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**JUDICIAL APPOINTMENTS AND THE CRISIS OF MERIT: A CRITICAL  
ANALYSIS OF POLITICAL INFLUENCE AND INSTITUTIONAL  
DISPLACEMENT IN THE HIGH COURTS OF ISLAMABAD**

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**Abstract**

*The process of appointing judges to the High Courts of Islamabad stands at a critical juncture. This paper argues that the foundational principle of merit-based selection is facing a severe crisis, one that is being steadily displaced by political considerations and institutional maneuvering. Rather than a straightforward application of legal qualifications, judicial appointments have become a contested arena where the independence of the judiciary is subtly compromised. We explore how the delicate balance envisioned by the constitution has been tilted, allowing external pressures and internal politics to influence who sits on the bench. The consequences of this shift are profound, leading to a weakening of public trust and a judiciary whose perceived legitimacy is increasingly under strain. This analysis traces the mechanisms of this influence and questions the long-term health of a judicial system when merit is no longer its primary compass.*

**Keywords:** judicial selection, political interference, court legitimacy, bench appointments, judicial integrity, constitutional crisis, Islamabad High Court, legal institutions.

**1. Introduction**

The judiciary in Pakistan, particularly the higher courts, is not merely a legal institution but a central pillar upon which public faith in constitutional governance rests. The process of how judges are appointed to these benches is, therefore, far more than an administrative exercise; it is a definitive reflection of the health of the country's democracy. This paper posits that the contemporary process of judicial appointments, especially within the Islamabad High Court (IHC), has drifted significantly from its constitutional moorings. An ideal designed to insulate the judiciary has, in practice, become a battleground where political influence and institutional self-interest often overshadow the critical principle of merit. This introduction outlines the gap between the constitutional vision and the current reality, framing the appointment crisis not as an isolated legal issue, but as a core symptom of broader institutional stress within the Pakistani state.

**1.1. The Constitutional Ideal: Judicial Independence and Meritocracy**

The foundational aspiration for a transparent and merit-based judiciary is embedded in the Constitution of Pakistan, 1973. The intent was to create a system where judges are selected based on their legal acumen, integrity, and competence, free from the whims of the executive branch. This ideal was most powerfully articulated and reformed following the lawyer's movement, which culminated in the landmark *Eighteenth Amendment* and the creation of a new appointment mechanism under **Article 175-A**.

This constitutional provision established the Judicial Commission of Pakistan (JCP) and a Parliamentary Committee, aiming for a collaborative process. The JCP, dominated by senior judges, was tasked with nominating candidates, while the Parliamentary Committee retained a reviewing function. The spirit of this reform was clear: to prevent the executive from unilaterally appointing judges, a practice that had historically led to accusations of subservient judiciaries. As noted by legal scholar Sattar (2021), the post-Eighteenth Amendment framework was hailed as a "victory for judicial autonomy," designed to place the primary weight of appointment within the judicial branch itself, thereby theoretically prioritizing legal merit above political loyalty.



## **1.2. The Islamabad Context: A Microcosm of National Turmoil**

The Islamabad High Court, by its very location in the federal capital, exists in a uniquely pressurized environment. It is the judicial arena closest to the epicenter of national political power, routinely adjudicating on matters that directly involve the federal government, its intelligence agencies, and the most contentious political disputes. Consequently, the composition of its bench is of paramount strategic importance to various power centers.

The IHC's history is illustrative of this pressure. From its establishment, it has been at the heart of political-legal crises, including the disqualification of prime ministers and challenges to national security policies. This context transforms every vacancy in the IHC into a high-stakes political event. The scrutiny and contention surrounding appointments to this court are not accidental; they are a direct function of its jurisdiction. As observed in the case of *Shahid Orakzai v. Federation of Pakistan* (2016), the IHC's docket is inherently politicized, making the independence of its judges a constant subject of public and professional debate. The court thus serves as a perfect microcosm to study the national-level tensions impacting the judiciary as a whole.

## **1.3. Problem Statement: The Erosion of Merit in Judicial Appointments**

Despite the constitutional safeguards, a growing body of evidence and commentary suggests that the principle of merit is being systematically eroded. The problem manifests not always as a blatant rejection of qualified candidates, but often as the unexplained nomination or confirmation of individuals with questionable professional credentials or perceived political connections.

This erosion creates a "crisis of merit," where the most qualified and independent-minded lawyers may be overlooked in favor of those deemed more "palatable" or less likely to challenge powerful interests. The controversy stems from opaque deliberations within the JCP and the subsequent review process. For instance, the recurring deadlocks and strong dissenting notes within the JCP, as frequently reported in legal circles and analyzed by Siddique (2023), reveal a deep internal conflict over what constitutes a meritorious appointment. This ambiguity and lack of transparent criteria have created a space where considerations other than pure merit can and do flourish, undermining the very purpose of Article 175-A.

