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## **The Doctrine of Necessity in Pakistan's Judiciary: Implications for Democracy and the Rule of Law**

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### **ABSTRACT**

The doctrine of necessity has played a critical role in shaping Pakistan's judicial and political landscape. Originating from legal theory and adapted in local jurisprudence, it has been invoked by the judiciary to legitimize extra-constitutional actions, particularly military coups and emergency powers. First applied during the 1954 Tamizuddin case, the doctrine became a tool through which successive authoritarian regimes secured legal cover. While it offered a short-term solution to constitutional crises, its repeated use undermined democratic norms, weakened institutional integrity, and eroded public confidence in the judiciary. This study examines the origin, application, and consequences of the doctrine of necessity in Pakistan, using key judicial verdicts as a case study in the complex relationship between law and power. It also explores the broader implications of judicial complicity in political engineering, highlighting the long-term effects on rule of law and democratic consolidation. Using qualitative methods, including historical and legal analysis, this research provides valuable insights into the rise and rejection of the doctrine, contributing to a deeper understanding of Pakistan's judicial history and the challenges of sustaining constitutional democracy.

**Keywords:** Doctrine of necessity, judicial legitimacy, Tamizuddin case, Military coups, Rule of law, judicial activism, Authoritarianism

### **Introduction**

The constitutional history of Pakistan has been deeply influenced by repeated military interventions and judicial responses to political crises. One of the most controversial legal doctrines that emerged from this dynamic is the doctrine of necessity. First



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introduced in Pakistan's judicial discourse during the early years of the republic, this doctrine provided a legal justification for actions that were otherwise unconstitutional. The judiciary invoked it to legitimize emergency rule, military coups, and the suspension of constitutional order, thereby reinforcing authoritarian regimes under the guise of legal continuity.

The earliest and most influential use of this doctrine occurred in 1954 when Chief Justice Muhammad Munir upheld the dissolution of the Constituent Assembly in the famous *Federation of Pakistan vs. Maulvi Tamizuddin Khan Case*. Drawing upon ancient Roman maxims and British legal precedents, the court argued that necessity justified otherwise unlawful actions. This precedent laid the groundwork for future judicial approvals of military takeovers, including Ayub Khan's regime in 1958, Zia-ul-Haq's coup in 1977, and Pervez Musharraf's takeover in 1999. Over time, the doctrine evolved from a one-time judicial compromise into a recurring legal mechanism. It became embedded in the power structure of Pakistan's state apparatus, often undermining democratic transitions and sidelining civilian institutions. The judiciary, instead of acting as a guardian of constitutionalism, became an enabler of authoritarianism. By granting legitimacy to unconstitutional regimes, the courts weakened democratic resilience and diluted public trust in the legal system.

This research article aims to explore the historical development, application, and eventual rejection of the doctrine of necessity in Pakistan's judiciary. It examines how the judiciary has oscillated **between** legal formalism and political expediency, and how such shifts have shaped Pakistan's constitutional trajectory. By analyzing landmark cases and legal interpretations, the study offers a comprehensive assessment of the doctrine's legacy and its implications for the rule of law in Pakistan.

### **Objective of the Study**

The main objective of this study is to analyze the doctrine of necessity as a judicial tool for legitimizing extra-constitutional actions and its impact on Pakistan's legal and democratic framework.

### **Sub-Objectives**

To analyze how the judiciary used the doctrine of necessity to justify unconstitutional regimes.

To examine the impact of the doctrine on key judicial verdicts, especially military takeovers

To assess the long-term effects of the doctrine on democracy and the rule of law in Pakistan

### **Research Questions**

How did Pakistan's judiciary use the doctrine of necessity to legitimize extra-constitutional acts?

What was the role of the doctrine in major judicial verdicts such as the *Tamizuddin, Dosso, and Zafar Ali Shah* cases?

How has the doctrine of necessity affected the democratic and constitutional development of Pakistan?

