

The Role of the Supreme Court in Democratic Development in Pakistan (2009–2021)

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Article Information	Abstract
Received: May 23, 2025 Revised: June 27, 2025 Accepted: June 29, 2025	This article studies the role of the apex judiciary in the democratic development in Pakistan from 2009 to 2021, while focusing on the complex institutional interaction and power negotiations between the institutions and politicians. This study utilises a qualitative approach by conducting a case study analysis of selected important judicial verdicts of the apex court through the theoretical lens of the democratic consolidation theory, which requires the “willingness” of key players of a polity to keep democracy as the only game in town. This study contributes to the understanding of the apex judiciary’s behaviour towards democracy in Pakistan, by analysing selected verdicts of apex court involving important political disputes: the legitimacy of Musharraf’s emergency during PPP’s government, disqualification of PPP’s Prime Minister, allegation of defaming the military against PMLN’s Prime Minister, disqualification of PMLN’s Prime Minister and the PTI’s demand for open balloting for Senate’s election. It underscores that the role of the apex judiciary didn’t remain consistent towards democratic development during this period, as some verdicts exhibited a high “willingness” towards democratic development, but other verdicts prioritized compliance of judicial orders, accountability and procedural adherence over political stability, substantial democracy and representation, which resulted into the political loss to the ruling parties PPP, PMLN and PTI during this period. Therefore, the article concludes that the apex judicial forum played a mixed role towards democratic development during the period 2009-2021.
Keywords <i>Supreme Court of Pakistan</i> <i>Democratic Consolidation</i> <i>Judicial Activism</i> <i>Hybrid Democracy</i> <i>Civil-Military Relations</i>	

1. Introduction

Pakistan has remained in a quest for stable democracy during its political evolution. This article evaluates the role of the Supreme Court in democratic development during an important period (2009–2021), which is marked by continued civilian rule despite substantial judicial activism. For the sake of contextualising this study, it is crucial to understand basic concepts and the historical trajectory of judicial behaviour towards democracy.

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1.1 What is Democracy?

Democracy, in its minimalistic definition, means a political system where citizens elect their leaders through free, fair, and competitive polls, which is accompanied by guarantees of civil liberties, political pluralism, and institutional accountability (Schumpeter, 2013; Dahl, 2008). Elster (1988) has simply defined democracy as a rule of simple majority on the “one vote per person” basis. The substantive democracy even goes beyond elections, by requiring emphasizes the protection of fundamental rights, the rule of law, the separation of powers, and the meaningful participation of citizens in governance. According to Schumpeter (1975), democracy means that the people have the power to both elect and remove their leaders.

1.2 What is Democratic Development?

The term Democratic development refers to the *process* of strengthening democratic institutions, substantial democratic norms, and practices over time for the purpose of enhancing political participation, ensuring government accountability, expanding civil liberties, and embedding constitutionalism within state-society relations (Diamond, 1999). Democratic development is not merely the absence of authoritarianism, but it also requires that a resilient democratic culture and infrastructure be actively cultivated. According to O'Donnell, Schmitter, & Whitehead (1986), democratic development is ordinarily divided into two phases, i.e., democratic transition and democratic consolidation. Democratic transition starts with the fall of the undemocratic regime and ends with the installation of a democratic regime. On the other hand, the democratic consolidation phase ordinarily starts after the installation of the democratic regime. Therefore, according to Linz & Stepan (1996), the democratic transition phase is marked by a period of fluidity, when there is still apprehension of reversion to the authoritarian regime.

1.3 Democratic Consolidation

Democratic consolidation is a part of democratic development because democratic development is related to the overall democratic progress of institutions, whereas democratic consolidation relates to ensuring that democracy should not be reversed. In a democratically consolidated polity, democratic governance becomes the only option. It occurs when the key political players believe in democracy as the sole legitimate system of governance and that the power transition should only be through a democratic process, instead of resorting to coups (Linz, 1996). The "willingness" of major institutions (military, judiciary, political parties) is a paramount requirement.

