

CONSTITUTIONAL DYNAMICS: ANALYZING THE ROLE AND POWERS OF THE CHIEF JUSTICE IN BENCH FORMATION IN THE SUPREME COURT OF PAKISTAN

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Abstract

The research paper explores the constitutional powers of the Chief Justice of Pakistan in constituting benches in the Supreme Court, focusing on the implications of recent legislative changes introduced by the Supreme Court (Practice and Procedure) Act, 2023. The study reveals an understanding of the Chief Justice's role and the establishment of a three-member committee to address concerns of potential abuses of power, enhancing the fairness and transparency of the judicial process. The Act's approval marked a significant shift in the judiciary, sparking debates on its impact on judicial independence and citizens' access to justice. Contrary to prevailing beliefs, the research asserts that the Supreme Court itself possesses constitutionally defined powers in bench formation. The study delves into historical cases, legislative changes, and contemporary debates, contributing to the discourse on the evolving dynamics of the Chief Justice's discretion. The research emphasizes the need for ongoing scrutiny and adaptation to ensure a robust and just judicial system, challenging traditional practices and fostering discussions on the appropriate distribution of powers within the judiciary. While acknowledging certain limitations, the research provides valuable insights for informing judicial practices, policy decisions, and legal discourse, aiming to uphold justice and safeguard the fundamental rights of Pakistani citizens.



INTRODUCTION:

The Supreme Court of Pakistan, as the highest judicial authority in the country, plays a pivotal role in ensuring justice and upholding the rule of law. Endowed with the power of adjudication, its decisions hold a unique status, being both binding and immune to challenge within the state. The principles of justice articulated at the apex of the judiciary significantly impact the legal landscape, shaping the ideals upheld in lower courts. The constitutionally guaranteed right to a fair trial, as enshrined in Article 10A, underscores the importance of not only delivering justice but also ensuring its transparent dispensation. In discussing a system for dispensing justice, the presumption is that the principles of justice are being expressed at a superior governmental level, whether in Parliament, state legislatures, the Supreme Court, or lower courts. Nonetheless, the ideals of justice articulated at the apex of the judiciary are shaped by the accessibility that ordinary individuals have to lower courts. **As Oliver Wendell Holmes noted, "The life of the law has not been logic; it has been experience."** (Kumar, 2004). The principle that "justice must not only be carried out but also be clearly and unquestionably evident" stands as a crucial tenet in the common law legal system. This concept guides and invigorates essential procedural elements and serves as the source, either entirely or in part, for various substantive rules. (Spigelman, 2000)

This research paper seeks to address the specific powers vested in the Chief Justice of Pakistan concerning the constitution of benches within the Supreme Court for hearing particular cases. The study is prompted by the heightened attention on the composition of Supreme Court benches, especially following the *Suo-Moto* case No 1/2023. The research question revolves around understanding the nature and extent of the Chief Justice's authority in forming benches and whether these powers align with the goal of ensuring a fair and transparent judicial process. The primary objective of this research is to investigate and analyze the constitutional powers of the Chief Justice of Pakistan in constituting benches in the Supreme Court. The study aims to explore the intricacies of bench formation by examining constitutional provisions, legal precedents, and relevant case studies. Specifically, the research seeks to shed light on the implications of bench formation on judicial transparency and ascertain whether the current perception aligns with the actual powers granted to the Supreme Court in this regard.

The significance of this research lies in its potential to uncover the nuances of bench formation in the Supreme Court, challenging common perceptions. The study hypothesizes that contrary to prevailing beliefs, the Supreme Court itself possesses constitutionally defined powers in forming benches, and the exercise of these powers is geared towards ensuring a fair and transparent

judicial process. The motivation stems from recent legislative changes, particularly the enactment of the "Supreme Court (Practice and Procedure) Act, 2023," which has introduced alterations to the traditional practice of bench formation, sparking debates on judicial powers and transparency.

In summary, this research delves into the constitutional framework governing bench formation in the Supreme Court of Pakistan, aiming to provide a comprehensive understanding of the Chief Justice's powers in this critical aspect of the judicial process. The investigation encompasses legal provisions, historical precedents, and contemporary developments to contribute to the discourse on judicial transparency and the dispensation of justice in the country.

BACKGROUND:

The composition of Supreme Court benches is crucial for the administration of justice and holds the status of the backbone in the judicial system. Only a natural composition of benches can ensure the dispensation of justice in society. In the past decades, there was a perception of benches being formed based on personal choices or judges with similar inclinations. In recent years, objections raised against the benches in various cases have been a significant point of discussion. This is due to the regular occurrence of composition and decomposition, which was a debatable concern in light of constitutional articles 4, 10A & 25, and Supreme Court Rules 1980 Order XI. Currently, Order XI has been substituted with section 2 of the Practice and Procedure Act 2023 (Constitution of Benches).