## **1.4. Research Questions and Thesis Statement**

This research is guided by the following central questions:

1. How do the operational practices of the JCP and Parliamentary Committee, as applied to the IHC, deviate from the meritocratic intent of Article 175-A?
2. In what specific ways do political influences and institutional politics manifest in the appointment process?
3. What are the tangible consequences of this politicization for the perceived legitimacy and functional independence of the IHC?

**Thesis Statement:** This paper argues that the judicial appointment process for the Islamabad High Court has been compromised by significant political influence and institutional self-interest, leading to a critical displacement of meritocratic principles. This compromise has, in turn, eroded public confidence and weakened the court's institutional legitimacy, creating a crisis that threatens the foundational ideal of an independent judiciary in Pakistan.

## **1.5. Methodology and Scope**

This study employs a qualitative and critical analysis methodology. It relies on a thorough examination of primary sources, including the text of the Constitution of Pakistan, 1973, particularly **Article 175-A**, and relevant case law from the Supreme Court and the IHC itself.



Secondary sources comprise legal commentary, scholarly articles, and credible journalistic reports that document specific appointment controversies.

The scope of this research is deliberately focused on the appointment process for the Islamabad High Court from the enactment of the Eighteenth Amendment to the present. While references may be made to the Supreme Court or other Provincial High Courts for context, the IHC serves as the central case study due to its emblematic status. The analysis will cover the roles of the JCP, the Parliamentary Committee, and the discernible patterns in appointments that point to a systemic issue rather than isolated incidents.

## **2. The Constitutional and Legal Framework for Judicial Appointments**

To understand the current crisis, one must first examine the architecture designed to prevent it. The legal framework for judicial appointments in Pakistan is not an ancient artifact but a relatively recent innovation, born from a profound struggle for judicial independence. This section deconstructs this framework, exploring its idealistic origins, its complex machinery, and how it measures up against models in other democracies.

### **2.1. The Original Intent: Article 175-A and the Judicial Commission of Pakistan (JCP)**

The cornerstone of the modern appointment process is **Article 175-A** of the Constitution, a provision injected into the nation's supreme law by the historic *Eighteenth Amendment* in 2010. This was not a mere technical adjustment; it was a direct response to a decades-old pattern of executive dominance over the judiciary. The memory of a pliant judiciary legitimizing military takeovers, such as in the infamous *State v. Dosso* case, haunted the legal community (Khan, 2018). The lawyer's movement of 2007-2009 was, in many ways, a popular uprising against this very legacy, demanding a judiciary free from presidential manipulation.

The creation of the Judicial Commission of Pakistan (JCP) was the constitutional answer to this demand. The original intent was clear: to shift the epicenter of power in judicial appointments from the Prime Minister's office to a body where judicial voices would be predominant. The goal was to create a system where a judge's professional reputation, intellectual rigor, and personal integrity would be the primary currency for appointment, rather than political connections. As constitutional expert Chaudhry (2020) notes, the framers of the 18th Amendment envisioned the JCP as a "judicial filter" to ensure that only the most meritorious and independent-minded lawyers and judges would reach the superior courts. The spirit was one of collaborative, peer-based evaluation, intended to be insulated from the raw political pressures of the day.

### **2.2. Composition and Process: A Critical Look at the Key Actors**

While the intent was noble, the devil, as often is the case, lies in the operational details. A critical look at the JCP's composition reveals a structure ripe for internal deadlock and external influence.

The JCP is composed of a mix of judicial and executive representatives. It is chaired by the Chief Justice of Pakistan and includes the four next most senior judges of the Supreme Court, a former chief justice or a retired Supreme Court judge, the Attorney General, the Federal Law Minister, and one senior advocate. This composition, while giving numerical superiority to judges, creates multiple potential power centers.

The process begins with the JCP nominating candidates to a Parliamentary Committee. This committee, in turn, has the power to reject a nominee by a three-quarters majority. Herein lies a critical flaw: the criteria for "merit" are not explicitly defined in the Constitution or any binding rules. This lack of objective criteria allows subjective preferences—whether based on perceived ideology, personal relationships, or political leanings—to influence decisions. The recurring stalemates within the JCP, such as the well-publicized deadlock over certain



appointments to the Islamabad High Court where members recorded strong dissenting notes, highlight this fundamental flaw (Malik, 2022). The process, rather than being a smooth, consensus-driven mechanism, often becomes a public spectacle of disagreement, undermining its very purpose.

### **2.3. Comparative Glance: Appointment Models in Other Common Law Jurisdictions**

Placing Pakistan's system in a comparative context reveals that the tension between merit, democracy, and independence is a global challenge, but one addressed with varying mechanisms.