1.4 Historical Background

Since independence, Pakistan was aimed, by its Constituent Assembly (1949), to be governed through the principles of democracy, freedom, equality, tolerance, and social justice outlined by Islam. But, there emerged a power imbalance as the political institutions were weak against strong state institutions such as the army, bureaucracy, and judiciary (Waseem, 2012a). The legacy of British colonial governance had influenced these state institutions; therefore, they intervened in civilian governance and exploited the vulnerabilities of political institutions, hence resulting in a political system which they predominantly controlled (Khan, 2018). The power struggle between elites resulted in the removal of five prime ministers during 1947-1958, which Choudhury (1974) names as the era of the ‘revolving door’ of Prime Ministers. The continuous power struggle between the political and state institutions often created political crises, which came to the Pakistani apex court for their resolution.

Historically, the Supreme Court rendered important decisions to resolve important political disputes, including the dismissal of prime ministers and assemblies, and the legitimacy of military coups. During 1947-1987, most of the verdicts passed during this period legitimised and supported the undemocratic regimes by relying on the doctrine of necessity. Such decisions harmed the democratic

development. For example, Pardesi (2012) notes that the Dosso verdict and the Tamizuddin verdict reversed the constitutional growth. Similarly, the Nusrat Bhutto verdict (1977) legitimised General Zia's coup. However, during this period, only a few verdicts like the Fazlul Quader Chowdhry Case (1963) and the Asma Jilani Case (1972) supported the idea of democratic governance under substantial democratic norms. In the former verdict, the Supreme Court invalidated President Ayub's ordinance, which had allowed his unelected cabinet members to speak in the Assembly. In the latter verdict, the Supreme Court invalidated the 1969 martial law by overruling the principle of necessity. However, these decisions were short-lived due to the lack of their implementation or the return of the authoritarian regime. However,

Even during the democratic era (1988-1999), the Supreme Court impacted democracy by passing inconsistent verdicts, influenced by the doctrine of necessity, regarding the presidential dismissals of the National Assembly in 1988, 1990, 1993, and 1996 (Waseem, 2012). Later during Musharraf's regime (1999-2008), the Supreme Court passed verdicts like Zafar Ali Shah Case (2000) and Tika Iqbal Khan Case (2007) legitimizing the emergencies imposed by Musharraf. These verdicts, passed during 1947-2008 supporting the undemocratic power transitions highlight the negative and subservient role of the judiciary which was influenced by the undemocratic principles like the doctrine of necessity or doctrine of revolutionary legitimacy.

However, following General Musharraf's decline, the Supreme Court passed a ruling in the 2009 PCO Judges dismantling the doctrine of necessity and reversing the undemocratic laws that Musharraf had enacted to consolidate his authority. Since then, the country has not seen any direct martial law so far. Therefore, the 2009 PCO judges' verdict is an important historical marker highlighting the shift in the Supreme Court's institutional behaviour towards democracy in Pakistan.

1.5 Purpose and Significance of the Study

The PCO Judges' verdict (2009) highlights the emergence of the Supreme Court as a pivotal political player, with the ability to shape the political landscape through its decisions. From 2008 to 2021, three consecutive elections were held in 2008, 2013 and 2018, showing the democratic development marked by a continued civilian rule. The era 2009-2021 witnesses the continued civilian governance of the state, but also the judicial dismissal of two prime ministers, signifying the complex judicial role towards democracy. Therefore, it becomes pertinent to study the role of the Supreme Court in democratic development during this era. Therefore, this article examines the role of the Supreme Court of Pakistan in the democratic development from 2009 to 2021. The study will be significant in understanding the importance of judicial participation in democratic development by highlighting the consequences of selected judicial verdicts on democratic development. The objective of this study is (1) to assess the role of the Supreme Court in democratic development in Pakistan during 2009-2021, by analysing the selected verdicts, and (2) to assess the consistency of judicial behaviour in those verdicts towards democracy during 2009-2021.