A common misconception, assumed as a hypothesis in this research "before relevant literature review," was that the constitution of benches was the prerogative of the Supreme Court rather than the Chief Justice. This assumption was incorrect, as before the enactment of the Practice & Procedure Act 2023 (Section 2), the matter was governed by Supreme Court Rule 1980 Order XI, granting powers to the Chief Justice of Pakistan for the composition of benches. This has now been replaced by a three-member committee comprising the Chief Justice and the two seniors

most judges of the Supreme Court of Pakistan for the constitution of benches.

Hussan Raza, in his news article published in *Courting the Law*, beautifully portrayed the historical evolution of the constitution of benches with respect to various court cases in the Supreme Court of Pakistan. This can be outlined in the following manner: "The term 'master of roster' cannot be understood to mean that the HCJ has unfettered discretion regarding constitution of Benches. In fact, the discretion vested in the office of the HCJ for constitution of Benches is to be exercised in a structured manner according to the SCR." Manzoor Ahmad Malik J [PLD 2021 Supreme Court 639].

The evolution of Order XI, originating from the Supreme Court Rules of 1980, has been complex and shaped by diverse experiences. Its implementation has resulted in the removal of Supreme Court judges in Pakistan from cases of public importance due to their dissenting capacity. This raises concerns within the legal community about the justification of granting absolute authority to the Chief Justice of Pakistan to determine the composition of Supreme Court benches. Furthermore, there is a need to assess whether such unchecked discretion violates the fundamental rights protected in the Constitution of Pakistan, 1973.

In the historical case of *Zulfiqar Ali Bhutto*, there was a notable exercise of discretion in forming Supreme Court benches. Bhutto, facing a death penalty appeal before a nine-member bench, sought Chief Justice Anwar-ul-Haq's exclusion, citing lack of confidence due to Anwarul Haq's involvement in validating General Zia-ul-Haq's martial law. However, the application was not presented to the original bench but decided by Zia-ul-Haq alone in chambers, resulting in Anwar-ul-Haq declaring his own competence to adjudicate Bhutto's appeal in his favor. (***Zulfiqar Ali Bhutto v. The State*, PLD 1978 Supreme Court 125**)

In the 1979 case of the late Air Marshal (retired) Asghar Khan under Martial Law Order 12, his detention was contested before the Supreme Court of Pakistan using Article 183(4) of the 1973 Constitution. During the proceedings, the veteran's counsel objected to the composition of

the bench, arguing that all six judges were from the province of Punjab. The objection was dismissed in the judgment of **Hamid Sarfraz v. Federation of Pakistan (PLD 1979 Supreme Court 991)**, which emphasized the Chief Justice's authority to form benches for hearing and deciding cases before the court.

In 1997, Chief Justice Sajjad Ali Shah, like his predecessors, interpreted Order XI in a historic manner. While adjudicating two references by the President of Pakistan, he addressed a question about the interpretation of Article 48 of the Constitution. Despite the presence of the **Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324)** case, a five-member bench initially handled the matter. The Attorney General later requested a full court hearing, but the application was not considered by the original bench. Instead, CJ Sajjad Ali Shah, in the judgment of **Re: In References No.1 and 2 of 1996 (PLD 1997 Supreme Court 80)**, followed precedents, including those of Mr. Bhutto and Air Marshal Asghar Khan. He asserted that the power to constitute benches under Order XI would remain with the Chief Justice, and Order XXXIII, Rule 6 of the Supreme Court Rules, involving the use of inherent powers to ensure justice and prevent abuse of the court's process, would not apply.

In the aftermath of the **Malik Asad Ali v. Federation of Pakistan (PLD 1998 Supreme Court 161)** case, Chief Justice (CJ) Sajjad Ali Shah faced challenges under Order XI. On November 26, 1997, the Quetta Registry restrained CJ Sajjad Ali Shah from judicial and administrative functions. As no acting Chief Justice was appointed by the federal government, the Peshawar Registry instructed the senior puisne judge to form a full court to address the challenge to Sajjad Ali Shah's appointment. The senior judge declined, prompting the Peshawar Registry to direct junior judge Saeed-uz-Zaman Siddiqui to form a ten-judge bench. Despite acknowledging the Chief Justice's prerogative, the full court later deemed the constitution of a full court by a junior judge under Order XI as constitutional. The Malik Asad case provided a unique and limited purposive interpretation of Order XI of the Supreme Court Rules.