### **Significance of the Study**

This study is significant as it provides a deeper understanding of how Pakistan's judiciary has historically responded to constitutional breakdowns through the doctrine of necessity. It highlights how legal reasoning was used to legitimize authoritarian regimes and undermine democratic processes. By examining key cases and judicial behavior, the study sheds light on the tension between legality and legitimacy in the country's constitutional development. Additionally, it contributes to academic and policy discussions on judicial independence, constitutionalism, and the role of courts in



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democratic societies. It also offers lessons for contemporary legal reforms and helps scholars, lawyers, and policymakers understand the long-term costs of judicial compromise under political pressure.

### **Sources and Methodology**

The study titled "The Doctrine of Necessity in Pakistan's Judiciary: Implications for Democracy and the Rule of Law" is qualitative in nature, employing analytical and descriptive approaches to examine its findings. Data is collected from both primary and secondary sources.

Primary sources include landmark judicial verdicts such as the Tamizuddin case (1954), Dosso case (1958), Zafar Ali Shah case (2000), and Sindh High Court Bar Association case (2009). These cases are studied to understand how the doctrine was applied and interpreted over time. Speeches, legal commentaries, and judicial opinions are also analyzed to trace the evolution of judicial thinking.

Secondary sources consist of academic books, peer-reviewed journal articles, legal commentaries, and newspaper archives that critically assess the judiciary's role in legitimizing political power. Writings by constitutional scholars, legal historians, and political analysts are examined to contextualize the doctrine within broader debates on democracy, legal ethics, and authoritarianism. Together, these sources provide a comprehensive understanding of how the doctrine of necessity shaped the legal and political fabric of Pakistan.

### **Review of Literature**

Hamid Khan, in his seminal work *Constitutional and Political History of Pakistan* (2017), offers a comprehensive legal analysis of constitutional breakdowns in Pakistan. He traces the emergence of the doctrine of necessity to the Maulvi Tamizuddin Khan case (1955), where the judiciary upheld the dissolution of the Constituent Assembly by the Governor General. Khan critically assesses this and subsequent judgments, including *State v. Dosso* (1958) and *Zafar Ali Shah* (2000), arguing that the judiciary, under the guise of necessity, legitimized extra-constitutional actions, thereby undermining democratic consolidation.

Fazal Mueqem Khan, in *The Story of the Pakistan Army* (1963), presents the military's view of political interventions. While not focused on legal doctrine, his account reveals how Ayub Khan's coup was facilitated by judicial approval, portraying necessity as essential for national stability. His narrative underscores the military's dependence on judicial cover for legitimacy, especially during regime transitions.

Sardar Muhammad Raza Khan, in *Judicial Role in the Constitutional Crises of Pakistan* (1991), offers a judicial insider's critique of the courts' behavior during constitutional crises. He discusses how the judiciary repeatedly relied on the doctrine of necessity to validate martial laws and emergency powers, particularly under General Zia-ul-Haq and General Musharraf. According to Raza Khan, such actions weakened the judiciary's independence and encouraged authoritarian governance.

Iftikhar H. Malik, in *Military Statecraft and the Judiciary in Pakistan* (2003), explores the institutional alliance between the military and judiciary. He argues that rather than challenging illegality, the judiciary provided legal justification for unconstitutional power grabs. Malik sees the doctrine of necessity as a pivotal tool that allowed military rulers to gain constitutional legitimacy while suppressing democratic dissent.

Martin Lau, in *The Role of Islam in the Legal System of Pakistan* (2006), explores how the doctrine of necessity was supported not just by Western jurisprudence (as cited by



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Chief Justice Munir) but also by Islamic legal principles like Maslaha (public interest) and Darurah (necessity). Lau critiques this fusion as a way to religiously and legally legitimize authoritarianism, especially during General Zia's Islamization period.

Paula R. Newberg, in *Judging the State: Courts and Constitutional Politics in Pakistan* (1995), presents a political-legal critique of Pakistan's judiciary. She asserts that the courts consistently failed to defend constitutionalism, choosing instead to support executive power. According to Newberg, the doctrine of necessity became a judicial habit, leading to institutional erosion and undermining the courts' legitimacy as defenders of the rule of law.

