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DOES PAKISTAN'S CONSTITUTIONALISM ORCHESTRATE LIMITED GOVERNMENT?

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Abstract
The essence of a constitutional system lies in two key aspects: limiting state power and ensuring the supremacy of rights, particularly the protection of human rights and freedoms. Without mechanisms to limit state power, the state inevitably encroaches on society and the private lives of individuals, threatening their rights and freedoms. Pakistan's constitutionalism is designed to promote a limited government through a system of checks and balances. The 1973 Constitution establishes a parliamentary democracy with a bicameral legislature, ensuring separation of powers among the executive, legislature, and judiciary. The features of Constitution's design show how the principles of limited government are implemented, including constitutional constraints, due process of law, a system of checks and balances, protection of individual rights as prescribed in the constitution, and mechanisms for holding government officials accountable for their actions. However, the implementation and interpretation of these principles can be complex and sometimes contentious. This research will carry the Doctrinal Method to explore how constitutionalism can be achieved by executing the tenets the limited Government in state apparatus of Pakistan.

INTRODUCTION

Henry David Thoreau said he endorsed the motto, 'That government is best which governs least.

By looking into the Constitution of Pakistan, it is very significant to lure the attention of the constitutional scholars to a multidimensional exploration of the bounds of state involvement in the businesses of society and a precisely individual. It is so that the very gist of the constitutionalism is the notion that power of the state should act only inside the restrictions defined and permissible to it by free citizens. According to V. Rechytsky,

"in the situations of constitutionalism, it is not the state that should teach citizens proper behavior, but citizens should indicate to the state the direction of its activity that is useful for them. Otherwise, under the guise of a constitution, citizens would risk receiving only a means of lowering the standards of their civil, political and personal freedom."

The Constitution of 1973 provides for a parliamentary democratic structure, with checks and balances to prevent excessive power concentration in the executive at both the national and provincial levels. The central tenet for this framework is the idea of separation of

powers. The Constitution divides power between three main organs of the state, namely, legislature, executive and judiciary. This separation is not just structural but functional in that no one branch can operate without constitutional limits. The legislature enacts laws, the executive put them into force, and the interpretation of them rests with the judiciary. In fact, this segregation of functions is meant to promote the balance of power, not domination.

The governance structure of Pakistan, as a Constitutional democracy, is organized in such a way to self-impose restrictions to the exercise of power. To ensure both accountability in the system and prevent arbitrary exercise of coercive power by any of the executive agency, the government is liable to explain its authority to the parliament which in turn represents and protects the interests of the citizens. Similarly, the legislature does not enjoy the unfettered authority as the changes made to the constitution are not without limitations and must comply with the Constitution's underlying principles embedded in the ideological and religious inclination of Pakistan. The contemporary mandate of law is aimed to secure the inviolable Constitutional rights of every citizen. These constitutional-enumerated fundamental rights, however, are to be viewed not just as personal, civil rights, but as a means to serve as self-imposed restrictions to the power of government, to limit its authority. The fundamental rights are not left at the sweet will of the executive but have been augmented by the redressed and enforcement mechanism on the behest of Constitutional Courts with extraordinary jurisdiction.

This separation of powers, complemented by checks and balances, oversight functions on the others, as long as it is within the constitutionally established limits. This interdependence avoids the unilateral exercise of authority and encourages institutional dialogue. The Constitution does not simply allocate powers; it purposefully and functionally interlocks institutions to protect against the misuse of power.

4. Research Methodology.

The study employed several methods to examine the doctrine of limited government, its elements, and the legal positions related to this issue. This research article is based on the doctrinal research methodology in which the researcher will adopt a systematic approach to analyze legal principles, statutory provisions, and judicial precedents to interpret, explain, and harmonize whether the Constitutionalism exits in Pakistan and to what extent limited Government can pave the way for its existence. In order to establish this theory the researcher will endeavor to theorize that the best Government is that which governs least. To institute this doctrine the research will problematize the existing framework of the Constitution of Pakistan by pointing out when and how excess in powers dismantle the Constitutionalism and wipe out the basic structure of the constitution of state of Pakistan.

4. Significance of Study.

The study inspects the past expansion and current state of the concept of limited government, by discovering its acquaintances with the Constitutionalism , the code of the rule of law, the concept of human rights and freedoms, and the principle of the separation of powers. The primary conclusion is that the legal positions of the Constitutional of Pakistan regarding the doctrine of limited government, a key pillar of modern Pakistani constitutionalism, have been methodically studied. It has been time-honored that the Constitutional Court of Pakistan has consistently affirmed the essential elements of the doctrine of limited government from its inception. These elements form the doctrine of constituent power and the fundamental principle of constitutionalism, emphasizing the necessity of limiting state power to safeguard human rights and freedoms. Furthermore, the Judicial Constitutionalism in the light of leading case laws has also been explained and emphasized by focusing on the division into legislative, executive, and judicial branches is not an end in itself but is intended to ensure the protection of individual rights and freedoms.

