assessment, the JAC recommends a single candidate to the Lord Chancellor. The Lord Chancellor can accept the recommendation, reject it, or require the JAC to reconsider, but cannot substitute their own candidate. This structure ensures that merit, as defined and assessed by the independent commission, is the paramount consideration, severely curtailing the potential for political patronage (Malleson, 2018).

Appointment Process for Lower Court Judges (Circuit and District Judges)

The appointment process for lower court judges, such as Circuit and District Judges, follows a similarly structured, JAC-led meritocratic model. The process is fundamentally the same in its principles of open competition and objective assessment, though the specific competencies assessed may be tailored to the requirements of the specific judicial role. This creates a unified and consistent approach to judicial appointments across all levels of the judiciary in England and Wales. The key distinction from the Pakistani model is this very integration; unlike in Pakistan, where the High Court and lower court appointments are governed by entirely different bodies and procedures, the UK system applies a single, coherent philosophy from the Supreme Court down to the lower tiers, ensuring a consistent standard of selection.

Emphasizing Merit, Diversity, and Transparency

The UK model explicitly prioritizes merit, diversity, and transparency as its core values. "Merit" is meticulously defined through published competencies, moving beyond informal reputation to a structured evaluation of skills. To address historical homogeneity, the JAC proactively runs outreach programs and has simplified application processes to attract a wider pool of candidates, including more women and ethnic minorities (Judicial Appointments Commission, 2023). Transparency is achieved through publicized vacancies, clear selection criteria, and the publication of annual reports detailing selection statistics. While the system is not without its critics—some argue it has become overly bureaucratic and can struggle to assess intangible judicial qualities—it is widely regarded as a successful example of a deliberate shift from a closed, political system to an open, merit-based one, offering a stark contrast to the more politicized US model and the hybrid Pakistani system (Gee et al., 2015).

The United States Model of Judicial Appointments

The United States model of federal judicial appointments stands as a premier global example of a highly politicized and democratically accountable process. Rooted directly in the nation's Constitution, the framework is designed to integrate the judiciary into the political fabric of the nation, ensuring that the appointment of judges reflects the will of the elected branches of government. This system creates a stark contrast with the technocratic UK model and the hybrid Pakistani system, placing ideological alignment and political considerations at the forefront of the selection process for the federal bench.

The Constitutional Framework: Presidential Nomination and Senate Confirmation

The entire federal judicial appointment process is built upon a simple yet powerful constitutional foundation outlined in Article II, Section 2 of the U.S. Constitution: The President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... Judges of the supreme Court, and all other Officers of the United States." This bifurcated process deliberately divides power between the executive and legislative branches, preventing any single entity from controlling the judiciary. The President's power to nominate allows the executive to shape the federal bench with individuals who share their philosophical and judicial outlook. Conversely, the Senate's "advice and consent" role, which includes the power to confirm or reject nominees through a majority vote, provides a crucial check on presidential authority, ensuring a measure of bipartisan support is often necessary (Epstein & Segal, 2005).

Appointment Process for Federal Circuit and District Court Judges (Lower Courts)

While the constitutional process is the same, the practical appointment process for lower federal court judges (District and Circuit Courts) involves distinct political dynamics. The White House typically delegates the initial screening and selection of potential nominees for these courts, allowing for significant input from political allies.

The Role of Senators and the American Bar Association (ABA)

For District Court vacancies, a long-standing tradition known as "senatorial courtesy" gives home-state senators, particularly those from the President's party, substantial influence in recommending candidates. A senator can effectively veto a nominee from their state by refusing to return a "blue slip," a practice that, while not a formal rule, carries significant weight. The American Bar Association's (ABA) Standing Committee on the Federal Judiciary also plays a unique role, as it traditionally evaluates the professional qualifications, integrity, and temperament of nominees and provides a rating (e.g., "Well Qualified," "Qualified," "Not Qualified"). Although its influence has waxed and waned and it is no longer given a pre-nomination review by all administrations, the ABA's rating remains a significant benchmark in the confirmation process (Goldman, 2018).

Appointment Process for Supreme Court Justices (Highest Court)

Appointments to the Supreme Court represent the apex of political judicial selection in the United States. Given the Court's immense power to shape American law and society for generations, the process is intensely scrutinized and politically charged. The President typically takes a personal and strategic role in selecting a nominee, considering not only a candidate's legal acumen and judicial philosophy but also their perceived ability to withstand a grueling confirmation process and their potential to be a persuasive force on the Court. Senate confirmation hearings for Supreme Court nominees are major political events, featuring lengthy questioning on constitutional interpretation and past rulings, and have become increasingly partisan and contentious, often decided by a narrow party-line vote (Toobin, 2008).