In 2002, the Supreme Court, in the case of **Supreme Court Bar Association v. Federation of Pakistan (PLD 2002 Supreme Court 939)**, addressed the appointment of three judges, emphasizing the Chief Justice's prerogative to constitute benches. The judgment upheld established principles and diverged from the Malik Asad Ali case. Subsequent rulings, such as **Mir Alam Gul v. Ismail (PLD 1990 Supreme Court 926)**, **Muhammad Siddiqui v. Government of Pakistan (PLD 2005 Supreme Court 186)**, **Malik Muhammad Mumtaz Qadri v. State (PLD 2016 Supreme Court 146)** and **Shahzada Aslam v. Muhammad Akram (PLD 2017 Supreme Court 142)**, reiterated that the Chief Justice has the exclusive authority to form benches, as outlined in Order XI of the Supreme Court Rules, 1980. Parties involved in a case were affirmed to have no influence in this matter.

The recent instances involving Order XI, primarily focusing on Justice **Qazi Faez Isa** of the Supreme Court of Pakistan. Justice Isa challenged a reference against him by filing a petition under **Article 184(3)** of the Constitution. After a majority judgment, he filed a review, contested its composition, and sought the reconstitution of the bench. The judgment in **Qazi Faez Isa vs Federation of Pakistan** attempted to limit the Chief Justice's power to form benches, emphasizing compliance with Order XI of Supreme Court rules. Justice Manzoor Ahmad Malik disagreed with the notion of the Chief Justice being the "master of the roster," arguing for structured discretion based on the Supreme Court Rules. Ultimately, Isa J's review was heard by the same number of judges as the original judgment.

In the case of **Action Against Distribution of Development Funds to MNAs/MPAs By Prime Minister (PLD 2021 Supreme Court 446)**, Justice Isa and Justice Maqbool Baqir requested Chief Justice Gulzar Ahmed to form a larger bench. However, the Chief excluded Justice Maqbool Baqir without providing a valid reason. Justice Isa, in his dissenting note, criticized the Chief Justice's absolute discretion, arguing that a judge involved in a case should not be excluded unless retired or incapacitated, citing precedents like **Pakistan vs**

Abdul Wali Khan (PLD 1976 Supreme Court 57).

In a more recent development, the Chief Justice initiated *Suo-Moto* action on Holding of General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa. He formed a nine-member bench, which was later reconstituted after objections from several judges regarding the Chief Justice's jurisdiction and discretion. Justice Mansoor Ali Shah, who still presides over the bench, specifically objected to excluding the two most senior judges from the nine-member bench. The final judgment in this case will provide important guidance on the application of Order XI of the Supreme Court Rules. Instances exist where Chief Justices have formed or reconstituted benches to manage dissent in matters of public significance, but such actions appear to deviate from democratic norms outlined in the written constitution. It is argued that granting a Chief Justice absolute discretion in bench formation, without restrictions and reasoned justification, goes against democratic principles and risks perpetuating historical judicial errors.

The unrestricted authority of a Chief Justice in deciding judicial matters has led to unchecked discretion and process abuse, violating Article 10A of the Constitution, which guarantees the right to a fair trial and due process. Historical cases, including that of Zulfiqar Ali Bhutto, have been criticized for depriving individuals of a fair trial, often termed "judicial murder." Similar abuses are evident in cases involving Chief Justice Sajjad Ali Shah and Justice Qazi Faez Esa, violating both Article 10A and Article 4, which ensures the right to be treated in accordance with the law. The author contends that the current form of Order XI may be unconstitutional in its present state.

The Supreme Court Rules, being sub-constitutional legislation, cannot supersede constitutional provisions, notably Article 10A. Previous court decisions emphasize that Article 10A universally influences sub-constitutional laws. The author suggests three potential courses of action: amending Order XI under Article 191, interpreting Order XI purposively through a full court, or declaring Order XI *ultra vires*. Given the impracticality of Article 191, the author favors the

second option. Proposing that the Supreme Court justices interpret Order XI to establish guidelines for bench constitution, the author stresses the need for a judicial structure to ensure fair trials and due process promptly. The author hopes the Supreme Court will consider this plea for the institution's benefit. (Raza, 2023)

The Supreme Court (Practice & Procedure) Act, 2023:

The "Supreme Court (Practice and Procedure) Act, 2023" went through a complex legislative process in Pakistan. Initially passed by the National Assembly on March 29, 2023, and later approved by the Senate on March 30, 2023, the Act faced presidential scrutiny. The President returned the bill for reconsideration by the *Majlis-e-Shoora* (Parliament), invoking Article 75 of the Constitution. The *Majlis-e-Shoora* (Parliament) reconsidered the bill and passed it with amendments on April 10, 2023. Before the Act's passage, a series of Constitution Petitions (No. 6 to 8, 10 to 12, 18 to 20, and 33 of 2023) challenging the constitutionality of the proposed legislation were dismissed by the Supreme Court of Pakistan on December 15, 2023. The petitioners argued against concentrating power in the Chief Justice, emphasizing the principles of equality and consultation mandated by the Constitution and Islamic teachings.

The Act aimed to regulate the Chief Justice's powers and procedural aspects, introducing a three-member committee, including the Chief Justice, for *Suo-Motu* notices. However, it faced setbacks, as an eight-member bench issued a stay order before its enactment. Despite the stay, the Act outlined key provisions, including committee approval for *Suo-Motu* notices, transparent bench formation, and a 30-day limit for Supreme Court appeals. In response to challenges, Chief Justice Qazi Faez Isa announced a committee, comprising himself and the two most senior judges, to decide bench formations. The Supreme Court upheld the Act in a 10-5 majority decision on October 3, 2023, affirming its constitutionality. The Act, effective as of now, brings significant changes to the judiciary's functioning, raising concerns and varied reactions.

Additionally, the Act faced challenges related to its retrospective appeal's rights, with an 8-7 majority voiding the right but sustaining the right to appeal in *Suo-Motu* cases with a 6-9 majority. Chief Justice of Pakistan (CJP) Justice Qazi Faez Isa has announced that a three-member committee, including himself and the two most senior judges, will decide bench formations in response to petitions challenging the Supreme Court (Practice and Procedure) Act 2023. The Act, introduced by the former coalition government, was under scrutiny in a historic live broadcast hearing. The CJP, along with senior colleagues, will determine bench compositions, and the court has adjourned the hearing until 3rd October 2023. The full court, headed by CJP Isa, accepted pleas for live broadcasts and approved petitions regarding the full court. The federal government urged the dismissal of challenges against the Act, asserting Parliament's right to legislation. During the hearing, CJP Isa cautioned against abrupt responses, emphasizing detailed and law-focused answers. Questions were raised regarding the legislation's impact on the CJP's powers and the judiciary. The court directed lawyers to submit responses by September 25 and set a precedent by broadcasting live proceedings. (Pakistan Today, 2023)

The Act's approval marked a pivotal moment in Pakistan's legal landscape, with proponents praising modernization efforts and critics expressing concerns over potential judicial overreach. The Act's impact on judicial independence and citizens' access to justice remained a subject of debate. The legal community urged stakeholders to understand the nuances, considering both pros and cons. Reactions to the Act vary, with some applauding it as a necessary step to streamline judicial processes and enhance accountability, while others fear it may compromise judicial independence and concentrate excessive power in the Chief Justice. Critics argue that the Act's emphasis on lower court approval for appeals may hinder access to justice, making the legal process more complex for ordinary citizens. Looking ahead, the Act's impact on the judiciary-government relationship and its

adherence to the principle of exemplary justice remains uncertain. Legal stakeholders are urged to understand the Act's nuances, weigh its pros and cons, and adapt legal practices accordingly. The Act represents a departure from established Supreme Court practices, potentially signaling a new judicial trajectory. Despite the uncertainties, the legal community's collective goal remains the same to uphold justice and safeguard the fundamental rights of Pakistani citizens. (Web Desk & Afzal, 2024)

Law Minister Azam Nazir Tarar introduced the bill, previously passed by both Houses and sent to the President for approval. The President returned it for parliamentary review. The Senate passed a resolution urging simultaneous general elections for the National Assembly and provincial assemblies to enhance federation strength. The resolution, moved by Tahir Bizenjo, emphasizes the importance of political stability for economic stability, calling for elections under neutral caretaker setups as stipulated by Article 280. (Radio Pakistan, 2023)

The legislative journey also involved parliamentary proceedings, with the Joint Sitting of Parliament approving the Supreme Court Practice and Procedure Bill, 2023. The Bill addressed constitutional matters and emphasized the committee-led bench formation for top court cases. Despite the Act's approval, the Supreme Court indefinitely adjourned hearings on challenges to the Act. The Chief Justice, Justice Qazi Faez Isa, refrained from participating in bench formations until a verdict on the Act was reached, emphasizing the need for consultation on laws concerning the judiciary's internal affairs.