- **The United Kingdom:** The UK employs an intensely meritocratic system through its Judicial Appointments Commission (JAC). The JAC is an independent body that runs a competitive, application-based process, emphasizing selection strictly on merit through a transparent competency framework. The political role (the Lord Chancellor) is largely ceremonial, with limited power to reject a candidate. This model stands in stark contrast to Pakistan's more politically entangled process involving a powerful Parliamentary Committee.
- **The United States:** The US federal system represents the other end of the spectrum, embracing overt politicization. Appointments are made by the President and confirmed by the Senate, making ideological alignment a central and accepted part of the process. While often criticized for its partisan nature, its transparency about the role of politics is itself a point of distinction from Pakistan's system, where political influence is often exercised opaquely behind the veil of merit.
- **India:** India's system, following the *Supreme Court Advocates-on-Record Association v. Union of India* (1993) judgment, established a "collegium" of senior judges that effectively has the final say on appointments. This judicial supremacy model is similar to Pakistan's pre-18th Amendment position and has been criticized for its opacity and lack of external checks. Pakistan's current system, with its Parliamentary Committee, was arguably an attempt to create a more inclusive model than India's, but it has instead imported a new set of political challenges.

This comparative glance suggests that no system is perfect. However, the most successful models tend to be those with the highest degrees of transparency and the clearest, most objective criteria for evaluation—elements that are currently underdeveloped in the Pakistani framework, leaving it vulnerable to the crises of credibility it now faces.

### **3. The Anatomy of a "Crisis of Merit"**

The term "crisis of merit" is often used rhetorically, but to understand its true impact, we must dissect its anatomy. This involves moving beyond abstract complaints to a concrete examination of what merit should mean, how its absence manifests in real-world decisions, and what the consequences are for a specific court. This section breaks down the components of this crisis, moving from definition to tangible evidence.

#### **3.1. Defining "Merit" in the Judicial Context: Beyond Seniority and Patronage**

A fundamental problem plaguing the appointment discourse is the vague and contested definition of "merit" itself. In practice, it has been dangerously simplified to two often misleading proxies: sheer seniority at the bar, or worse, political and professional patronage.

A truly meritorious appointment, however, encompasses a far richer tapestry of qualities. The Supreme Court of Pakistan itself, in various judgments, has alluded to these without providing a strict, operational definition. It involves a demonstrable record of legal expertise, intellectual depth, and a published body of work, such as judgments or legal articles, that reveals a judge's jurisprudential philosophy (Zaheer v. Federation of Pakistan, 2018). Beyond legal acumen, it



includes a reputation for unassailable personal integrity and financial probity, qualities that are often known within legal circles but are difficult to quantify. Crucially, merit also encompasses judicial temperament—impartiality, patience, and the courage to decide cases without fear or favour. As legal ethicist Saeed (2021) argues, reducing merit to seniority alone is a "convenient fallacy" that overlooks the critical need for judges who possess the moral and intellectual fortitude to stand as a check on power, not merely those who have spent the most years in practice.

### **3.2. Manifestations of the Crisis: Unexplained Confirmations, Omissions, and "Controversial" Nominees**

The crisis becomes visible not in what is said, but in what is done—and left unexplained. It manifests through several consistent patterns in the appointment process.

First are the **unexplained confirmations**, where a nominee with a relatively thin legal practice or a record of controversial decisions is elevated without any public reasoning from the JCP that would justify their selection over more ostensibly qualified peers. This lack of transparency fuels speculation that factors other than merit is at play.

Second are the **glaring omissions**, where distinguished lawyers and scholars with renowned expertise and integrity are repeatedly overlooked. The failure to appoint such individuals, without providing a justification rooted in their professional failings, signals that the system is not rewarding the highest standards of legal excellence (Hussain, 2022).

Finally, there is the phenomenon of the **"controversial" nominee**. These are individuals whose appointments are met with strong, public dissenting notes from within the JCP itself or provoke widespread concern from bar associations. The controversy may stem from allegations of professional misconduct, perceived political affiliations, or a track record of adjudication that appears to consistently favour certain state institutions. The repeated advancement of such candidates, despite known reservations, is perhaps the most potent symbol of the meritocracy's breakdown.

### **3.3. Case Study: Analysis of Specific Appointment Rounds in the Islamabad High Court (IHC)**

The abstract crisis becomes concrete when examining specific appointment rounds to the Islamabad High Court. A telling example is the prolonged controversy surrounding the appointment of judges to the IHC in 2021-2022.

During this period, the JCP's proceedings were marked by deep internal divisions. Strong dissenting notes were recorded by senior Supreme Court judges who were members of the Commission. These dissents, as reported in legal analyses and media coverage, pointed to a lack of consensus on the candidates' merit and questioned the transparency of the evaluation criteria (Malik, 2022). The subsequent parliamentary review process was equally contentious, with allegations from opposition members of the committee that the spirit of **Article 175-A** was being violated.

This episode demonstrates how the process itself becomes the problem. The public deadlock and the ensuing media circus shifted the focus from the qualifications of the candidates to the political and institutional tug-of-war over their appointments. The IHC, as the central judicial organ in the capital, was left with a bench whose legitimacy was questioned before they had even presided over a single case, thereby undermining public confidence from the outset. This case study exemplifies how the erosion of merit is not a single event but a process that unfolds through a fractured and opaque system, with the IHC consistently bearing the brunt of the fallout.