5. Constitutional Framework

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6. Attributes of Limited Govt.

The concept of limited government refers to a political philosophy and a constitutional arrangement where law limits governing authority in order to preserve individual rights and avoid a concentration or abuse of power. Modern democratic norms refer to it as a system in which the government is confined to a particular territory and, within that territory, only exercises the powers that are specifically granted to it by a constitution or some other fundamental law. The fundamental principle of limited government is that the government is not sovereign, but the government is limited to the authority given to it by the constitution. The constitution is the supreme law that articulates the range, type, and degree of power that the government may lawfully exercise. It also ensures that the public administration does not act in an arbitrary manner. Therefore, a written constitution is a device that brings the restraint of power the constitution embodies.

An important feature of limited government is the constitution and the restraints it places on branches of government. Each branch of government is limited in scope and does not have the authority to go beyond what is mandated. In other words, government agencies cannot exercise powers beyond those explicitly granted to them, and the constitution serves as a restraint on the legislature, the executive, and, to some extent, the judiciary. Constitutional restraint goes hand in hand with the rule of law. In a limited government, the state's actions must adhere to the established laws. This means that the government is bound by the law and cannot act beyond it. The rule of law fosters certainty, protection, and accountability. It protects the government from acting arbitrarily, ensuring that its actions have a legal basis and are not influenced by personal or political motives.

One more distinguishing feature is the system of separated powers with its accompanying system of checks and balances. Power is distributed among branches usually the legislature, executive, and judiciary, so that one branch does not hold ultimate authority. Each branch fulfills different functions but also checks the power of other branches. This division of structure helps to limit the potential for tyranny and renders the equilibrium of institutions, devising a counterbalancing system so that when one branch exercises power unjustly, the other branches can respond. Almost as important as the structure is the respect for individual rights. The existence of a government with limited powers is to defend the rights of individuals, their liberties and belongings from the encroachments of the State. These fundamental rights also protect individuals from arbitrary actions by the state. Rights act as a claim against the state and, as a consequence, place a limit on the power of the state.

Lastly, a crucial part of the limited government philosophy is the role of accountability. Public duty is answerable to the law, and it is this responsibility that legitimizes the exercise of government power. This is formed through the electoral process and the other law on public officials. The electoral process promotes democracy, and the law on public officials is an instrument of democracy. These factors consolidate the theory that democracy is grounded and legitimized by a limited and responsible government.

7. Key Aspects of Limited Government:

i. **Constitutional Constraints**: In a limited government, authority is defined and restricted by a written constitution or similar foundational document. The governing authority must commit its behavior and actions to the law. This constitution serves as the supreme law and outlines the scope of governmental powers. Rather than allowing unlimited discretion, it delegates specific powers to state institutions and sets clear boundaries within which they must operate. This structural limitation ensures that government remains an agent of the people, not their master. By defining powers in advance, constitutional constraints reduce arbitrariness and promote stability in governance.

ii. **Rule of Law**: Under this principle, all government actions must conform to established legal norms striving to achieve the aspirations of rule of law. No individual or institution, including those in positions of authority, is above the law. The rule of law ensures that power is exercised according to pre-existing rules rather than personal will or political expediency. This principle strengthens legal certainty and protects citizens from arbitrary decisions. It also reinforces the idea that legitimacy arises from adherence to law, not from force or dominance.

iii. **Separation of Powers & Checks and Balances**: Limited government requires the division of authority among distinct branches (commonly the legislative, executive, and judicial) to prevent any single entity from gaining too much control. Each branch performs separate functions and is equipped with mechanisms to restrain the others. This distribution of power prevents concentration in a single entity, which could otherwise lead to authoritarianism. Checks and balances operate as safeguards, ensuring that institutional overreach is corrected through structured oversight. The interplay among branches maintains equilibrium and guards against dominance by any one organ of the state.

iv. **Protection of Individual Rights:** A limited government exists primarily to safeguard personal freedoms and private property from state overreach. Rather than treating rights as privileges granted by authority, this framework recognizes them as fundamental. Government's role is therefore protective, not intrusive. By restricting the scope of state interference, limited government maximizes personal liberty and ensures that laws serve the individual rather than suppress them.

v. **Accountability**: Finally, accountability functions as a practical enforcement mechanism of limitation. Mechanisms such as elections and judicial review ensure that public officials remain

answerable to the people and subject to constitutional scrutiny. Accountability connects authority with responsibility, preventing officials from acting without consequences. Through democratic participation and legal oversight, citizens retain ultimate control over governance.

8. Challenges to Limited Government

Despite the constitutional framework aimed at creating a limited government, Pakistan has faced ongoing structural and institutional challenges that hinder its effective operation:

Military Interventions: Frequent military coups have interrupted democratic continuity and weakened constitutional governance. When military regimes suspend or cancel constitutions, they change the legal and political order beyond constitutional limits. These disruptions undermine the separation of powers and weaken institutional stability. Instead of authority being exercised within defined constitutional boundaries, extraordinary rule gathers power in one authority. This undermines checks and balances and sidelines representative institutions. The repeated interventions have disturbed democratic processes and weakened the supremacy of constitutional rule. The outcome is an inconsistent constitutional path, where the core idea of limited government struggles to function during periods of extra-constitutional control.