The Supreme Court (Practice and Procedure) Bill, 2023 has become law after passing all necessary requirements and regulations, and notified for the gazette. The bill aimed to limit the Chief Justice's powers, prompting the apex court to preemptively halt its enforcement. The amended Supreme Court (Practice and Procedure) Act, 2023 now empowers a three-member committee, including the Chief Justice, to take *Suo-Motu* notice and ensures transparent proceedings with the right to appeal. The committee, responsible for bench formation, will consist of the Chief Justice and the

two senior-most judges. The act outlines procedures for matters invoking Article 184(3) and allows retrospective appeal rights. It grants parties the choice of counsel for review applications and mandates expedited hearings for urgent matters. The act's provisions supersede other laws and court judgments. (Daily Times, 2023)

The Supreme Court has indefinitely adjourned the hearing on petitions challenging the Supreme Court (Practice and Procedure) Act, 2023, aimed at limiting the powers of the Chief Justice of Pakistan (CJP). An eight-judge bench, led by CJP Umar Ata Bandial, had to postpone the hearing due to the indisposition of Justice Shahid Waheed. During a meeting with Attorney General for Pakistan (AGP) Mansoor Awan, the CJP was informed that the government wanted to harmonize two related legislations but couldn't due to the ongoing parliamentary budget session. The AGP acknowledged an overlap between the two laws and requested the case be listed after the passage of the federal budget. The CJP welcomed the AGP's statement but emphasized the need for consultation with the Supreme Court in drafting laws concerning the judiciary's internal affairs. The Supreme Court (Practice and Procedure) Act, 2023, which curtails CJP powers, was passed by the National Assembly on March 29 and endorsed by the Senate on March 30, despite the top court's order to stop its enforcement on April 13. (Our Correspondent, 2023)

Justice Faez expressed dissatisfaction with the handling of Suo-Motu cases and criticized the Registrar of the Supreme Court for disregarding his order. He also raised concerns about the formation of an inquiry commission, which was hindered by a five-member bench, and questioned the legitimacy of the larger bench reviewing the Supreme Court (Practice and Procedure) Act 2023. Until a verdict on the law is reached, Justice Faez refused to recognize the current bench as a legitimate court. (Sigamony, 2023) In conclusion, dispensation of justice and upholding the rule of law are not mutually exclusive; rather, the latter is an integral part of the former. Upholding the rule of law is considered a form of dispensing justice,

emphasizing the importance of maintaining legal principles for a just society. (Khan Blawgs, 2016)" .22

LITERATURE REVIEW:

The literature review explores the background and implications of the Supreme Court (Practice and Procedure) Act, 2023 in Pakistan. It discusses the varied reactions to the Act, ranging from support for streamlining judicial processes to concerns about compromising judicial independence. Legal stakeholders are encouraged to understand the nuances of the Act, and the text highlights the departure from established Supreme Court practices, potentially indicating a new judicial trajectory (Web Desk & Afzal, 2024).

The review delves into the legislative journey, parliamentary proceedings, and the Act's impact on the judiciary-government relationship, emphasizing the uncertainties surrounding its adherence to the principle of exemplary justice (Radio Pakistan, 2023). Additionally, the Act's provisions, including the three-member committee's empowerment and transparent proceedings, are outlined, as well as the challenges faced by the Chief Justice in its enforcement (Daily Times, 2023).

The literature review also provides insights into the dissatisfaction expressed by Justice Faez with the handling of Suo-Motu cases and the challenges to the Act. It touches upon the historical evolution of the constitution of benches in the Supreme Court, highlighting changes brought about by the Practice and Procedure Act, 2023. The article by Hussan Raza, published in *Courting the Law*, contributes historical context by discussing the Chief Justice's powers in bench formation, citing relevant case law and legal principles (Raza, 2023). The literature introduces key theories and concepts related to the Act, such as the "master of roster" concept, which refers to the Chief Justice's discretion in forming benches. It discusses the evolution of Order XI from the Supreme Court Rules of 1980, highlighting concerns within the legal community about granting absolute authority to the Chief Justice in determining bench composition. The concept of unchecked discretion is linked to potential violations of

fundamental rights protected in the Constitution of Pakistan, 1973, particularly Article 10A guaranteeing the right to a fair trial and due process.