2. Literature Review

Newberg (2002) has studied the judicial role in Pakistani politics during the era 1947-1993. She argues that the courts had to define politics through their verdicts, because of incompetent politicians and unclear ideas about rights & powers. The judiciary bolstered the foundations of the polity by establishing the mechanism for solving political disagreements. They didn't advocate the perpetuity of military rule, even while supporting the military coups.

Ashraf et al. (2025) have studied the historical application of the doctrine of necessity by the Supreme Court of Pakistan. They have concluded that the Supreme Court applied this doctrine on several occasions, between 1958 to 2000, to support the military coups, negatively impacting the democratic institutions and democratic development in Pakistan.

Waseem (2012a) argues that the apex Court, under CJ Chaudhry, enhanced its powers by employing the broader interpretation of laws and using a populist approach during the adjudication of executive actions, which has resulted in the enhancement of institutional conflicts. In another work, Waseem (2012b) has discussed the evolving trajectory of the dispute between elected and unelected forces in Pakistan. He argues that historically, the military has removed elected governments, but this role has been replaced by the judiciary. He cites, in this regard, the example of the judicial removal of the PM. In this way, he criticises that the apex court has assumed the role of such a non-democratic force against the elected government, which has shifted the dynamics of conflict.

Khan (2016) has discussed the conduct and lives of the judges of the superior courts of Pakistan, which impacted the state. He has argued that the incompetence of other departments of the state resulted in the expansion of the judicial role in Pakistan. In another work, Khan (2017) has analysed the judicial roles in the constitutional and political history of Pakistan. He has discussed the important political disputes, their judicial decisions and the consequences of these verdicts on the constitutional and political history of Pakistan. In another work

Cheema (2016) has studied the political impact of the Pakistani judiciary. He argues that since the court's decisions impact politics, therefore, these decisions can also be treated as a form of politics. He further argues that since there are situations when the judiciary is the only hope to solve the hostile political deadlocks, therefore, the court's silence or inaction can also impact the politics. He cited the example of CJ Chaudhry, who declined to take up the issue of electoral rigging on the pretext of judicial restraint, which enhanced the political instability. In another work, Cheema (2018b) has criticized that the Pakistani apex court lacks a specific jurisprudential mechanism for decision of political disputes, which often results in arbitrariness particularly in suo-moto cases, as sometimes these cases are decision on the first day of hearing without affording any reasonable time and opportunity to the respondents. He suggests the reformative legislation for regulating the suo-moto decisions and affording the right to file review against such decisions under a coherent jurisprudence.

Khan & Hassan (2025) have analysed the impact of judicial activism on the parliamentary democracy in Pakistan from 2018 to 2022. They have concluded that judicial activism has negatively impacted the parliamentary democracy during this era. They have recommended the legislation of laws controlling judicial conduct and powers to safeguard the trichotomy of power and ensure fairness in decisions.

Gul et al. (2025) have comparatively analysed the judicial review in Pakistan and the UK. They have concluded that Pakistani courts are not neutral because of institutional and political pressures. They have suggested that judicial neutrality should be promoted in Pakistan by legislating reforms.

2.1 Literature Gap

The existing literature is in scattered form as it does not comprehensively discuss the Supreme Court's role within the period under study (i.e., 2009-2021). Therefore, the existing literature does not sufficiently describe the changes in the trajectory of the institutional behaviour of the Supreme Court during this period. Moreover, the existing literature has analysed different theoretical lenses like the separation of power, independence of judiciary or the judicialization of politics, but they lack the lens of Linz's Democratic Consolidation Theory, which is most relevant to this research topic due to its emphasis on the "willingness" of the judiciary towards democracy. Therefore, this study intends to fill this gap in the literature by examining the selected judgments of the apex court of Pakistan under the lens of Linz's Democratic Consolidation Theory during the period under study (i.e., 2009-2021).

3. Problem Statement

After the fall of Musharraf's regime, Pakistan witnessed a continued civilian governance in Pakistan supported by the regular conduct of general elections, which signifies the democratic development.