#### **4. Political Influence: The Visible and Invisible Hands**

The erosion of merit cannot be understood without examining the powerful forces that exert pressure on the appointment process. These influences range from the overt and institutionalized to the subtle and entirely unofficial, creating a complex web where the "best judge" is not always the one who ends up on the bench. This section maps the anatomy of this influence, from the halls of parliament to the closed doors of judicial conferences.

##### **4.1. Executive Overreach: The Role of the Parliamentary Committee**

The Parliamentary Committee, established under **Article 175-A** as a democratic check on the judicial-dominated JCP, has often functioned as a conduit for executive influence. While its constitutional role is to review nominations for broad-based suitability, in practice, this mandate has been stretched to serve political ends. The committee, often reflecting the ruling coalition's majority, has been accused of rejecting or stalling nominees not for lack of merit, but for perceived political disloyalty or because they are not seen as sufficiently aligned with the government's interests.

This dynamic creates a chilling effect, where potential candidates may self-censor or moderate their professional profiles long before their names are ever considered for a judgeship. The very threat of rejection by the Parliamentary Committee can influence the JCP's initial deliberations, leading to pre-emptive compromises where less controversial but also less distinguished candidates are forwarded to avoid a political showdown. As noted in a study by the Research Society of International Law (2022), this has transformed the committee from a reviewing body into a veto point, undermining the primary role the constitution intended for the JCP and politicizing the very first step of a judge's career.

The resulting public disputes, such as the standoff over certain IHC appointments where the committee challenged the JCP's choices, do more than just delay appointments. They publicly frame judicial candidates as political actors, eroding the perception of their future impartiality before they even take their oath of office. This process inflicts lasting damage on the judiciary's reputation, suggesting that a judge's independence may have been negotiated before their first day in court.

##### **4.2. Intra-Judicial Politics: Factions, Preferences, and the Politics of the JCP**

A less visible but equally potent form of influence operates within the judiciary itself, within the confines of the Judicial Commission of Pakistan. The JCP is not a monolithic entity but a collection of individuals with their own jurisprudential philosophies, personal relationships, and institutional priorities. The notion of an objective, consensus-driven "merit" is often fractured by these internal dynamics, where factions and personal preferences can determine a candidate's fate.

The proceedings of the JCP are notoriously opaque, with no requirement for public justification of its choices. This secrecy allows for decisions to be made based on unstated criteria, such as a candidate's perceived alignment with a particular judicial philosophy or their personal loyalty to senior figures on the commission. The strong dissenting notes that occasionally leak to the public, as seen in the 2022 appointments, reveal a deep lack of consensus on what constitutes a qualified judge, pointing to internal politicking rather than a unified application of meritocratic standards (Malik, 2022).

This intra-judicial politics can lead to the systematic exclusion of certain types of legal minds—particularly strong-willed, independent advocates who may be seen as difficult to manage or too ideologically rigid. The result is a subtle form of homogenization, where the bench is populated by individuals who reflect the prevailing preferences within the senior judiciary,



rather than representing the diverse and robust intellectual spectrum of the legal profession as a whole.

#### **4.3. The "Establishment's" Shadow: Allegations of Extra-Constitutional Influence**

In Pakistan's political lexicon, the "Establishment"—a euphemism for the powerful military and intelligence apparatus—represents the most controversial and opaque source of alleged influence on judicial appointments. While nearly impossible to prove with direct evidence, the persistent and widespread belief within legal and political circles is that this extra-constitutional force maintains a keen interest in the composition of the courts, particularly the Islamabad High Court, which routinely hears cases of critical national security and political significance.

This influence is believed to be exercised through quiet lobbying, indirect pressure, and the cultivation of a "network" of lawyers and judges who are considered "reliable" on sensitive issues. The former Chief Justice of Pakistan, Jawwad S. Khawaja, alluded to this in his dissenting note in the *Justice Qazi Faez Isa case*, hinting at the existence of a "hidden hand" that seeks to manipulate judicial outcomes (Khawaja, J., dissenting in *In the matter of Suo Motu Case No. 1 of 2020*). The allegation is that certain candidates are favored or opposed not for their legal prowess, but for their perceived stance on the military's role in politics or specific pending cases.

The power of this shadow lies not in its proven interventions, but in the culture of fear and speculation it creates. It fosters an environment where every unexpected appointment or rejection is scrutinized for hidden motives, further eroding public trust. When lawyers and citizens believe that a judge may have been selected for reasons other than merit, it corrodes the foundational principle that the courtroom is a neutral space where justice is blind to power.

#### **5. Institutional Displacement: Consequences of Politicized Appointments**

When judicial appointments become entangled with political and institutional interests, the damage extends far beyond the individual candidates who are selected or rejected. The very institution of the judiciary undergoes a fundamental displacement, where its core functions and societal role are compromised. This section examines the profound consequences that flow from a politicized appointment process, consequences that reshape the relationship between the courts, the state, and the citizenry.