The High Degree of Politicization and Public Scrutiny

The U.S. model is defined by its high degree of overt politicization and public scrutiny. From the moment a vacancy occurs, political activists, interest groups, and media outlets engage in vigorous campaigns to support or oppose potential nominees based on their perceived ideology and likely rulings on key issues like abortion, healthcare, and gun rights. This highly public and partisan process underscores the American view of the judiciary as a political, albeit independent, institution. The confirmation process has become a key battleground for competing visions of the Constitution, making judicial appointments a central issue in presidential and senatorial elections (Epstein & Segal, 2005). This stands in direct opposition to the UK's goal of depoliticization and differs from Pakistan's more opaque institutional friction between branches.

State-Level Variations: A Brief Note on Merit Selection (Missouri Plan)

It is crucial to note that the federal model is not the only system used in the United States. Individual states employ a variety of methods for selecting their own judges, including partisan elections, non-partisan elections, and gubernatorial appointment. A significant alternative is the "Missouri Plan," a merit-based system of appointment. This model typically involves a non-partisan judicial commission that screens candidates and submits a shortlist of qualified nominees to the governor, who then appoints one. After a short term, the judge faces a retention election where voters decide simply whether the judge should "retain" their seat, without a challenger (American Judicature Society, n.d.). This system represents an American effort to incorporate elements of merit and independence, mirroring some objectives of the UK JAC, while still retaining an element of public accountability.

Comparative Analysis: A Three-Way Examination

A side-by-side comparison of the judicial appointment systems in Pakistan, the United Kingdom, and the United States reveals a spectrum of approaches to resolving the core tension between judicial independence and democratic accountability. Each nation's model reflects its unique constitutional history and political culture, resulting in distinct institutional structures, processes, and outcomes. This analysis evaluates these systems against the key metrics of transparency, merit, diversity, and the treatment of different court tiers, highlighting their relative strengths and weaknesses.

Comparative Table: Institutional Structures and Key Actors

Jurisdiction	Primary Appointing Body	Key Actors	Overall Model
Pakistan	Judicial Commission of Pakistan (JCP) & Parliamentary Committee	Chief Justice, Senior Judges, Parliamentarians	Hybrid (Judicial-Executive-Parliamentary)
United Kingdom	Judicial Appointments Commission (JAC)	Independent Commission (Judges, Lawyers, Lay Members), Lord Chancellor	Technocratic-Meritocratic
United States	President & U.S. Senate	President, Senate Judiciary Committee, Political Parties	Political-Democratic

Balancing Independence and Accountability: A Spectrum of Models

The three models can be positioned on a spectrum based on their prioritization of judicial independence versus political accountability. The **UK's technocratic-meritocratic model** leans most heavily towards independence, deliberately insulating the selection process from direct political influence through an independent commission (Malleon, 2018). At the opposite end, the **US's political-democratic model** explicitly embraces accountability, embedding the process within the elected branches of government to ensure the judiciary reflects, to some degree, the prevailing political will (Epstein & Segal, 2005). **Pakistan's hybrid model** occupies a fraught middle ground, attempting to balance these values by giving both the judiciary (via the JCP) and parliament (via the Parliamentary Committee) veto powers, a structure that often leads to institutional stalemate rather than balance (Rizvi, 2021).

Transparency in the Selection Process

Transparency levels vary dramatically across the three systems. The UK model is the most transparent, with the JAC publishing detailed vacancy announcements, role-specific selection criteria, and annual reports on its activities and diversity statistics (Judicial Appointments Commission, 2023). In stark contrast, the US process is transparent in its political nature—hearings are public and votes are recorded—but often opaque in its real decision-making, which occurs through political negotiations and partisan strategies. Pakistan's process is the least transparent, with JCP deliberations being confidential and the criteria for assessing merit largely undefined, leading to criticisms of opacity and internal judicial lobbying (Siddique, 2021).

The Criterion of Merit: How is it Defined and Assessed?

The definition and assessment of "merit" is a key differentiator. The UK has the most structured approach, defining merit through five core, publicly available competencies that are assessed via application forms, tests, and interviews. The US system often conflates merit with ideology; a candidate's legal qualifications are a baseline requirement, but their judicial philosophy and perceived rulings on key issues are the primary determinants of their "merit" in the eyes of

political actors (Goldman, 2018). Pakistan's system suffers from an ambiguous definition of merit, which is not codified and is left to the internal, and often inconsistent, judgment of the JCP, making the standard vulnerable to shifting internal dynamics.