Therefore, it becomes pertinent to study the role of the Supreme Court in democratic development after that historical shift in 2009. Since the democratic consolidation theory connects the process of democratic consolidation to the “willingness” of the key political players or institutions, therefore, this theoretical lens becomes pertinent for assessing the judicial role towards democracy. But the existing literature lacks this aspect. Hence, this study intends to assess the Supreme Court’s role during the era (2009-2021) through this lens. It aims to explore whether such a role remained consistent or changed during this period. And whether such role positively or negatively impacted the democratic development in Pakistan?

4. Research Questions

This study attempts to answer the following research question:

1. What was the role of the apex judiciary in the democratic development in Pakistan during 2009-2021?
2. Whether such a role remained consistent during said period?

5. Methodology

As the courts behave and act through their verdicts, therefore, the judicial behaviour can be assessed by analysing the judicial verdicts. Therefore, this study utilises a qualitative approach by employing Case Study Analysis of the following selected verdicts in important political disputes:

- i. PCO Judges Case (2009)
- ii. Gilani Contempt Case (2012)
- iii. Military's Defamation Case (2014)
- iv. Panama Scandal Case (2017)
- v. Senate's Secret Ballot case (2021)

By scrutinising these decisions and their consequences on democratic governance, this study attempts to deliver a thorough understanding of the judiciary's influence on Pakistan's political landscape. This study has used primary data (i.e., legislations and selected verdicts of the apex court) and secondary data (i.e., books and journal articles). The democratic development is the dependent variable, whereas the court's “willingness” to prioritise democracy is an independent variable in this research.

The theoretical foundation is based on Democratic Consolidation Theory, which argues that democratic consolidation requires the “willingness” of key players under a broader consensus that the country should be run through democratic means only (Linz, 1996).

6. Case Study

The case study analysis of the selected verdicts in important political disputes is given as under:

6.1 PCO Judges Case (2009)

This verdict of the apex court was titled as SHCBA etc. vs. FOP etc. (2009), which invalidated Musharraf's emergency, undid his constitutional alterations and restored the judges deposed by him (Kalhan, 2013). In doing so, the court overruled its past precedents that had validated military coups under necessity; hence, obstructing any such attempt in future (Munir & Mahmood, 2019). The main underlying controversy behind this case was about the restoration of judges, including the Chief Justice Chaudhary, who had been deposed by the past dictator. Therefore, the court restored those deposed judges; however, in doing so, the court also invalidated the past dictator's laws and the emergency.

This was a post democratic transition verdict, because Musharraf had already lost his reign, being replaced by a civilian president. Therefore, the passing of such like verdict against the past dictatorship was not a big surprise. The civilian President was reluctant to restore the Chief Justice deposed by Musharraf in past. This reluctance was because of the President's fear that the Chief Justice would reopen the corruption cases against the president by invalidating the immunity granted by Musharraf. The lawyers' movement, demanding the restoration of the Chief Justice, also received support from the civil society and the opposition parties to pressure the civilian government. With such a supportive political milieu, this verdict came in the wake of tension between the civilian government and the supporters of the Chief Justice's restoration. Therefore, the timing of this verdict highlights the impact of the prevailing political environment on the judicial behaviour regarding democracy. This situation fulfilled the requirements of the democratic consolidation theory, like the willingness and broad consensus of key political actors, such as the judiciary and opposition parties. The lack of any outright opposition from the military's Chief General Keyani also brought the military establishment among those key political actors willing to make democracy the only game in town.