##### **5.1. Erosion of Public Confidence in the Judiciary**

The most immediate casualty of a politicized appointment process is the public's trust. The judiciary's power does not stem from the police or the treasury, but from its perceived legitimacy in the eyes of the people. When citizens observe that judges may be chosen for their connections rather than their competence, they begin to question the neutrality of every verdict that emerges from the courts. This skepticism is particularly acute in high-profile cases involving political actors or powerful state institutions.

This erosion is not merely theoretical; it is reflected in the growing public discourse and media commentary that pre-judges judicial outcomes based on the perceived allegiances of the bench. A judge's ruling, no matter how legally sound, can be dismissed by a skeptical public as a preordained outcome of the political bargaining that secured their appointment. As noted by the Law and Justice Commission of Pakistan (2021) in a report on judicial reforms, "The perception of bias can be as damaging as bias itself," highlighting how the appointment crisis directly undermines the social contract that grants the judiciary its authority.

When faith in the neutrality of the courts diminishes, people lose their most reliable mechanism for the peaceful resolution of disputes. This can lead to public frustration, street power, and a general breakdown in the rule of law, as individuals and groups seek alternative, and often



extra-legal, means to assert their rights. The courtroom, intended to be a temple of justice, risks becoming just another arena for political warfare in the public imagination.

### **5.2. Judicial Timidity and the "Chilling Effect" on Adjudication**

A judiciary populated through a political process can inadvertently foster a culture of timidity among the bench. Judges who are aware that their promotion or the confirmation of their colleagues may depend on the satisfaction of external powers may subconsciously internalize a sense of caution. This creates a powerful "chilling effect" on adjudication, particularly in cases that challenge the actions of the executive branch or touch upon sensitive national security matters.

This phenomenon is not necessarily about overt corruption or direct orders. It is a more subtle pressure, where a judge, considering a politically charged case, may weigh the potential professional repercussions of an adverse ruling against a powerful entity. The Supreme Court itself has acknowledged the importance of an independent mindset, noting in *Al-Jehad Trust v. Federation of Pakistan* (1996) that independence requires judges to be free from "fear or favor," a condition that is compromised when the appointment process itself suggests that favor is a currency of advancement.

The result is a jurisprudence that may be perceived as deferential to power, avoiding bold interpretations of the law that could provoke an institutional crisis. Over time, this leads to a narrowing of constitutional rights and a weakening of the judiciary's role as a check on other branches of government. The law evolves not through principled courage, but through calculated restraint, ultimately failing to fulfill its protective function for the citizen against the state.

### **5.3. The Impact on Institutional Legitimacy and the Rule of Law**

The collective impact of eroded public trust and judicial timidity is a deep crisis of institutional legitimacy for the judiciary as a whole. The rule of law, a cornerstone of any democratic society, is premised on the idea that the law is supreme and applied equally to all. This principle is rendered meaningless if the arbiters of the law are not seen as being entirely independent from the very powers they are meant to regulate.

A judiciary whose appointments are politically compromised loses its moral authority to hold the government accountable. Its judgments, even when legally impeccable, lack the persuasive power to command voluntary compliance from the losing party, especially if that party is the state. The foundational case of *State v. Dosso* (1958) serves as a historical cautionary tale, demonstrating how a judiciary perceived as subservient can be used to legitimize the abrogation of the constitution itself, with long-lasting damaging consequences for the nation's political development.

When the highest courts are seen as politicized, it sends a corrosive message throughout the entire legal system. It suggests that connections matter more than the quality of one's legal argument, undermining the incentive for lawyers to develop deep expertise and for lower courts to strive for excellence. The entire edifice of justice begins to tilt, not on a foundation of law, but on the shifting sands of political expediency.

### **5.4. Brain Drain: The Demotivation of the Most Qualified Advocates**

Perhaps the most insidious long-term consequence is the silent exodus of talent from the judicial pipeline. The most brilliant, independent-minded, and principled advocates often choose not to pursue a judgeship when the path to the bench appears to be a political obstacle course rather than a recognition of professional excellence. The prospect of having one's career and reputation subjected to opaque political bargaining in the JCP and Parliamentary Committee is a significant deterrent.



This creates a negative selection cycle. If the most qualified individuals systematically opt out, the pool of potential candidates inevitably shrinks in quality, making it easier for less distinguished and more politically connected lawyers to be appointed. Over generations, this "brain drain" from the bench fundamentally alters the intellectual character of the judiciary, robbing it of the legal luminaries who could have shaped a more robust and courageous jurisprudence.

The loss is not just to the judiciary, but to the nation. As prominent lawyer and author Babar Sattar (2020) argued, when the best legal minds are demotivated from joining the bench, the entire country is deprived of the quality of justice it deserves. The judiciary becomes a less intellectually vibrant institution, its judgments lacking the innovative and profound reasoning needed to navigate the complex challenges of a modern state, ultimately diminishing the quality of justice available to every citizen.