The literature also presents the author's contention that the current form of Order XI may be unconstitutional, raising questions about its compatibility with Article 10A and Article 4. The literature review identifies gaps and controversies, including the uncertainty surrounding the Act's impact on exemplary justice, challenges faced by Justice Faez Isa, and the ongoing debate about the Chief Justice's absolute discretion in bench formation. The controversies are evident in instances where Chief Justices have formed or reconstituted benches to manage dissent, raising concerns about deviations from democratic norms and potential violations of constitutional provisions.

The theoretical framework is grounded in constitutional provisions, legal principles, and case law. It explores the tension between the Chief Justice's discretion in bench formation and the protection of fundamental rights. The author suggests potential courses of action, including amending Order XI, interpreting it purposively through a full court, or declaring it ultra vires. The theoretical framework emphasizes the need for a judicial structure to ensure fair trials and due process promptly, aligning with the constitutional guarantees outlined in Article 10A.

METHODOLOGY:

The research design of this study involved a qualitative approach with a focus on legal analysis, constitutional provisions, and historical case studies. The study sought to understand and analyze the constitutional powers of the Chief Justice of Pakistan in constituting benches in the Supreme Court. The research design was primarily doctrinal, relying on legal texts, statutes, and case law to explore the nuances of bench formation. The primary source of data was legal documents, including the Supreme Court (Practice and Procedure) Act, 2023, relevant constitutional provisions (such as Article 10A), and Supreme Court Rules, 1980 (Order XI). The research involved an in-depth analysis of relevant case

studies, including historical cases such as *Zulfiqar Ali Bhutto vs The State* and recent cases like *Suo-Moto* case No 1/2023. These case studies provided insights into the evolution of bench formation practices.

News articles and media reports, such as those from *Pakistan Today* and *Daily Times*, were used to gather information on the legislative journey of the Supreme Court (Practice and Procedure) Act, 2023, reactions to the Act, and challenges faced by the Chief Justice. Scholarly articles, legal commentaries, and journals, particularly the work by Hussan Raza published in *Courting the Law*, were consulted to gain a comprehensive understanding of the historical context and implications of bench formation. Given the legal and qualitative nature of the research, purposive sampling was employed. The focus was on selecting cases, legal documents, and scholarly articles that were directly relevant to the research question. The sampling prioritized sources that provided in-depth insights into the constitutional powers of the Chief Justice in bench formation.

A detailed legal analysis was conducted on the Supreme Court (Practice and Procedure) Act, 2023, relevant constitutional provisions, and Supreme Court Rules, 1980 (Order XI). This analysis involved interpreting the text, identifying key provisions, and understanding the legal framework. The historical and recent case studies were analyzed to trace the evolution of bench formation practices in the Supreme Court. This analysis included identifying key decisions, reasoning, and any shifts in judicial interpretation. Articles and media reports underwent content analysis to extract information on the legislative process, reactions to the Act, and challenges faced by the Chief Justice.

The findings from legal analysis, case law analysis, and content analysis were synthesized to form a comprehensive understanding of the Chief Justice's powers in bench formation. The synthesis contributed to answering the research question and addressing the hypothesis. The research design and data collection methods aimed to provide a thorough examination of the constitutional framework governing bench formation in the Supreme Court of Pakistan, with

a specific focus on the Chief Justice's powers and their implications for judicial transparency.

RESULTS AND ANALYSIS:

The research sought to investigate and analyze the constitutional powers of the Chief Justice of Pakistan in constituting benches in the Supreme Court. The study delved into constitutional provisions, legal precedents, and contemporary developments, focusing on the implications of bench formation on judicial transparency. The findings presented a nuanced understanding of the Chief Justice's authority and its alignment with the goal of ensuring a fair and transparent judicial process. The Supreme Court (Practice and Procedure) Act, 2023, marked a significant shift in the judiciary's functioning, introducing alterations to the traditional practice of bench formation. The Act empowered a three-member committee, including the Chief Justice, for Suo-Motu notices and outlined transparent bench formation procedures. Despite facing challenges, the Act was upheld by the Supreme Court, emphasizing its constitutionality. The Act's impact on adherence to the principle of exemplary justice remained uncertain, with varied reactions from different quarters of the legal community. The Act's approval and subsequent challenges highlighted debates over its potential impact on judicial independence and citizens' access to justice. Proponents viewed it as a necessary step to streamline processes and enhance accountability, while critics expressed concerns about compromising judicial independence and concentrating excessive power in the Chief Justice. The findings also revealed dissatisfaction expressed by Justice Faez Isa with the handling of Suo-Motu cases and challenges to the Act. The controversies surrounding bench formation, especially instances of Chief Justices forming or reconstituting benches to manage dissent, underscored concerns about deviations from democratic norms and potential violations of constitutional provisions.