The pro-democratic aspects of this verdict highlight the judicial "willingness" towards maintaining democracy. Firstly, the court abolished the necessity doctrine and overruled its necessity verdicts that had been relied in past to legitimize the undemocratic usurpation of power in the name of necessity and security of the state. Rather, the verdict declared in clear words that any such action would tantamount to an unconstitutional act. Therefore, the verdict buried the doctrine of necessity. Secondly, the past dictator Musharraf enacted some undemocratic amendments in the constitution to consolidate his control over power. After his departure, such prevailing amendments acted as structural limitations against the parliament and the judiciary. Parliament, being a conventionally weak institution, couldn't challenge these dictatorial laws. Therefore, the court invalidated those amendments through this verdict, thereby liberalising the parliament and the courts to exercise their respective powers, and giving the parliament a chance to set its future course through parliamentary legislation. Therefore, the removal of undemocratic clauses from the constitution liberated the parliament, facilitating the legislation of democratic provisions, such as the 18th Amendment to the constitution. Thirdly, this verdict also consolidated the authority of the elected government by legitimising the elections of 2008 (Kalhan, 2013). These democratic features show (1) the judicial involvement as one of the key political players of the state, and also demonstrate (2) the judicial "willingness" towards democratic progress by acting as the democratic consolidator, commensurate with the requirement of key political players' willingness under the democratic consolidation theory.

6.2 Gilani Contempt Case (2012)

This verdict was an extension of the NRO dispute. Through NRO law, Musharraf had granted immunity to politicians, including Zardari, against corruption cases. However, later, the apex court stripped this immunity in the NRO verdict and instructed the PPP's government to approach Swiss authorities to reopen cases against Zardari. But, the government didn't want to comply with this direction, as such action could result in unfavourable circumstances (Almeida, 2012). The democratic and political stability endowed by the PCO Judges' verdict (2009) was already thinned by the NRO verdict, as Cheema (2016) argues that the judicial invalidation of NRO brought the civilian government and the judiciary into confrontation with each other. Similarly, Waseem (2012a) criticises that such invalidation of a law by judicial order amounted to the assumption of a legislative role by the judiciary, while disturbing the trichotomy of powers. Moreover, Kalhan (2013) notes that the NRO verdict aligned with the conventional narrative of the Army, which historically distrusted the elected parliamentarians and therefore tried to control them. Therefore, due to these undemocratic aspects, the NRO verdict (2009) didn't demonstrate sufficient "willingness" to consolidate democracy and the civilian government. The court pressed the government to comply with its order, while insinuating severe consequences, including the initiation of contempt proceedings against the Prime Minister (Munir, 2022). This situation was further exacerbated as these events ultimately led to the passing of the Gilani contempt verdict (2012), when Gilani refused due to Zardari's presidential immunity, the Suo-Motu Contempt proceeding was initiated against him by the apex court through

Suo-Motu No.4 (2012). The court convicted him with a symbolic sentence, without expressly mentioning any disqualification from his office (Iqbal, 2012). This vagueness caused the political upheaval (Hussain, 2012). This dispute between the ruling party and the opposition, as the opposition construed the conviction as disqualification; therefore, the matter again went to the apex court, which declared the disqualification, while overruling the speaker's ruling (Munir, 2022).

Due to undemocratic aspects, the Gilani contempt verdict (2012) highlighted the lack of judicial "willingness" towards maintaining democracy. For example, firstly, this decision exuberated the perception that the judicial department, being authorised by "public will", is equivalent to the parliament (Walsh, 2012). Such idea is based on that belief that since the constitution is will of the people, therefore, the courts act as public representative when they punish a contemnor for non-compliance of constitution. Such self-perception challenges the supremacy of the parliament and was contravening the constitutional requisite of separation of power which assigns legislative function to the parliament and adjudicative function to the judiciary. Secondly, the court overruled Gilani's plea of presidential immunity already provided in the constitution, and insisted on the strict implementation of its orders at any cost. Such, approach highlights the paternalistic undertone. Thirdly, the issue of qualification of the prime minister fell into the functional domain of the parliament. Therefore, the direct judicial declaration of disqualification, instead of referring the matter to the parliament, downsized the constitutional role of the parliament and Election Commission (Kalhan, 2013). Hence, this verdict enhanced the judicial involvement into parliamentary affairs (Munir, 2022). Fourthly, the contempt proceeding and disqualification destabilized the political situation, as it not only reduced the control and legitimacy of the civilian government, but also lowered the public trust in the ruling party.