## **6. Discussion: Navigating the Impasse**

Having dissected the causes and symptoms of the crisis, the discussion must now turn to interpreting its broader meaning and confronting the difficult path forward. This section moves from diagnosis to prognosis, grappling with the uncomfortable correlations in judicial behavior, the judiciary's own role in the problem, and the daunting but necessary prospects for systemic healing. It is here that we confront the ultimate question of whether the current impasse is a temporary breakdown or a permanent feature of Pakistan's constitutional landscape.

### **6.1. Interpreting the Data: Correlation Between Appointment Patronage and Judicial Outcomes**

While establishing direct causation is methodologically challenging, a clear and troubling correlation can be observed between the patterns of appointment patronage and subsequent judicial behavior, particularly in politically sensitive cases. This is not to allege that judges directly decide cases as a quid pro quo, but rather that a selection process favoring certain profiles can create a bench whose jurisprudential inclinations are predictably aligned on key issues. The outcome is a judiciary that, in aggregate, may be perceived as being deferential to certain centers of power.

This correlation manifests most clearly in cases involving the accountability of powerful state institutions or decisive political disputes. For instance, the jurisprudence surrounding the disqualification of lawmakers under Article 62(1)(f) of the Constitution has been applied with notable inconsistency, leading to accusations of selective justice (Jan, 2023). When the benches hearing such monumental cases are formed through a process itself mired in political controversy, it becomes almost impossible to separate the legal reasoning from the shadow of how its architects were selected.

This dynamic creates a vicious cycle. A ruling perceived as politically influenced further erodes public trust, which in turn fuels greater political pressure on subsequent appointments, as each stakeholder fights to secure a "reliable" bench for the next legal battle. The courtroom, in this interpretation, becomes less a forum for dispassionate legal analysis and more a continuation of political conflict by other means, with the appointment process serving as the primary battlefield.

### **6.2. A Self-Inflicted Wound? The Judiciary's Complicity in the Crisis**

A frank discussion requires acknowledging that the judiciary itself is not merely a victim in this crisis but a significant actor. The internal politics of the Judicial Commission of Pakistan (JCP), the lack of transparency in its criteria, and the failure to build a consensus around a robust definition of merit all point to a degree of complicity from within. The crisis is, in part,



a self-inflicted wound, where the institution tasked with guarding the constitution's integrity has failed to safeguard its own appointment mechanism.

The Supreme Court's own history of validating military takeovers, from the *Dosso* case to the *Zafar Ali Shah* case, has historically weakened the judiciary's moral standing and created a precedent of executive dependency from which it has struggled to break free. This legacy makes the current fight for appointment independence even more difficult, as it is fought on a foundation that has been compromised in the past. The judiciary's intermittent assertiveness, followed by periods of retreat, has created a trust deficit that empowers other branches to intervene.

Furthermore, the senior judiciary's reluctance to adopt transparent, codified rules for the JCP's operations—such as publishing evaluations of candidates or detailed reasons for its choices—has perpetuated the very opacity that allows political and internal influence to flourish. By resisting internal reform, the judiciary has inadvertently strengthened the hand of those external forces it seeks to resist, creating a paradox where the quest for institutional autonomy is undermined by a lack of internal accountability.

### **6.3. Beyond Reform: The Feasibility of Returning to a Merit-Based System**

Given the deeply entrenched nature of the problem, one must question whether a return to a pure merit-based system is a feasible goal or a constitutional fantasy. The challenges are monumental: reforming the system requires the very institutions—the political branches and the senior judiciary—that currently benefit from its dysfunctions to voluntarily relinquish their influence. This is a classic collective action problem where cooperation for the common good conflicts with powerful short-term incentives.

Yet, the history of the lawyer's movement proves that transformative change is possible when driven by sustained civic pressure and professional solidarity. Reform would likely require a multi-pronged approach: a constitutional amendment to refine the composition and powers of the JCP and Parliamentary Committee, the creation of a transparent and objective scorecard for evaluating judicial merit by the JCP itself, and perhaps the inclusion of non-political, civil society representatives in an advisory capacity. The model of the UK's Judicial Appointments Commission, which operates with a high degree of transparency, offers a potential roadmap, albeit one that would need significant adaptation to the Pakistani context.

The feasibility of such reform ultimately hinges on a grand political and judicial bargain. It requires a consensus among the country's power centers that a truly independent judiciary is more valuable to long-term national stability than a pliant one is to short-term political advantage. Without this fundamental shift in mindset, technical reforms will be easily subverted, and the cycle of politicization will continue.

### **6.4. The Future of Judicial Independence in Pakistan**

The future of judicial independence in Pakistan thus hangs in a precarious balance, oscillating between the promise of the constitution and the realities of power politics. The current trajectory, if unaddressed, points towards a continued erosion of the judiciary's institutional legitimacy, reducing it to just another faction in the country's perennial political struggles. In this scenario, the public's recourse to justice would become increasingly meaningless for cases that truly matter.

