



**IMMUNITY, ACCOUNTABILITY AND THE RULE OF LAW: A
CONSTITUTIONAL CRITIQUE OF LIFETIME LEGAL PROTECTION UNDER
THE 27TH AMENDMENT**

***Muhammad Saeed,**

Department of Law, Dadabhoy Institute of Higher Education, Pakistan
(saeedkhanm567@gmail.com)

****Dr. Tansif Ur Rehman,**

Teaching Associate, Department of Sociology, University of Karachi, Pakistan; and Visiting
Faculty, Department of Law, Dadabhoy Institute of Higher Education, Pakistan
(tansif@live.com) (<https://orcid.org/0000-0002-5454-2150>)

Abstract

The 27th Constitutional Amendment is a landmark in Pakistan's legal history because it grants the President and five-star military officers lifelong immunity. This paper critically analyzes these provisions, i.e., the amendments to Articles 248 and 243, and argues that they are, in themselves, contrary to the Rule of Law and Article 25 (Equality of Citizens). The amendment creates a permanent class of citizens who cannot be charged with a crime, not only by granting immunity to the tenure of the person but also to their life. This study uses a doctrinal legal analysis to prove that this type of person-specific immunity has no rational nexus to the stability of the State and is in opposition to the Basic Structure Doctrine. The research paper avers that this lack of accountability poses a danger to the independence of the judiciary and calls upon the Supreme Court to declare these clauses null and void as ultra vires.

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

Introduction

The 1973 Constitution of Pakistan was constructed on the concept of the supremacy of the law and the equal protection of the law for every citizen of the State (Khan et al., 2024). Nonetheless, this paradigm has been shaken by the latest 27th Constitutional Amendment, which has given the President and the highest leadership of the military unprecedented lifelong immunity. This legislative change is a seismic shift in the accountability mechanisms of the state, essentially creating a category of 'untouchables' within the text of the Constitution (Ali, 2024).

This amendment also provides that the President (amending Article 248) and the holders of the five-star military rank (amending Article 243) may remain immune to criminal prosecution throughout their lives (Mohtasim, 2024). This is directly opposite to the constitutional ethos of accountability and the accepted standards of judicial independence (Imran & Kazmi, 2025). Article 248, in the past, had always been a source of immunity that was limited only to the office. The new amendment, however, gives immunity to the individual permanently—a shield that remains even when the individual is out of office.

The compatibility of this amendment with Article 25, which ensures equality before the law, raises significant ethical and legal concerns (Jamali et al., 2025). Legal experts believe that this establishes an "elite immunity" that undermines the confidence of the public in the justice system and corrodes the concept of constitutional supremacy (V-DEM Institute, 2025). This research will break down the constitutionality of these particular clauses based on the argument that they amount to a 'colorable exercise of legislative power' that jeopardizes the basic structure of the Constitution and the judiciary in its mandate to secure fundamental rights (Umar et al., 2025).



Research Justification

The constitutional implications of the 27th Amendment are important to explore since they represent a significant change to the social contract in Pakistan. Lifelong immunity is not only a procedural change, but it is also a substantive assault on the notion of citizenship and equality. For a law student from Balochistan, a province in which the enforcement of the law has been securitized in many cases, I find that the process by which state authorities are positioned outside the scope of the law is of special concern. The urgency of such research lies in the fact that there is a necessity to academically dismantle legal arguments that are used to justify the amendment. Those in favor of it claim that it will provide stability and command integrity, which have not been subjected to the stringent standards of constitutional law. The existing literature has a gap in terms of the specific doctrinal validity of the lifelong versus temporary immunity in the Pakistani context.

Furthermore, since Pakistan ranks low on the Rule of Law Index, the study of this amendment offers a requisite understanding as to why the international trust in legal system of Pakistan is dwindling. This paper seeks to address this gap by presenting a narrow legal critique that can guide future petitions in judicial review and legislative discussions.

