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Examining Whether the Doctrine of Necessity in Pakistan Acts as a Judicial Tool or a Constitutional Deviation

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Abstract

The doctrine of necessity is one of the most debated judicial doctrine in the constitutional history of Pakistan. It is used by higher courts to justify extra-constitutional acts, especially military interventions and emergency governance. Scholars and advocates say that it is a useful judicial tool to run the state in constitutional crisis, though others see it as a complete departure from the rule of law and democratic processes. This study critically looks into the development, applications, constitutional consequences and significance of the doctrine and whether it is a necessity of the court or a breach of the constitutionalism in Pakistan.

Keywords: challenges, historical context, laws, opportunities, theoretical context

Introduction

Doctrine of Necessity is a constitutional principle which allows actions otherwise deemed as unconstitutional to be taken in extraordinary situations, as long as it is necessary to preserve the continuity and governance of the state. This doctrine has played a major role in the constitutional practice of Pakistan. The doctrine became well known because of the fact that it was used by the Honorable judges of the High Courts and the Supreme Court as a basis for their judgments in the times of political instability and constitutional breakdown. Recurrent use of the doctrine of necessity to justify judicial decisions has been seen as further enhancing the role of the executive and as a problem for constitutional supremacy and judicial independence.

The Doctrine of Necessity has been endorsed and criticized by the Pakistani Judiciary on numerous occasions, as evident in the country's constitutional history, in landmark constitutional cases. In certain instances, the superior judiciary upheld extra-constitutional measures like in *State v. Dosso, Begum Nusrat Bhutto v. Chief of Army Staff,* under the doctrine of necessity for the preservation of institutional continuity during crisis. But critics state that this judicial endorsement had a negative effect on democracy and constitutional governance in Pakistan.

Research Justification

The importance of this research lies in the fact that the Doctrine of Necessity is still holding a significant place in the constitution and Judiciary of Pakistan. While a controversial doctrine, it has, and will continue to, play a significant role in the rulings of judges during political crisis, and it should be a key subject in critical constitutional research. Additionally, the theoretical underpinning and its application will be crucial to assess its implications for constitutional supremacy, rule of law, and democratic governance. The aim of this study is thus to be part of this critical academic and legal debate.

Literature Review

The concept of necessity has been cited in Pakistan's constitutional law to justify extra-constitutional action. In the present context, the doctrine's evolution and the Supreme Court's reaction to the political crisis that erupted in April, 2022, are discussed, highlighting the link between judicial decisions and constitutional supremacy (Anees et al., 2025).

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Imran and Makhdoom (2024) discuss the principle of necessity in civilian military trials and its interpretation in the light of constitutional principles, fair trial rights and unwritten judicial policy. Likewise, Malik (2026) studies the doctrine comparatively and highlights issues of the lack of uniformity in the application of the judicial power, the executive overreach and insufficient protection.

Laghari et al. (2024) explore the ambiguities of constitutional language about the President and how these can become sources of constitutional crises. Peftinas (2026), on a more general theoretical level, distinguishes between state necessity and the general justification of constitutional deviations, stating that the legitimate use of it should be restricted, temporary and legally limited.

In recent scholarship the connection between constitutional change and judicial independence is underscored. Butt et al. (2026) discuss the debates surrounding the Twenty-Seventh Constitutional Amendment and its implications for judicial independence and institutional power. Hassan and Imran (2026) examine constitutional changes and how they may impact judicial independence and separation of powers. Shah (2026) explores the issue of judicial resiliency and institutional factors capable of withstanding autocratic governance.

Historical Context

The Doctrine of Necessity was a concept developed in Pakistan amidst the frequent constitutional turmoil, political instability and military interventions over the past few decades in Pakistan. This doctrine was applied by the Supreme Court in State v. Dosso, which defended the imposition of martial law on the basis of Kelsen's theory that a successful revolution establishes its own legality, and thus a new legal order. This approach was a way of expressing judicial acquiescence to constitutional upheaval in crisis situations. It was also the start of the constitutionalization of extra-constitutional powers in Pakistania's law.

It was then reiterated in Begum Nusrat Bhutto Case and Zafar Ali Shah Case where the military coups were justified on necessity basis. Such decisions paved the way for judicial endorsement of constitutional aberrations. Scholars believed that this jurisprudence cemented the way for the constitutional trajectory of Pakistan in political breakdowns.

Theoretical Context

The doctrine of necessity, in Pakistan, is generally recognized as an exception which allows departure from the strict requirement of the Constitution in extraordinary situations. It is made on the assumption that in times of political instability, institutional failure or emergency, there may be some exceptions to the law for limited political deviation, which would otherwise lead to a complete collapse of governance.

The doctrine is linked with the impression of revolutionary legality, as a new and effective political order can only acquire legal legitimacy through the replacement of the old one. But it is a controversial doctrine in constitutional theory and in the history of law in Pakistan. It has been invoked to be used for purposes that are not constitutional, especially when there is a crisis in the political sphere. Some contend that this practice is unconstitutional and damages the rule of law, and raises uncertainty in constitutional governance.

Relevant Laws

1. Article 6 of the Constitution of Pakistan, 1973 (High Treason): Article 6 treats any attempt to revoke, overthrow or suspend the Constitution is a high treason. However in times of emergency, certain actions have been allowed under the principle of the Doctrine of Necessity.

2. Provisional Constitutional Orders (PCOs): The constitutional order declared during the martial law was suspended at times and was validated by the courts as part of the Doctrine of Necessity, which meant that the military order could continue functioning even in the absence of a constitution.

3. Emergency Provisions (Articles 232–237): These provisions enable the President to declare an emergency under certain circumstances like a war, internal disturbance or economic crisis.