Kalim Bahadur, in *Democracy in Pakistan: Crises and Conflicts* (1988), places the judiciary's behavior within the broader failures of Pakistan's democratic institutions. He argues that the doctrine of necessity was used as a political instrument rather than a legal principle, contributing to cycles of political instability and elite compromise with military rulers.

### **Historical Development of the Doctrine in Pakistan**

#### **Maulvi Tamizuddin Khan Case (1955)**

**Citation:** *Federation of Pakistan v. Maulvi Tamizuddin Khan*, PLD 1955 FC 240

This case marked the first major judicial use of the doctrine of necessity in Pakistan. The crisis began when Governor-General Ghulam Muhammad dissolved the Constituent Assembly in 1954, which was challenged by Maulvi Tamizuddin, the Speaker of the Assembly.

The Federal Court, under Chief Justice Muhammad Munir, ruled in favor of the Governor-General, stating that the Governor-General's assent was necessary for any law, including constitutional amendments. This interpretation effectively validated the dissolution of the Assembly and introduced the idea that extra-constitutional acts could be justified for state necessity.

**Significance:** This ruling set a dangerous precedent. Although the phrase "doctrine of necessity" was not formally used, Justice Munir referenced Bracton and Roman law to justify actions taken in the interest of preserving the state. It opened the door for future judicial validation of unconstitutional acts, undermining parliamentary supremacy.

#### **State v. Dosso (1958)**

**Citation:** *State v. Dosso and Another*, PLD 1958 SC 533

This case followed General Ayub Khan's martial law takeover in 1958 after President Iskander Mirza abrogated the Constitution. The question before the court was whether the new legal order introduced by the military regime was valid.

Chief Justice Munir again led the court in upholding the legality of Ayub Khan's regime, citing Hans Kelsen's Pure Theory of Law, particularly the concept of a "revolution" creating a new legal order.

#### **Doctrine of Necessity Applied:**

The court held that a successful revolution (or coup) results in the creation of a new legal order, and the validity of laws is judged by the new order's effectiveness. This was a clear application of the doctrine of necessity in formal legal terms.

**Criticism:** The decision was widely criticized for legitimizing military rule and eroding constitutionalism, allowing the judiciary to align with the executive under the pretense of necessity.



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### Asma Jillani Case (1972)

#### **Citation: Miss Asma Jillani v. The Government of Punjab, PLD 1972 SC 139**

This case challenged the detention orders issued under martial law regulations by General Yahya Khan, who had taken over after Ayub Khan and ruled from 1969 to 1971. The Supreme Court, under Chief Justice Hamoodur Rahman, rejected the doctrine of necessity as used in *Dosso*. The Court held that General Yahya Khan was a “usurper” and that martial law was illegal and unconstitutional.

### Zafar Ali Shah Case (2000)

#### **Citation: Zafar Ali Shah v. General Pervez Musharraf, PLD 2000 SC 869**

After the 1999 military coup by General Pervez Musharraf, which removed Prime Minister Nawaz Sharif, the legality of Musharraf’s regime was challenged in this case.

The Supreme Court validated the coup under the doctrine of necessity, citing “state necessity,” “public welfare,” and “political instability” as justifications. The Court allowed Musharraf to govern for three years, enact necessary legislation, and hold elections within a fixed timeframe.

**Mixed Judgment:** Although the Court tried to limit military authority by putting a timeline and conditions, it revived the doctrine of necessity, contradicting the stance taken in *Asma Jillani*.

**Criticism:** The decision was seen as a relapse into judicial submission, reinforcing the military’s ability to manipulate constitutional frameworks with judicial approval. It also exposed the inconsistency in judicial decisions regarding constitutionalism and the role of the judiciary.

These cases reflect a judicial journey oscillating between complicity and resistance; Maulvi Tamizuddin (1955) and *Dosso* (1958) legitimized authoritarian rule. *Asma Jillani* (1972) repudiated the doctrine and reinforced constitutional supremacy. *Zafar Ali Shah* (2000) revived the doctrine, showing the judiciary’s vulnerability to political pressure.