Literature Review

The debate surrounding the civil-military relations and constitutional immunity in Pakistan has changed remarkably. Recent literature indicates an increasing concern regarding “the judicialization of hybrid regimes,” where non-democratic norms are entrenched with the help of constitutional amendments (Ali, 2025). According to Khan et al. (2024), the continuation of colonial-era structures has enabled the executive and military to assume a dominant role, but the recent amendments signify a formal transition from *de facto* power to *de jure* constitutional protection.

There is a considerable amount of literature on the topic of the “Basic Structure Doctrine” and the boundaries of judicial review in Pakistan (Mangi et al., 2025). Although the Supreme Court of Pakistan has had a track record of being reluctant to invalidate constitutional amendments, researchers such as Jamali et al. (2025) observe that the new amendments have pushed the judiciary to a breaking point. According to their study, any change in the fundamental aspect of equality can lead to a court backlash like the Kesavananda Bharati case in India.

There is also a dispute over the concept of immunity. Recent research notes that no democratic jurisdiction provides executive or military officials with lifelong immunity (Umar et al., 2025). Moreover, the World Justice Project (2024) Rule of Law Index places Pakistan at 129th position among 142 countries, specifically mentioning the “limitations on government powers” and “equal treatment” as some of the significant areas of failure. This literature does not consider the amendment a reform but rather regressive to the point of institutionalizing inequality. This article expands on these works in order to give a specific doctrinal critique.

Historical Context of Constitutional Immunity in Pakistan

Constitutional immunity in Pakistan has a long history that dates back to the colonial and post-colonial struggles. Viceregal protections came under the Government of India Act, 1935, and were transferred to the legal system of Pakistan (Mangi et al., 2025). The 1973 Constitution, however, aimed to strike some balance between these by restricting immunity to the President and Governors under Article 248 and only as long as they are in office (Khan et al., 2024).

Traditionally, in Pakistan, military and executive immunity was largely *de facto*, as the Doctrine of Necessity justified extra-constitutional measures in 1958, 1977, and 1999 (Khan et

al., 2024). These interventions were frequently approved by courts but never codified in the Constitution as lifelong immunity of individual officers (Mangi et al., 2025). The type of lifelong legal protection brought about by the current amendment was not constitutionally enshrined even by the then Field Marshal Ayub Khan.

The introduction of this amendment breaks from historical constitutional tradition (Khatiwada & Adhikari, 2024). In the past, the emphasis was on vindicating governmental acts (indemnity clauses); the present amendment changes the focus to the protection of the person of the officeholder. This change is a threatening historical innovation that takes Pakistan even farther away from the principles of its original constitutional authors (V-DEM Institute, 2025).

Theoretical Context of Constitutional Immunity in Pakistan

The theoretical framework of the present analysis is based on the concept of the Rule of Law by A.V. Dicey and the contemporary constitutional theory of Basic Structure. According to Dicey, the Rule of Law demands two primary characteristics, namely, the unconditional preeminence of the common law over arbitrary authority and equality before the law, i.e., that no man is above the law. The immunity provisions in the 27th Amendment explicitly contravene both of these principles, establishing a class of people whose status is beyond legal reproach.

The 'Basic Structure Doctrine' is the main prism through which the constitutional theory is viewed. According to this doctrine, the authority of Parliament to amend the Constitution is not absolute; it cannot change the salient features that comprise the identity of the Constitution. Judicial independence and fundamental rights (such as equality) have been identified as salient features in the Mahmood Khan Achakzai (1997) and the District Bar Association (2015) judgments in Pakistan.

It can also be subject to ethical theories of justice like the 'Justice as Fairness' by John Rawls. Rawls contends that inequality can only be acceptable when it favors the most disadvantaged in society. Allowing the strongest executive and military officials to have lifelong immunity is not in the best interest of the people and cannot pass the ethical test of justice, as it will only serve to enshrine elite privilege.

Laws Regarding Constitutional Immunity in Pakistan

The main legal documents that govern this matter are the Constitution of Pakistan, 1973, and the recently enacted Constitution (Twenty-Seventh Amendment) Act.