Judicial Activism: While the judiciary is entrusted with maintaining constitutional balance and safeguarding the rule of law, the courts have at times adopted an expansive interpretation of their powers. This expansive approach can create tensions with the executive and legislature. In a system of separation of powers, each branch must function within its defined sphere. However, when judicial review extends deeply into administrative or legislative domains, it may be perceived as encroachment. Although judicial oversight is essential for preventing abuse of authority, excessive intervention may disturb institutional equilibrium. The delicate balance required in limited government depends on mutual respect among branches. Persistent conflicts between judiciary and political organs can weaken governance efficiency and blur constitutional boundaries.

Provincial and Ethnic Tensions: Pakistan's constitutional design incorporates a federal structure intended to balance national unity with provincial autonomy. However, regional and ethnic differences have at times strained this framework. Disputes over resource distribution, political representation, and autonomy test the effectiveness of federal arrangements. Limited government requires clarity in division of authority between federal and provincial governments. When tensions intensify, they can challenge constitutional harmony and complicate governance. Such strains affect not only administrative functioning but also perceptions of legitimacy and inclusion within the constitutional order.

9. Impact of Abusive Constitutionalism

Abusive constitutionalism refers to the use of constitutional mechanisms in a manner that formally appears lawful but substantively undermines democratic principles, civil liberties, and limited government. Constitutionalism is intended to restrict state authority, protect individual rights, and maintain checks and balances. However, certain eroding actions weaken these safeguards, the very structure designed to restrain power can instead facilitate its expansion. The 21st Amendment serves as a clear illustration of how abusive constitutionalism can disrupt the delicate balance envisioned in a constitutional democracy.

The core purpose of limited government is to ensure that authority remains confined by constitutional constraints and guided by the rule of law. The 21st Amendment, by granting military courts the power to try civilians, represented a significant shift from ordinary judicial processes. This development placed adjudicatory authority in forums that operate outside the conventional civilian judicial framework. In doing so, it raised serious concerns

regarding the protection of fundamental rights and adherence to procedural safeguards. Since the constitutional framework emphasizes protection of individual liberties and prevention of state overreach, any departure from ordinary judicial standards challenges the foundational philosophy of limited government.

While amendments may be passed through representative processes, their effect can concentrate power or shield certain state actions from meaningful oversight posing long-term consequences for democratic accountability. This reduces transparency and public confidence in constitutional governance. Over time, repeated reliance on exceptional constitutional measures can normalize deviations from limited government and fade away democratic culture

10. Judicial Role in Constitutionalism

Judges are instrumental in supporting constitutionalism and the notion of limited government through the courts of Pakistan by their ability to uphold limits on governmental power through the judiciary. The judicial role serves to address the fundamental notion of limited government, which is to prevent the use of power beyond the limits permitted under constitutional law. A foundational aspect of this judicial role lies in the power of constitutional interpretation and review. When the courts exercise judicial review, they examine whether legislative acts, executive actions, and even constitutional amendments comply with the principles established under the constitution.

The *Fazlul Quader Chowdhry v. Federation of Pakistan* (PLD 1963 SC 486) case is an early example of how a court engaged with the Constitution and its structure at a time when courts were just beginning to investigate their authority to determine the scope of constitutional amendments and to review whether such amendments had intra-constitutional limits. The articulation of the judiciary's authority to undertake constitutional review became clearer with the *District Bar Association (Rawalpindi) v Federation of Pakistan case* (PLD 2015 SC 401). In this instance, the judiciary, with greater firmness than in the *Fazlul Quader Chowdhry* decision, asserted its authority to review the constitutionality of constitutional amendments to the Constitution and to determine if they are consistent with the Constitution's basic structure. The court established that even constitutional amendments, despite having been enacted under a prescribed procedure, will be subject to judicial review to determine if they violate any of the fundamental principles of constitutional law, and therefore are invalid. By recognizing substantive limits on amendment power, the judiciary strengthened the concept of limited government and reinforced the supremacy of constitutional norms over transient political majorities.

11. Conclusion

To sum it up, the system of Government in Pakistan is set up in such a way as to reflect a strong and clear commitment of limited government, grounded on principles of, constitutional supremacy; separation of powers; and, judicial oversight. At the heart of this design of Constitution, however, is the fundamental principle that the power of the government must, in all respects, be limited by law and defined. First, the Constitution guarantees to individual people their essential civil rights and liberties, and provides, in its provisions for checks and balances, the system by which those rights and liberties may not be violated. All of these protections, taken together, provide the means to create a system of limited government through restricting the power of the state to only that for which it has been delegated; thereby maximizing the individual freedom of people and providing protection for property rights and individual safety.

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