### Military-Judicial Nexus

The relationship between the military and judiciary in Pakistan has been characterized by complex dynamics, where the judiciary has frequently played a pivotal role in legitimizing military interventions. Historically, courts have often provided legal validation for military coups through the invocation of the doctrine of necessity, effectively sanctioning the suspension of constitutional order. This judicial endorsement has not only facilitated the continuation of military regimes but has also undermined the principle of constitutional supremacy. The judiciary’s readiness to accept extra-constitutional takeovers has, in many instances, reflected an institutional dependence on the military’s power, leading to significant compromises in judicial independence. This judicial acquiescence stems partly from the institutional vulnerability of the courts in the face of military dominance and partly from the elite consensus that prioritizes state stability over democratic processes. The judiciary’s role in providing a legal cover to the military has often been justified as a necessity for the survival of the state and the prevention of political chaos. Through this lens, courts have rationalized authoritarian rule as a temporary measure aimed at restoring order and safeguarding national interests. However, such compromises have entrenched a pattern of constitutional interruptions, weakening democratic institutions and eroding public confidence in the judiciary as an impartial arbiter.

The military-judicial nexus in Pakistan has been a critical factor in shaping the country’s political trajectory. The judiciary’s complicity in endorsing military coups has



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perpetuated cycles of authoritarianism and constitutional instability, raising fundamental questions about the separation of powers and the rule of law. Addressing these challenges requires a reassertion of judicial independence and a commitment to upholding democratic norms, ensuring that the courts become a bulwark against, rather than a facilitator of, extra-constitutional interventions.

### **Democratic Implications and Rule of Law**

The doctrine of necessity has had profound and lasting implications on Pakistan's democratic development and the rule of law. By repeatedly allowing extra-constitutional actions, such as military coups and dissolution of elected assemblies, the judiciary has effectively eroded the principle of constitutional supremacy that underpins democratic governance. This erosion weakens the authority of the constitution as the highest law of the land and creates a precedent where unlawful seizures of power are accepted rather than challenged. Moreover, the frequent judicial legitimization of military takeovers and emergency measures has systematically undermined democratic institutions, particularly elected civilian governments. Civilian leaders and political parties have often been sidelined or dismissed under the legal guise of necessity, disrupting the democratic process and discouraging the development of stable political culture. This has contributed to cycles of authoritarianism interspersed with fragile democratic attempts, inhibiting long-term political maturation.

The undermining of civilian rule and constitutional order has also had a detrimental effect on public trust, not only in the judiciary but in the broader political system. When courts are perceived as endorsing authoritarianism rather than defending constitutionalism, their credibility and independence are questioned. This loss of judicial legitimacy harms the rule of law and weakens mechanisms of accountability and justice. In the long term, the doctrine's misuse has entrenched a pattern where legal principles are subordinated to political convenience and state survival tactics. This compromises the ideals of democracy, human rights, and good governance, leaving Pakistan with a fragile democratic foundation vulnerable to repeated institutional crises and political instability.

### **Continuing Challenges and Contemporary Relevance**

Despite growing criticism and efforts to limit the doctrine of necessity, its legacy continues to affect Pakistan's legal and political landscape. The residual effects of necessity jurisprudence remain embedded in the mindset of some judicial and political actors, making courts vulnerable to pressures to legitimize extra-constitutional actions under the guise of "emergency" or "public interest." This persistence poses a challenge to the consolidation of constitutionalism and democratic norms.

In the post-necessity era, there is also an emerging risk of judicial overreach, where courts may assert excessive authority in political matters under the banner of safeguarding the constitution. While judicial activism can serve as a check on other branches of government, unchecked overreach risks politicizing the judiciary and undermining its impartiality.

Furthermore, the continuing civil-military power dynamics in Pakistan complicate the judiciary's role. The military's entrenched influence over political affairs often pressures the judiciary to adopt pragmatic stances, sometimes at odds with strict constitutionalism. Balancing the demands of state stability and democratic principles remains a delicate challenge.

To address these issues, there is an urgent need for institutional reforms aimed at strengthening judicial independence and promoting constitutional literacy among all



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branches of government, including the military and the public. Enhancing legal education and awareness can empower citizens and institutions to resist extra-constitutional interventions and uphold democratic governance.