Diversity on the Bench: Gender, Ethnicity, and Professional Background

Diversity outcomes are closely linked to each system's design. The UK's JAC has a statutory duty to promote diversity and uses outreach and simplified applications to broaden the candidate pool, leading to gradual improvements in gender and ethnic representation. The US system, due to its political nature, can rapidly advance diversity when a president prioritizes it, as seen with the appointments of Justices Sotomayor and Jackson. However, this is subject to political whim. Pakistan's system has been widely criticized for its poor record on diversity, particularly the severe underrepresentation of women and religious minorities, which is perpetuated by the opaque and insular nature of the JCP's nomination process (Rizvi, 2021).

The Critical Divide: Comparing the Appointment of High Court vs. Lower Court

Judges

A critical finding of this comparison is the treatment of different court tiers, which highlights fundamental philosophical differences in judicial governance.

Pakistan: A Sharp Dichotomy

Pakistan operates two virtually separate systems. High Court appointments are national, politicized, and governed by the JCP and Parliament. In contrast, lower court appointments are provincial, administrative, and based on competitive examinations overseen by High Courts and Public Service Commissions (Chaudhry, 2020). This creates a stark divide within the judicial hierarchy itself.

UK: A More Unified, Commission-Led Approach

The UK applies a consistent, commission-led philosophy across all levels of the judiciary. While the specific process may vary slightly, the same core principles of merit, transparency, and independent assessment by the JAC govern appointments to both the High Court and the lower courts, ensuring a coherent and standardized approach.

US: A Similar Political Process for Both Tiers

The US federal system subjects both Circuit/District judges and Supreme Court Justices to the same fundamental political process of presidential nomination and Senate confirmation. The intensity of scrutiny is greater for the Supreme Court, but the underlying democratic-political logic of appointment is consistent across tiers.

Discussion

The comparative analysis reveals that no single model of judicial appointments offers a perfect solution; each system embodies a distinct set of trade-offs with inherent strengths and weaknesses. The UK's technocratic model excels in ensuring merit-based selections through a transparent and independent process, thereby maximizing judicial independence and public confidence. However, it can be criticized for its potential bureaucratic inertia and a definition of merit that may undervalue real-world judicial temperament. Conversely, the US political model provides robust democratic accountability, ensuring the judiciary remains connected to the electorate's evolving values. Its primary weakness, however, is the intense politicization that can undermine the perceived legitimacy of the courts and turn appointments into partisan battlegrounds (Epstein & Segal, 2005). Pakistan's hybrid model attempts to navigate a middle path but often ends up encapsulating the weaknesses of both worlds—experiencing the political friction of the US system without its democratic clarity, and the opacity of a closed judicial process without the UK's rigorous meritocratic safeguards.

Interpreting the Findings: Strengths and Weaknesses of Each System

The strengths and weaknesses of each system are direct consequences of their institutional design. The UK's strength lies in its insulation from daily politics, but this can also be a

weakness if the process becomes disconnected from societal needs. The US system's strength is its democratic responsiveness, but this is also the source of its greatest vulnerability: deep politicization that can erode public trust. Pakistan's system, with its power-sharing arrangement, is designed to prevent any single branch from dominating. Yet, in practice, this has proven to be its fundamental flaw, as the lack of a clear, decisive appointing authority often results in deadlock and institutional conflict rather than collaborative consensus (Rizvi, 2021). The system's opacity and failure to promote diversity further highlight how its structure fails to meet key benchmarks of a modern judiciary.

The Pakistani Experiment: Has the 26th Amendment Achieved its Goals?

The 26th Amendment has achieved only a partial and limited success. Its primary goal of streamlining the appointment process by reducing the size of the Parliamentary Committee has, to an extent, alleviated the large-scale partisan gridlock of the past. However, it has failed to resolve the underlying institutional tension between the judiciary and parliament. The amendment tinkered with the structure but did not address the core issues of a lack of transparent criteria in the JCP or the fundamental question of whether a political body should have veto power over judicial nominees (Shah, 2019). Therefore, while the 26th Amendment may be considered a minor procedural success, it is a substantive failure in its inability to foster a truly collaborative, meritocratic, and transparent appointment culture.

Lessons for Pakistan from the UK and US Experiences

Pakistan can draw critical lessons from the experiences of the UK and US. From the UK, the most valuable lesson is the efficacy of a strong, independent appointing body. Pakistan could strengthen its system by reforming the JCP to include more lay members and representatives from the bar, mandating the publication of clear selection criteria, and requiring reasoned decisions for all nominations, not just rejections. From the US, Pakistan can learn the dangers of excessive politicization, which serves as a cautionary tale against further empowering political actors in the process. The US experience underscores that while democratic input is valuable, when it becomes the dominant factor, it can compromise judicial independence and legitimacy.