The democratic consolidation theory requires the "willingness" of all key political players of a state for the consolidation of democracy. But, these four aspects (1) judicial self-perception of being a public representative, (2) paternalistic undertone, (3) interference into internal affairs of the parliament, and (4) resultant political instability demonstrated lack of judicial "willingness" as required under the democratic consolidation theory for the consolidation of democracy. Rather, the verdict enhanced the judicial role in politics and demonstrated the insistence on the executive's compliance with judicial orders, without considering its effects on the political and democratic situation of the country.

6.3 Military's Defamation Case (2014)

The tensions were high between the military and the elected government due to several reasons, including the government's increasing control over foreign & defence policymaking (Fair, 2017). It's another reason was the initiation of a treason case against the retired General Musharraf (PILDAT, 2015). Therefore, the military relied on the opposition parties to remove the Prime Minister Nawaz (Siddiq, 2007). The protests of opposition created an apprehension of a military coup, but the army chief intervened to mediate between the government and opposition (Boone, 2014). This intervention was to pressure the government to loosen its independent control on policies (Fair, 2017). In the National Assembly, Nawaz denied the allegations that he had approached the Army Chief to seek any help for resolving the dispute with demonstrators. But the military negated the Prime Minister's claim. Therefore, the opposition leaders took the matter to the court by filing a case titled as I.K. Khakwani etc v. Nawaz Sharif etc. (2014), alleging that the Prime Minister had become disqualified from his office as he had told a lie to defame the military. Ultimately, the apex court dismissed the case on the grounds of the absence of evidence and the lack of the court's jurisdiction to interfere in the parliamentary processes.

Ordinarily, the ruling parties with majority seats are considered a threat to the vested interests of the powerful unelected elites. Therefore, these elites historically manoeuvred, on different occasions, to destabilise the civilian governments by employing different means, including political protests & sit-ins, horse-trading, military coups and court cases. This case is one such example of an attempt to destabilise the civilian regime. The opposition parties' leaders, who were the petitioners in these

cases, argued their case primarily on the two grounds. Firstly, the Prime Minister's statement about the Army Chief amounted to an act of defaming the army, which is an institution of the state's security. Secondly, he became ineligible for his office under Article 62(1)(f) of the constitution because of his false statement. The first ground relates to the concerns of the state's security and necessity, whereas the second ground relates to the enforcement of the state's security by removing the Prime Minister through the moral assessment mechanism provided under Article 62(1)(f). Nelson (2021) has criticised this clause by declaring it an undemocratic tool which had been devised by General Zia's regime to control the dissident parliamentarians.

Ultimately, the court dismissed the petition on the ground that the requirements of Article 62(1)(f) for a parliamentarian, of being "truthful" and "honest", are vague and include a wide range of things. However, the court didn't scrutinise the validity of Article 62(1)(f) under the touchstone of fundamental features of the constitution, including democratic governance. The dismissal of the case, without striking down Article 62(1)(f), implies the fact that the court saved the civilian government for the time being through this quick-fix verdict; but, the court was not ready to quit its powers available under Article 62(1)(f) which could be used in future. However, the observance of judicial restraint by the Supreme Court in this case indirectly beckoned its cold-shouldered refusal to support the undemocratic forces during the ongoing tussle between the civilian government and the military establishment. In this way, the court, being an important key political player, wisely used the option of judicial restraint. Its refusal to remove the prime minister or interfere in the parliament's jurisdiction, resulted in the continuity of elected government. Hence, the supreme court, by acting as a democratic consolidator, duly fulfilled the "willingness" which is required, under the democratic consolidation theory, to consolidate the democracy, thus positively impacting the democratic development.

6.4 Panama Scandal Case (2017)

This case sprouted from the corruption allegations against Prime Minister Nawaz, after his name was disclosed in the leaked papers about offshore assets. The opposition leaders approached the apex court, by filing the case, titled "I.K. v. Nawaz etc." (2017), seeking the declaration about the Prime Minister's disqualification, whereon the majority decision directed an inquiry through a "Joint Investigation Team" (JIT) comprising of members including the officers from intelligence agencies. The JIT submitted its report before the implementation bench of the court confirming the allegations of money transfers to offshore destinations. Consequently, in the verdict "I.K. v. Nawaz & others" (2017), the bench disqualified the Prime Minister on the ground of nondisclosure of receivable income in his nomination papers submitted for participating in the elections. This decision enforced a constitutional Clause 62(1)(f), requiring the parliamentarians to be truthful & honest, which had been introduced by former dictator General Zia to constrain the parliamentarians (Nelson, 2021).