1. **The 27th Constitutional Amendment:** The focal point of this study includes the amendment to Article 248, which extends the President's immunity beyond their tenure to a lifetime protection against criminal proceedings, and Article 243, which grants five-star officers 'lifelong immunity from criminal and civil proceedings.'
2. **Article 25 (Equality of Citizens):** According to this article, 'All citizens are equal before law and are entitled to equal protection of law.' It allows 'reasonable classification,' but the Supreme Court has determined that classification must be on the basis of an intelligible differentia and a *rational nexus* to the object of the law (I.A. Sherwani case).
3. **Article 248 (Original Text):** Originally, this article provided that 'No criminal proceedings whatsoever shall be instituted... against the President or a Governor during his term of office.' This was the constitutional doctrine of immunity, which focused on the fact that ordinary immunity is, like all other types, both functional and temporal, but not personal and permanent.
4. **The Pakistan Army Act, 1952:** This law regulates the discipline of military personnel. The Amendment virtually supersedes clauses of this Act that would hold officers liable for misconduct after retirement, and thus presents a conflict of law.

5. Article 8 (Laws inconsistent with Fundamental Rights): This article states that any law (and, by extension of the Basic Structure doctrine, any amendment) that curtails fundamental rights is invalid. The clause on immunity directly contradicts the fundamental right to equality under Article 25.

Challenges for Constitutional Immunity in Pakistan

The greatest challenge the 27th Amendment presents is that it erodes the Rule of Law. The constitutional protection of impunity is tantamount to the State saying that some people are too powerful to fall under judgment. This is a blow to the ethical integrity of the criminal justice system. If the President or a five-star officer commits a crime, be it corruption, human rights violations, or a civil wrong, the courts are now constitutionally forbidden to hear the case forever. This gives a legal loophole whereby “might makes right.”

The second problem is that of the violation of the principle of Separation of Powers. The main role of the judiciary is to make judgment and deliver justice in a just manner. The amendment takes away jurisdiction from the Judges for a class of persons for an indefinite time. The amendment weakens the balance of power intended by the Constitution, favoring the executive and military powers over the judiciary.

Besides, the amendment exacerbates inequality and distrust among the people. The notion of the elite getting lifetime legal protection causes a further rift between the State and the citizens and in a country like Pakistan where marginalised communities like Balochistan are already alienated from the justice system, this is even more problematic. It enhances the notion that the law exists only to punish the weak and the strong continue to amend the Constitution to protect themselves. Political instability and civil unrest is a major issue due to lack of accountability.

Opportunities for Constitutional Immunity in Pakistan

In the face of all these gloomy prospects, the passage of this amendment is a very rare opportunity for the Supreme Court of Pakistan to implement the concept of a Basic Structure Doctrine. The Court has historically shown a reluctance to invalidate amendments to the Constitution. But the obviousness of ‘lifelong immunity’ presents a clear case for action that is justiciable. If this provision is challenged in a judicial review petition, it could lead to a landmark judgment which may determine the ultimate limits of Parliament's power to amend the Constitution, thus reinforcing the principle of constitutional supremacy.

Also, there is a space for legal activism and civil society engagement. This amendment can be used by the Bar Councils and human rights organizations to mobilize the people to support the significance of the Rule of Law. Civil society can encourage a national discussion on accountability by exposing the absurdity of the notion of lifelong immunity of both civilian and military leaders. This might even cause a future legislative repeal of the amendment in case another political consensus arises.

Moreover, this crisis presents academic and legal scholarship with the chance to restructure the limits of the definition of national security vs. constitutional rights. Now legal scholars can strongly point out that stability is not a veil to cover individual immunity. The amendment forces a necessary confrontation between two competing visions of Pakistan: a security state vs. a constitutional democracy. Should the democratic forces win in this legal and intellectual battle, it may lead to a stronger and more resilient ethical system in the future of the country.