4. Article 190 (All Executives and Judicial Authorities to Act in Aid of Supreme Court): Article 190 has at times been interpreted to mean that there must be cooperation with the Supreme Court in time of constitutional crisis, but this is a somewhat controversial issue and is legally debatable.

5. Judicial Precedents (Case Law): The doctrine is basically grounded on a series of landmark cases, including *State v. Dosso, Begum Nusrat Bhutto, and Zafar Ali Shah,* in which the courts upheld extra-constitutional measures.

Challenges

The Principle of Constitutional Supremacy is one of the main hurdles in the path of Doctrine of Necessity in Pakistan. The doctrine undermines the supremacy of the Constitution, and adds to the uncertainty in the legal structure of a country. It also undermines the equilibrium of power between the institutions of the state, with judges approving the military interventions, and questions over judicial independence. While the scope of constitutional interpretation is not limited to that of the Constitution, courts may sometimes seem to reflect the political realities, potentially compromising the credibility of constitutional interpretation and the integrity of institutions.

One of the biggest problems is that the doctrine sets a precedent that's repeated whenever there's a political emergency, giving justification to repeat it in the future. It can also impact on public trust of the judiciary, with judicial endorsement of extra-constitutional measures becoming seen as political favors. Moreover, the constitutional theory and international norms have become more focused on constitutional supremacy, the rule of law, and the continuity of democracy, thereby allowing little room for doctrines that permit constitutional deviation. This has led to growing criticism about the Doctrine of Necessity for being contrary to the modern principles of constitutional governance.

Opportunities

The Doctrine of Necessity has limited but significant opportunities in the constitutional structure of Pakistan despite facing much criticism, especially in times of grave political and institutional crises. Its capacity to provide continuity of government when constitutional processes fail is one important opportunity. Historically, the doctrine has been viewed as a judicial solution short of a complete absence of a legal framework, in order to maintain basic state stability and order in times of emergency.

It can also serve as a stepping stone in times of constitutional crises and can serve as a temporary justification for extraordinary measures until normal constitutional rule can be restored. It can constitute a stabilizing factor in institutions when there is institutional deadlock, constitutional uncertainty and emergency rule. Furthermore, the doctrine illustrates the judges' adaptability in applying constitutional law flexibly to meet real political conditions so that legal ideas can be integrated with the actual demands of governance. It has also indirectly helped create awareness regarding constitutional reform and awareness as it brought to the forefront the lack of institutional arrangements and motivated the academics and policy makers to enhance the safeguards against future constitutional disturbances and strengthen the framework of emergency governance in Pakistan.

Discussion

The Doctrine of Necessity has been used as a basis for extra-constitutional morality. Both supporters and critics of doctrine consider it a practical way to ensure a government functions during extreme circumstances, yet it is seen as a danger to the constitution. There has been a constant tension between constitutional theory and political practice in the application of the doctrine by the courts, particularly in times of military rule. It has on some occasions proved useful for ensuring administrative continuity during emergencies, but overall it does not look very favorable to the rule of law and democratic constitutionalism in Pakistan.

Conclusion

The Doctrine of Necessity has been an important and controversial issue in the constitutional history of Pakistan as it gives the judicial cover to extra-constitutional activities during political crisis. While it has been viewed once again as a means of ensuring the government's operation and continuity of institutions, the re-occurrence of its application has led to serious concerns relating to constitutional supremacy, democratic governance and judicial independence. But, with the passage of time, constitutional concepts are moving away from this approach and the respect of constitutional principles, rule of law and democratic continuity in Pakistan takes precedence more and more.

Recommendations

The courts in Pakistan need to firmly enforce the Constitution and refuse to legitimize extra-constitutional measures. Judicial interpretation must contribute to the strengthening of the rule of law and democracy. Moreover, constitutional amendment should explicitly clarify, control and restrict the use of emergency powers and military interventions within the confines of the constitution. Institutional checks and balances are also needed to avoid an accumulation of power and unapproved breaking out of existing legal frameworks.

Judicial training and awareness programs need to be enhanced to foster a more profound commitment to the constitutional principles, and minimize the use of practical arguments in times of crisis. More transparency and accountability also need to be established to deter unconstitutional takeovers and democratic institutions should be enhanced by way of political stability, good governance, and significant public involvement in the future constitutional practice in Pakistan so that the doctrine of necessity is rendered redundant.

Research Limitations

The limitations of this research are that the basis of its study is doctrinal analysis, which is primarily an analysis of legal texts and case law, as well as secondary academic materials. So it lacks empirical information and field-based evidence that might have provided a deeper insight into judicial and political behavior. A further constraint is the scarcity of relevant literature focusing specifically on the Doctrine of Necessity in Pakistan. In addition, time limitations and word counts have limited a more in-depth comparison to other jurisdictions which would have added depth to the findings and conclusions of the study.

Research Implications

The findings of this research are likely to be of immense relevance towards the constitution and judicial practice in Pakistan as well as its democratic governance. It highlights the need for the rule of law and for not using the doctrine of necessity to justify extra-constitutional measures. The study contributes to the scholarly discussion by looking at the impact that the doctrine has had on the rule of law and the separation of powers. The results also have implications for lawyers and academics to enhance judicial coping in constitutional emergencies and future research to develop institutional resilience and constitutional stability.

Future Research Directions

The study may be done by comparing constitutions regarding necessity issues like emergency situations or unconstitutional measures taken against them. Research on judicial conducts, politics decisions and institutions' reactions would be useful for more comprehensive knowledge than just theory-based study of law. Also further studies would be needed to study how judicial-approved military actions affected democracy formation. Constitutional scholars might study how to maintain government stability without compromising its authority through a constitution. An interdisciplinary approach to studying law, politics and government would help us better understand how institutions are resilient under stress as well as their stability over time.

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