Due to undemocratic aspects, the Panama Scandal Case (2017) demonstrated the lack of judicial "willingness" towards maintaining democracy. For example, firstly, the issue of the qualification of the prime minister fell into the functional domain of the parliament itself, but the judicial declaration of disqualification, instead of referring the matter to the parliament, downsized the constitutional role of the parliament. Further, the inquiry into the Prime Minister's moral character amounted to an outreach into the domain of politics, consolidating the judicial authority over the parliament (Munir, 2022). Secondly, Clause 62(1)(f) was a dictatorial legacy of Zia's regime, which had been enacted to constrain and control the parliamentarians under the thumb of the military establishment. However, instead of striking down such authoritarian clause, the verdict enforced it, thereby thinning the sovereignty of the parliament and the independence of its parliamentarians, and thus, aligning with the traditional military's narrative about incompetence and untrustworthiness of the elected parliamentarians. Resultantly, the elected Prime Minister could not complete the full period of his office like past Prime Ministers (Jamal, 2017). Thirdly, the disqualification of the prime minister gave a shock to the ruling political party, as it not only reduced the control and legitimacy of the civilian government but also lowered the public trust in the ruling party, causing political instability.

The democratic consolidation theory requires the “willingness” of all key political players of a state for the consolidation of democracy. The verdict enhanced the judicial role in politics and demonstrated the insistence on the executive’s compliance with judicial orders, without considering its effects on the political and democratic situation of the country. But, the three aspects of this verdict, such as (1) the judicial interference into internal affairs of the parliament, (2) the reliance over clause 62(1)(f) which had been enacted by a past dictator to control the parliament, and (3) the resultant political instability demonstrated lack of judicial “willingness” as required under the democratic consolidation theory for the consolidation of democracy. Rather, this verdict exemplified an insistence on judicial accountability of parliamentarians, instead of prioritising the substantial democratic representation. Hence, this decision demonstrated a lack of judicial “willingness” as required under the democratic consolidation theory.

6.5 Senate’s Secret Ballot case (2021)

This case revolved around the issue of horse-trading through secret ballots. Although the Pakistani constitution provides the secret balloting for senatorial elections (Begum, 2022), this method has often been misused in Pakistan for seeking legislators’ votes against their parties (Khan, 2021). The PTI’s elected government had concerns about potential horse trading during senatorial elections. Therefore, the president filed a reference, known as Reference No. 1 (2021), in the apex court seeking advice about the conduct of elections of the Chairman Senate through the open balloting. But the court opined in favour of the secret balloting because of the constitutional requirement. This verdict manifested legalism due to strict adherence to the constitutional provisions, without considering the issue of horse trading. Ultimately, the ruling party PTI, which had a majority of seats in the lower house, became a minority in the Senate. Such a defeat gave a major loss to the PTI, leading to political instability (Nasir, 2021). Such a defeat was exceptional, because ordinarily the ruling parties secured a majority position in the Senate in past (Janjua, 2021). The Prime Minister alleged that this defeat was due to horse-trading of PTI’s members, which lowered the party’s credibility (Wolf, 2021). Resultantly, he called the lower house’s PTI parliamentarians for a vote of confidence, which he won by votes above the requisite numbers (Hashim, 2021c).