Unintended Consequences and Emerging Challenges

An unintended consequence of Pakistan's post-26th Amendment system is the further entrenchment of judicial power within a small circle of senior judges. The continued opacity of the JCP, combined with a weakened Parliamentary Committee, has shifted the balance of power towards the judiciary without introducing corresponding mechanisms for accountability (Siddique, 2021). An emerging challenge for all systems, including the UK and US, is the increasing pressure to enhance diversity and representativeness on the bench. Furthermore, the rising influence of media and special interest groups in judicial appointments presents a new challenge to the deliberative nature of the selection process across all three jurisdictions.

The Limits of Comparison: Accounting for Different Constitutional Contexts

It is crucial to acknowledge the limits of this comparison. Each system is a product of its unique historical and constitutional context. The UK's unwritten constitution and principle of parliamentary sovereignty provide a different foundation from the US's written constitution with its strict separation of powers. Pakistan's context is shaped by its post-colonial history and periods of military rule, which have created a judiciary that is both assertive and insecure. Transplanting a model wholesale from one context to another is neither feasible nor desirable. The value of the comparison is not to identify a "best" model, but to understand the consequences of different institutional choices and to inform context-sensitive reforms in Pakistan that learn from international experiences while respecting local realities.

Conclusion

This research has demonstrated that the design of judicial appointment systems is a fundamental constitutional choice with profound implications for the independence, accountability, and legitimacy of the judiciary. Through a structured comparison of Pakistan, the UK, and the US, it is evident that each nation's approach reflects a different point on the spectrum between judicial autonomy and democratic control. The findings confirm that there is no universal solution, only a series of trade-offs that each society must navigate based on its own political culture and constitutional needs. The 26th Amendment was a well-intentioned but ultimately inadequate reform. It successfully addressed the logistical issue of a large, deadlocked committee but failed to tackle the core problems of transparency, defined merit, and institutional trust. While it has slightly improved the efficiency of appointments, it has done little to foster a "clean" judicial process. The potential for negativity remains high, as the system continues to operate in the shadows, fostering perceptions of cronyism and politicization that ultimately erode the foundation of judicial legitimacy and public confidence in Pakistan's legal system.

Summary of Key Findings

The key findings reveal a clear typology: the UK's technocratic model prioritizes independence and merit through an independent commission; the US's political model emphasizes accountability through elected branches; and Pakistan's hybrid model creates a fraught balance that often results in institutional deadlock. The analysis further highlighted stark contrasts in transparency, with the UK being most open and Pakistan the opaquest. The definition of merit also varied from competency-based (UK) to ideology-influenced (US) to ambiguous (Pakistan). A critical finding was the treatment of different court tiers, with Pakistan exhibiting a sharp dichotomy absent in the more unified UK and US federal systems.

Answering the Research Questions

In answer to the primary research questions, the 26th Amendment has only marginally altered the dynamics in Pakistan, reducing the scale of political deadlock but failing to resolve the fundamental tension between its judicial and political components. The comparative analysis shows that the post-amendment Pakistani model lags significantly behind the UK system in terms of transparency and a structured approach to merit, and while it avoids the overt politicization of the US model, it suffers from a lack of democratic legitimacy and accountability.

Policy Recommendations for Pakistan

Based on this analysis, the following policy recommendations for Pakistan are proposed:

1. **Reform the JCP:** Codify the criteria for judicial merit and introduce greater transparency in its deliberations, including the publication of reasons for nominating candidates.
2. **Strengthen the Role of an Independent Secretariat:** Empower the JCP's secretariat to independently vet candidates and provide detailed assessments to counter internal lobbying.
3. **Revise the Parliamentary Committee's Role:** Consider changing its power from a veto to a review-and-remand function, or oblige it to provide highly substantiated, public reasons for any rejection.
4. **Integrate Diversity Goals:** Mandate the JCP to develop and publish a strategy for improving gender, ethnic, and minority representation on the bench.

Avenues for Future Research

Future research could quantitatively analyze the impact of these different appointment systems on judicial decision-making and the career trajectories of judges. A more granular study focusing on the appointment of lower judiciary in Pakistan and its impact on overall judicial

performance would be valuable. Furthermore, longitudinal research tracking the implementation and evolution of the post-26th Amendment system over the next decade will be crucial to fully understand its long-term effects on Pakistan's judicial landscape.

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