However, an alternative future is also conceivable. The relentless scrutiny from the media, the bar, and academia has placed the appointment crisis at the center of public debate. This external pressure creates an impetus for change. A judiciary that can muster the courage for internal reform, coupled with a political class that recognizes the national interest in a strong and



independent judiciary, could still steer the institution toward a future where it commands respect, not for its power, but for its integrity.

The path forward is not about finding a perfect, apolitical system, for such a thing does not exist. It is about managing politics through transparent rules and robust institutions, rather than allowing it to fester in the shadows. The future of judicial independence will be determined by whether Pakistan's state institutions can learn to see a powerful, merit-based judiciary not as a threat, but as the ultimate guarantor of their own long-term security and the nation's democratic health.

## **7. Conclusion**

This analysis has journeyed through the intricate and troubled landscape of judicial appointments in Pakistan, with a specific focus on the emblematic case of the Islamabad High Court. The picture that emerges is not one of a simple breakdown, but of a complex systemic failure where constitutional ideals have been displaced by political and institutional realities. As we conclude, it is essential to consolidate the evidence, reflect on the broader implications, and propose a path forward that is both pragmatic and principled, ensuring that the findings serve as a catalyst for change rather than merely a record of decline.

### **7.1. Summary of Key Findings**

The central finding of this research is that the formal process for appointing judges, established under **Article 175-A** of the Constitution with the noble intention of ensuring merit and independence, has been systematically compromised. The crisis is not one of a lack of qualified individuals, but of a selection mechanism that frequently fails to identify and appoint them. The Judicial Commission of Pakistan (JCP), designed as a judicial filter, has been plagued by internal dissent and a lack of transparent criteria, while the Parliamentary Committee has often functioned as an instrument of executive overreach rather than a democratic check.

Furthermore, the investigation reveals that the consequences of this politicized process are profound and multifaceted. They extend beyond the individual courtroom to erode public confidence, foster a culture of judicial timidity in sensitive cases, and demotivate the most qualified legal minds from seeking a place on the bench. The case studies from the Islamabad High Court provide a stark microcosm of this national pattern, demonstrating how the very court at the heart of the federation has been rendered vulnerable to questions about its legitimacy and independence before it even hears a case.

### **7.2. The Inextricable Link: Appointments, Independence, and Democratic Health**

The most critical insight this analysis offers is the fundamental and inextricable link between the mode of judicial appointments, the reality of judicial independence, and the overall health of a democracy. A judiciary whose composition is negotiated in political backrooms cannot serve as an effective check on executive excess or protect the fundamental rights of citizens. The promise of the Constitution remains unfulfilled if the guardians of the document are perceived as being selected for their allegiances rather than their jurisprudence.

This link was powerfully recognized by the Supreme Court in *Al-Jehad Trust v. Federation of Pakistan* (1996), which established that judicial independence is a fundamental right and a foundational feature of the state. That independence, however, is a hollow concept if it is not safeguarded at the very point of entry to the profession. A compromised appointment process poisons the well of justice at its source, affecting every stream that flows from it. The democratic health of Pakistan is, therefore, directly correlated with the integrity of its judicial appointments.

When the public ceases to believe in the neutrality of its courts, the social contract frays. Citizens lose faith in peaceful, institutional means of resolving disputes, potentially leading to



instability and extra-legal assertions of power. A truly independent judiciary, appointed on merit, is not a luxury for a mature democracy; it is a necessary precondition for its survival and flourishing.

### **7.3. Recommendations for Structural and Procedural Reform**

To navigate this impasse, incremental tinkering is insufficient. What is required is a package of bold, structural, and procedural reforms aimed at depoliticizing the process and reinstating merit as the sole guiding principle. First, the operational procedures of the JCP must be radically overhauled. This should include the public notification of clear, objective criteria for evaluation—encompassing legal expertise, intellectual output, and proven integrity—and the requirement for the JCP to issue a reasoned report for each nomination, explaining how the candidate meets these standards.

Second, the role of the Parliamentary Committee should be constitutionally redefined to that of a transparency body, rather than a veto-wielding panel. Its function could be shifted to conducting public interviews or reviewing the JCP's reasoned reports to ensure procedural compliance, with its power to reject a nominee either removed or made subject to an exceptionally high threshold and justifiable reasoning. This would align the system closer to the meritocratic model of the United Kingdom's Judicial Appointments Commission.

Finally, fostering a culture of transparency is key. The JCP should proactively engage with the Bar Councils and civil society to solicit nominations and feedback, creating a broader, more democratic pool of candidates. As proposed by the Law and Justice Commission of Pakistan (2021), establishing a permanent secretariat for the JCP to maintain records and conduct initial screenings could professionalize the process and insulate it from ad-hoc political pressures.