The literature review provided historical context and insights into the evolution of bench formation in the Supreme Court. It discussed key theories and concepts, including the "master of roster"

concept and the concerns within the legal community about granting absolute authority to the Chief Justice. The literature identified gaps and controversies, emphasizing the uncertainties surrounding the Act's impact on exemplary justice and the ongoing debate about the Chief Justice's absolute discretion. The analysis of the data revealed a complex interplay between constitutional provisions, legal principles, and contemporary legislative changes. The Act's introduction and subsequent challenges reflected a dynamic landscape in the judicial system, with implications for transparency, accountability, and access to justice. The three-member committee's role in bench formation introduced a procedural shift, raising questions about the balance between judicial discretion and constitutional safeguards. The controversies surrounding bench formation, highlighted in historical cases and recent instances, underscored the need for a structured approach to ensure fair trials and due process. The tensions between the Chief Justice's discretion and constitutional guarantees, particularly Article 10A, revealed potential conflicts that require careful consideration. The literature review provided a theoretical framework grounded in constitutional provisions and legal principles. The review emphasized the tension between the Chief Justice's discretion and the protection of fundamental rights, particularly the right to a fair trial and due process. The author's contention that the current form of Order XI may be unconstitutional added a layer of complexity to the analysis, suggesting potential avenues for addressing the challenges in bench formation.

The research question focused on the specific powers of the Chief Justice of Pakistan in constituting benches of Supreme Court judges to hear particular cases. The findings indicated that while the Chief Justice held a significant role in bench formation, recent legislative changes, particularly the Supreme Court (Practice and Procedure) Act, 2023, introduced procedural adjustments. The Act's emphasis on a committee approach aimed to balance the Chief Justice's discretion, addressing concerns about potential abuses and ensuring a fair and transparent judicial process.

The hypothesis posited that the Supreme Court itself possessed constitutionally defined powers in forming benches, contrary to prevailing beliefs. The findings provided a nuanced perspective, acknowledging the Chief Justice's role but also highlighting the impact of legislative changes. The Act's provisions and the controversies surrounding its enforcement contributed to a reevaluation of the traditional understanding of bench formation, opening avenues for discussions on the appropriate balance of powers within the judiciary.

In conclusion, the research shed light on the intricacies of bench formation in the Supreme Court of Pakistan, navigating through constitutional provisions, legal precedents, and contemporary legislative changes. The findings emphasized the importance of addressing concerns related to transparency, accountability, and access to justice while maintaining a delicate balance between judicial discretion and constitutional safeguards. The evolving nature of bench formation calls for ongoing scrutiny and adaptation to ensure a robust and just judicial system.

DISCUSSION:

The results of the research revealed a comprehensive understanding of the powers vested in the Chief Justice of Pakistan regarding the constitution of benches in the Supreme Court. The study demonstrated that while the Chief Justice played a significant role in bench formation, recent legislative changes, particularly the Supreme Court (Practice and Procedure) Act, 2023, introduced a more structured approach through the establishment of a three-member committee. This committee, including the Chief Justice and the two most senior judges, aimed to address concerns about potential abuses of power and enhance the fairness and transparency of the judicial process.

The Act's approval marked a significant shift in the functioning of the judiciary, challenging traditional practices and prompting debates on its impact on judicial independence and citizens' access to justice. The research findings suggested that the Act represented a balancing act,

attempting to reconcile the Chief Justice's discretion with the need for accountability and transparency in bench formation. The study provided valuable insights into the evolving dynamics of bench constitution, encouraging a reassessment of prevailing beliefs and fostering discussions on the appropriate distribution of powers within the judiciary.

The research findings aligned with and expanded upon existing literature, particularly in relation to the Supreme Court (Practice and Procedure) Act, 2023. The literature review highlighted the varied reactions to the Act, with proponents praising it as a step toward streamlining judicial processes and enhancing accountability, while critics expressed concerns about compromising judicial independence. The research contributed by delving deeper into the implications of the Act, shedding light on the specific powers of the Chief Justice and the role of the newly established committee in bench formation.

The comparison with historical cases, such as Zulfiqar Ali Bhutto's case and the challenges faced by Justice Faez Isa, added context to the ongoing debates about the Chief Justice's discretion. The study acknowledged the complexities surrounding the evolution of bench formation and highlighted the potential conflicts between constitutional provisions, legal principles, and contemporary legislative changes. By synthesizing these elements, the research provided a comprehensive understanding of the past state of bench constitution in the Supreme Court.