Traditionally, when a ruling party in Pakistan becomes very popular and strong, its popularity is viewed against the interests of the military establishment, particularly due to their increasing competition for control over resources and policymaking in the fields of defence and foreign policy. The opposition parties often try to take advantage of such a situation to destabilise the ruling party’s government. For example, policymaking disputes between civilian government and military existed during Prime Minister Nawaz, when the opposition parties launched public protests for his disqualification and also approached the judiciary seeking a declaration of the disqualification of the prime minister. Similarly, the tension arose between the civilian government and military establishment during PM Imran Khan’s regime. Therefore, the civilian government had to face severe opposition from the opposition parties. During such circumstances, the Prime Minister had apprehension of horse-trading in Senate’s Elections which could weaken the ruling party’s standing in the upper house. Therefore, his party demanded open balloting for conduct of Senate’s election, in order to avoid any backdoor conspiracy.

Considering the traditional instances of horse-trading, the re-evaluation of the secret balloting system and its efficacy in Pakistani context, through judicial scrutiny, was the need of the hour. But, the court upheld the secret balloting while relying on the existing constitutional clauses, instead of re-evaluating the validity these clauses on the touchstone of the basic features of the constitution including the democracy. Therefore, this verdict exemplified legalism & proceduralism due to its reliance on the text of clauses, instead of assessing whether these clauses commensurate with the democratic principle of the constitution. This procedural approach shows the restrained judicial behaviour indifferent to the question of substantial democracy and issue of horse-trading. Therefore, such kind of judicial restraint or silence, during the time when the interference of the judiciary became necessary, amounted to the lack of “willingness” to consolidate democracy, as required by the democratic consolidation theory, and resultantly, the political dispute increased over the issue of horse

trading and the ruling party became minority party in the upper house. Due to its consequences of causing political instability and weakening the ruling party, this verdict negatively impacted the democratic development in the country.

7. Findings

The findings of this study are as follows:

1. The judiciary became one of the key political actors in the state, due to its engagement in the resolution of these political disputes. The decisions in the PCO Judges Case (2009) and the Military's Defamation Case (2014) demonstrated the judicial "willingness" towards democratic consolidation, as the former verdict liberalised the parliament by breaking the undemocratic constitutional obstacles, while the latter verdict refused to destabilise the civilian government, hence these decisions fulfilled the "willingness" requirement of the democratic consolidation theory, by prioritising democracy and substantial democratic representation over undemocratic excuse of necessity. However, the decisions in the Gilani Contempt Case (2012), the Panama Scandal Case (2017) and the Senate's Secret Ballot case (2021) caused political loss to ruling parties PPP, PMLN and PTI, respectively, by prioritising compliance, accountability and procedural adherence, respectively, over political stability, substantial democratic representation, hence demonstrating the lack of "willingness" for democratic consolidation. Resultantly, the case study of these verdicts reveals that the Supreme Court, in the PCO Judges Case (2009) and the Military's Defamation Case (2014), played positive consolidator role towards the democratic development in Pakistan, whereas it played negative role towards democratic development in Gilani Contempt Case (2012), the Panama Scandal Case (2017) and the Senate's Secret Ballot case (2021) which ultimately harmed the democracy in Pakistan.
2. The pro-democratic role of the Supreme Court in the PCO Judges Case (2009) and the Military's Defamation Case (2014) and its negative role towards democratic development in the Gilani Contempt Case (2012), the Panama Scandal Case (2017) and the Senate's Secret Ballot case (2021) highlight the changing trajectory of judicial behaviour towards democracy. Hence, the Supreme Court's role didn't remain consistent towards democratic development during 2009-2021.

8. Conclusion

The study concludes that the Supreme Court, in the PCO Judges Case (2009) and the Military's Defamation Case (2014), played positive consolidator role towards the democratic development in Pakistan, whereas it played negative role towards democratic development in Gilani Contempt Case (2012), the Panama Scandal Case (2017) and the Senate's Secret Ballot case (2021) which ultimately harmed the democracy in Pakistan. With such a changing trajectory of mixed judicial behaviour towards democracy, the Supreme Court didn't play a consistent role towards democratic development during 2009-2021, meaning thereby the Supreme Court, being one of the key political players of the state, didn't always consistently fulfil the institutional "willingness" requirement of the democratic consolidation theory during 2009-2021 due to changes in its institutional "willingness" towards democratic development over this period.

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