Discussion

The discussion of the 27th Amendment reveals a serious ethical lapse in the constitutional development of Pakistan. The doctrine of "reasonable classification" allowed by Article 25 cannot be used to justify the clause of lifelong immunity. There is no rational nexus between

the State's security needs and protecting a retired President or officer from criminal prosecution for private crimes. The distinction between protecting the function (as Article 248 originally intended) and protecting the individual (27th Amendment) is fatal to its constitutionality.

This development confirms the fear of the consolidation of hybrid regimes expressed by Ali (2024). By using constitutional means to achieve authoritarian ends, the State has weaponized the law against the Rule of Law itself. Comparison with international standards shows that Pakistan is turning into an outlier; no other constitutional democracy gives such wide, lifelong immunity to the leadership. This could be read as a sign that the amendment is not intended to modernize, but rather intended to be a form of protection by the elite against any future accountability.

Conclusion

The 27th Constitutional Amendment is an alarming step backward in the legal history of Pakistan. The amendment is unconstitutional in that it infringes upon the right to equality (Article 25) and also constitutes an attack on the Rule of Law, in that the President and 5-star officers enjoy 'criminal immunity for life'. This clause establishes a new class of citizens who are legally unaccountable, thereby upsetting the balance between power and accountability. Some may say the stability and integrity of the commands is worth it, but it comes at the price of the integrity of the Constitution itself. The amendment does not pass the reasonable classification test and amounts to a subversion of the Basic Structure of the Constitution. This immunity clause will permanently harm the trust of the people in the justice system and institutionalize impunity unless judicial intervention, or legislative repeal, alters it.

Recommendations

1. **Judicial Review:** The Supreme Court of Pakistan should take notice of petitions challenging the 27th Amendment. It must be asserted, based on the Basic Structure Doctrine, that the provisions of lifelong immunity are ultra vires and void, as they obliterate the material attribute of Equality and the Rule of Law.
2. **Legislative Repeal:** Progressive political parties should focus on repealing the immunity provisions of the 27th Amendment. Constitutional reforms in the future need to be aimed at enhancing civilian control, as opposed to protecting leadership.
3. **Restrictive Interpretation:** Until the amendment is repealed or invalidated, the Courts are required to give it a narrow and strict interpretation. It must be limited to official acts done while in office, and not give blanket immunity for crimes committed in a private capacity.
4. **Civil Society Advocacy:** The Bar Associations and law schools should have a strategic litigation and awareness campaign to educate citizens on the implications of this amendment to their rights.
5. **International Pressure:** International bodies monitoring the Rule of Law (including WJP) should down-rank Pakistan to show this constitutional regression and put pressure on the State to restore equality before the law.

Research Limitations

The limitations of this study relate to the novelty of the 27th Amendment. It has, accordingly, produced very little case law, and the interpretation remains doctrinal, using comparisons with previous amendments. In addition, the very nature of Pakistan's military and presidential politics sometimes results in self-censorship, particularly in academic and media spheres, suppressing legitimate sources of primary data and dissenting opinions within the state. Since the political and legal environment is constantly changing, judicial reaction to this amendment is still in its early phases, and a sudden court ruling could affect the legal premises of this research.

Research Implications

The findings of this study have tremendous implications for constitutional law in Pakistan. They argue that the 'Basic Structure Doctrine' is not just an academic theory but also a legal device for preventing the Constitution's own self-destruction. Immunity clauses mean that there is a precedent that anyone can establish a constitutional exception for themselves and the concept of 'rights' loses its meaning. This study fits into the more general debate on 'authoritarian constitutionalism', highlighting how the legal tools can be used to undermine democracy. It calls for a re-evaluation of the civil-military and executive legal framework.

Future Research Directions

Future research should focus on the judicial response to the 27th Amendment once cases are filed. To measure the loss of trust, empirical studies may conduct a survey of the perception of the justice system by the people after the enactment of this amendment. It also requires comparative research to examine how other post-colonial states have handled such efforts to constitutionally entrench executive and military privileges. Moreover, studies on the economic consequences of such amendments—namely, how the absence of the Rule of Law discourages foreign investment—would offer a pragmatic case against such immunities.

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