The implementation of the findings held substantial significance for the judiciary in Pakistan. The research identified the need for a structured approach to bench formation, acknowledging the Chief Justice's role while introducing safeguards through the three-member committee. The Act's provisions and the controversies surrounding its enforcement underscored the importance of adapting legal practices to ensure transparency, fairness, and adherence to constitutional guarantees. The significance of the research lay in its potential to inform judicial practices, policy decisions, and legal discourse. By uncovering the nuances of bench formation and addressing concerns related

to unchecked discretion, the findings contributed to ongoing discussions on judicial reform and the proper distribution of powers within the Supreme Court. The study encouraged stakeholders, including legal practitioners, policymakers, and the public, to understand the complexities of the past judicial landscape and adapt their perspectives and practices accordingly.

Despite the valuable insights provided by the research, certain limitations should be acknowledged. Firstly, the study primarily focused on the Chief Justice's powers in bench formation within the Supreme Court of Pakistan. It did not extensively explore the broader context of judicial decision-making or the impact of bench composition on specific cases. Secondly, the research was limited by the available data and information.

Additionally, while the research delved into the implications of the Supreme Court (Practice and Procedure) Act, 2023, it might not have comprehensively covered all perspectives or opinions within the legal community. The Act's long-term impact and its reception among different stakeholders could have evolved over time, necessitating ongoing scrutiny beyond the scope of this study. Despite these limitations, the research served as a valuable contribution to the understanding of bench formation in the Supreme Court of Pakistan, offering a foundation for further exploration and discussions in the realm of judicial processes and constitutional governance.

In conclusion, this research paper has provided an understanding of the powers vested in the Chief Justice of Pakistan regarding the constitution of benches in the Supreme Court. The research elucidated the complexities of bench formation in the Supreme Court, highlighting the Chief Justice's significant role and the recent legislative changes introduced by the Supreme Court (Practice and Procedure) Act, 2023. The Act, marked by a three-member committee, aimed to address concerns of potential abuses of power and enhance the fairness and transparency of the judicial process. The findings emphasized the Act's impact on the judiciary's functioning, sparking debates on judicial independence and citizens' access to justice. The study challenged prevailing

beliefs by asserting that the Supreme Court itself possesses constitutionally defined powers in forming benches.

The research contributed to the understanding of bench formation in the Supreme Court by synthesizing historical cases, legislative changes, and contemporary debates. It expanded upon existing literature, particularly in relation to the Act, and provided valuable insights into the evolving dynamics of the Chief Justice's discretion. The study encouraged a reassessment of traditional practices and fostered discussions on the appropriate distribution of powers in the judiciary. The significance of the research lies in its potential to inform judicial practices, policy decisions, and legal discourse.

Future research in this area should consider broader contexts of judicial decision-making and the impact of bench composition on specific cases. Ongoing scrutiny of the Act's long-term impact, its reception among different stakeholders, and potential developments on the available data. Exploring perspectives and opinions within the legal community, particularly on the Act's implications, would contribute to a comprehensive understanding of the ongoing debates in the realm of judicial processes and constitutional governance.

In essence, the research has illuminated the intricacies of bench formation in the Supreme Court of Pakistan, providing a foundation for further exploration and discussions on judicial transparency, accountability, and the balance of powers in the judiciary. The evolving nature of bench constitution calls for continuous scrutiny and adaptation to ensure a robust and just judicial system in the pursuit of upholding justice and safeguarding the fundamental rights of Pakistani citizens.

CONCLUSION:

In conclusion, this research paper has provided a comprehensive understanding of the powers vested in the Chief Justice of Pakistan regarding the constitution of benches in the Supreme Court. The research elucidated the complexities of bench formation in the Supreme Court, highlighting the Chief Justice's significant role and the recent

legislative changes introduced by the Supreme Court (Practice and Procedure) Act, 2023. The Act, marked by a three-member committee, aimed to address concerns of potential abuses of power and enhance the fairness and transparency of the judicial process. The findings emphasized the Act's impact on the judiciary's functioning, sparking debates on judicial independence and citizens' access to justice. The study challenged prevailing beliefs by asserting that the Supreme Court itself possesses constitutionally defined powers in forming benches. The research contributed to the understanding of bench formation in the Supreme Court by synthesizing historical cases, legislative changes, and contemporary debates. It expanded upon existing literature, particularly in relation to the Act, and provided valuable insights into the evolving dynamics of the Chief Justice's discretion. The study encouraged a reassessment of traditional practices and fostered discussions on the appropriate distribution of powers in the judiciary. The significance of the research lies in its potential to inform judicial practices, policy decisions, and legal discourse.

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