### Conclusion

This article has examined the historical evolution, legal rationale, and political consequences of the doctrine of necessity in Pakistan. The doctrine has played a central role in enabling military takeovers and emergency rule, often at the expense of constitutional supremacy and democratic institutions. Judicial legitimization of these actions has compromised the independence and credibility of the judiciary, contributing to cycles of authoritarianism and political instability.

Critically reflecting on this legacy reveals the urgent need to break free from the doctrine's detrimental influence. Strengthening the rule of law requires a judiciary committed to upholding constitutional norms without yielding to political expediency. A robust democratic future for Pakistan depends on judicial restraint, institutional reforms, and an informed citizenry dedicated to constitutionalism. Moving forward, Pakistan's judiciary must embrace its role as a guardian of democracy and constitutional order, ensuring that no authority civilian or military can bypass the law under the pretext of necessity. Only through such commitments can Pakistan hope to build sustainable democratic governance and restore public confidence in its institutions.

### References

- Khan, Hamid. *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press, 2017.
- Lau, Martin. *The Role of Islam in the Legal System of Pakistan*. Leiden: Brill, 2006.
- Newberg, Paula R. *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge: Cambridge University Press, 1995.
- Malik, Iftikhar H. *Military Statecraft and the Judiciary in Pakistan*. Lahore: Vanguard Books, 2003.
- Waseem, Mohammad. *Politics and the State in Pakistan*. Lahore: Progressive Publishers, 2007.
- Kureshi, Yasser. *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*. Cambridge: Cambridge University Press, 2022.
- Bahadur, Kalim. *Democracy in Pakistan: Crises and Conflicts*. New Delhi: Har-Anand Publications, 1988.
- Khan, Sardar Muhammad Raza. *Judicial Role in the Constitutional Crises of Pakistan*. Islamabad: Pakistan Law House, 1991.
- Khan, Fazal Muqem. *The Story of the Pakistan Army*. Karachi: Oxford University Press, 1963.
- Ziring, Lawrence. *The Ayub Khan Era: Politics in Pakistan, 1958–1969*. Syracuse: Syracuse University Press, 1971.
- Burki, Shahid Javed. *Pakistan Under Ayub Khan, 1960–1969*. Stanford: Hoover Institution Press, 1980.
- Rizvi, Hasan Askari. *The Military and Politics in Pakistan: 1947–1997*. Lahore: Sang-e-Meel Publications, 2000.
- Talbot, Ian. *Pakistan: A Modern History*. London: Hurst & Company, 1998.
- Hussain, Zahid. *The Military and Politics in Pakistan*. Lahore: Vanguard Books, 2007.
- Nawaz, Shuja. *Crossed Swords: Pakistan, Its Army, and the Wars Within*. Karachi: Oxford University Press, 2008.
- Jalal, Ayesha. *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence*. Cambridge: Cambridge University Press, 1990.
- Ahmed, Ishfaq. *The Pakistan Garrison State: Origins, Evolution, Consequences (1947–2011)*. Karachi: Oxford University Press, 2013.
- Siddiqi, Farhan Hanif. *The Politics of Ethnicity in Pakistan: The Baloch, Sindhi and Mohajir*



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Ethnic Movements. London: Routledge, 2012.

Chandio, Javed Iqbal. "Judiciary and Politics in Pakistan: An Analytical Study of the Role of Judiciary in Political Development." *Journal of Political Studies* 23, no. 2 (2016): 287–301.

Shah, Aqil. *The Army and Democracy: Military Politics in Pakistan*. Cambridge: Harvard University Press, 2014.

Jalalzai, Musa Khan. *Judicial and Political Reforms in Pakistan*. Lahore: Izharsons, 2003.

Ahmed, Mushtaq. *Government and Politics in Pakistan*. Karachi: Space Publishers, 1990.

Rehman, I.A. "The Judiciary and Democracy in Pakistan." *Economic and Political Weekly* 45, no. 5 (2010): 14–18.