### **7.4. Avenues for Further Research**

This study has opened several avenues for further scholarly inquiry. A quantitative longitudinal study tracking the career profiles of appointed judges versus those who were overlooked could provide empirical weight to the allegations of a merit deficit, analyzing factors like reported judgments, pro-bono work, and peer reviews. Such data could powerfully illustrate the systematic exclusion of certain types of legal excellence.

Another critical area for research is a deeper analysis of the jurisprudential trends emanating from benches formed during periods of high political interference in appointments. Comparing the outcomes of similar cases before and after controversial appointment rounds could yield more concrete evidence of the correlation between appointment politics and judicial decision-making, moving the discussion from anecdote to data-driven analysis.

Finally, a comparative legal study focusing on post-conflict or transitional democracies that have successfully reformed their judicial appointment systems could offer valuable lessons for Pakistan. Examining the political bargains and change management strategies employed in countries like South Africa or Colombia could provide a practical roadmap for navigating the complex political economy of judicial reform in Pakistan, turning the recommendations of this paper into a tangible action plan for the future.

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### Appendices

#### Appendix A: Timeline of Key Judicial Appointments in the IHC

This timeline charts pivotal moments and controversies in the appointment history of the Islamabad High Court, illustrating the persistent challenges to the process.

Date	Event	Significance / Outcome
2011	Officially established.	Creation of a superior court in the federal capital, placing it at the center of political-legal disputes.
2015	Appointments to fill the bench.	First major test of the post-18th Amendment (Article 175-A) process for the IHC, met with mixed reactions from the bar.



19	Meeting regarding IHC appointments.	dissenting notes recorded by senior Supreme Court judges on the JCP, citing lack of transparency and questionable merit of nominees. The deadlock was widely reported in the press.
20	Interim Committee review of JCP nominations.	Committee rejected/withheld approval for certain nominees, leading to public accusations of political interference from opposition members and bar associations.
21	Second round of contentious appointments.	Continuation of the 2019 deadlock, with JCP members again issuing dissenting notes, highlighting the institutionalization of disagreement within the Commission itself.
22	Supreme Court ( <i>Suo Motu Case No. 1 of 2023</i> ) takes up the issue of IHC appointments.	Supreme Court's intervention underscored the severity of the ongoing crisis, though the proceedings themselves became a subject of political and legal debate.
23	Unfilled vacancies and pending nominations.	Continuation of nomination, deadlock, and delay continues, demonstrating the systemic nature of the appointment crisis.

### Appendix B: Profiles of "Controversial" Appointees (Case Studies)

This appendix provides anonymized profiles to illustrate the typical characteristics and controversies surrounding certain appointments, based on documented public records, dissenting JCP notes, and media reports.

#### Case Study 1: "The Unexplained Elevation"

- **Profile:** A lawyer with a mid-tier practice, primarily representing a specific state institution in numerous cases before the IHC and Supreme Court. Their published legal work or landmark judgments in their own name were considered sparse by senior advocates.
- **Nature of Controversy:** Their nomination to the IHC bench was met with surprise in legal circles. A senior JCP member recorded a dissenting note, questioning the candidate's "demonstrable legal acumen" and "breadth of experience" compared to other more senior and distinguished practitioners who were overlooked. The note argued that the appointment seemed to reward "institutional loyalty over independent legal excellence."
- **Source of Public Scrutiny:** The dissenting JCP note, as covered in legal journals (e.g., *Journal of Pakistani Law*, 2022), and critical analyses by bar associations.

#### Case Study 2: "The Overtly Political Candidate"

- **Profile:** An individual with a known history of political affiliation and public commentary aligned with a major political party before being nominated for a



judgeship. Their transition from a politically active role to a candidate for an ostensibly neutral judicial office was abrupt.

- **Nature of Controversy:** Their nomination triggered immediate objections from opposition parties and civil society groups, alleging that the appointment was a political quid pro quo. The controversy centered on the perceived violation of the principle that a judge must not only be impartial but must also be seen to be impartial. The candidate's ability to hear cases involving their former political allies or opponents was widely questioned.
- **Source of Public Scrutiny:** Parliamentary committee debates reported in the official record, and editorials in major national newspapers at the time of nomination.

### Case Study 3: "The Controversial Omission"

- **Profile:** A widely respected senior advocate with a renowned practice in constitutional law, numerous citations in superior court judgments, and a public record of pro-bono work and legal scholarship. Considered a "textbook" meritorious candidate by peers.
- **Nature of Controversy:** This candidate's name was repeatedly suggested by bar councils but consistently failed to secure a nomination from the JCP. No public reasoning was ever provided for this omission. The legal community interpreted this recurrent rejection as a deliberate exclusion of a strong, independent-minded jurist who might be less malleable to internal or external influences.
- **Source of Public Scrutiny:** Resolutions passed by the Supreme Court Bar Association and Pakistan Bar Council protesting the omission, and commentary in legal publications (e.g., *Pakistan Law Review*, 2021).