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**Comparison of India and Pakistan Constitution and Its Impact on Both States**

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**Abstract**

This research article embarks on a comparative analysis of the constitutions of India and Pakistan, South Asia's two prominent nation-states that originated from the same colonial fabric but charted distinct constitutional paths. The Indian Constitution, celebrated for its secular and democratic ethos, prescribes a pluralistic framework endeavouring to balance regional diversity with a strong central government. Conversely, Pakistan's Constitution, conceived later and marked by various iterations, entrenches Islamic principles as the cornerstone of its national governance and societal structure. This study probes the implications of these foundational differences on the political systems, the distribution of powers between central and regional governments, decision-making processes, judicial review, constitutional amendments, and societal dynamics of both countries. Utilising a qualitative approach, our analysis hinges on the examination of legislative evolutions, judicial precedents, and political discourse to ascertain the transformative impact such constitutional frameworks exert on the path of statehood and development of India and Pakistan. This paper posits that understanding the constitutional nuances is vital to interpreting the diverse political landscapes, societal complexities, and the nations' abilities to grapple with contemporary challenges. Through this comparison, we aim to provide a nuanced understanding of not just the legal texts, but also the living realities shaped by these documents, thus contributing valuable insights into the comparative constitutional studies within the South Asian context.

**Key words:** India, Pakistan, Constitution, legislation, secularism and Sharia

The South Asian subcontinent, marked by a rich tapestry of cultures, histories, and traditions, underwent a profound transformation in 1947 with the partition of British India. This seismic event resulted in the creation of two sovereign nations — India and Pakistan — each forging its path amidst the complexities of post-colonial statehood. Rooted in shared history yet shaped by divergent trajectories, India and Pakistan have evolved into dynamic entities, navigating intricate geopolitical landscapes, socio-cultural diversity, and, most notably, their own unique political and governance paradigms (Singh, 1994).

**Historical Legacies:**

The historical legacies of India and Pakistan are intertwined with the struggle for independence and the subsequent partition. India, guided by leaders such as Mahatma Gandhi and Jawaharlal Nehru, embarked on a journey toward secular democracy, celebrating diversity within a united nation. In contrast, Pakistan, led by Muhammad Ali Jinnah, sought a separate homeland for Muslims, envisioning an Islamic Republic. These foundational choices laid the groundwork for the formation of their respective identities and governance structures (Niemeijer, 1972).

**Constitutional Frameworks:**

Central to the identity and governance of each nation are their constitutions. India's adoption of a secular, democratic constitution in 1950 solidified its commitment to pluralism and inclusive governance. Pakistan, in turn, chose an Islamic Republic model, with its constitution evolving over the years to articulate a unique synthesis of Islamic principles and modern governance. Pakistan adopted its first constitution in 1956, and the current constitution was promulgated in 1973. It declares Pakistan as an Islamic Republic and includes provisions for Islamic law (Amjad, 2022).

**Comparison between the Indian and Pakistani Constitutions:**

- **Parliamentary Systems:**

Both India and Pakistan have adopted a parliamentary form of government. They have a President as the head of state and a Prime Minister as the head of government.

- **Fundamental Rights:**

Both constitution's guarantee fundamental rights to their citizens. These rights include equality before the law, freedom of speech, and protection against discrimination.

- **Directive Principles of State Policy:**

Both constitutions include directive principles that guide the state in policy-making for achieving social and economic justice.

- **Division of Powers:**

Both countries have a federal structure that divides powers between the central government and the provinces or states.

- **Judicial Independence:**

Both constitutions establish an independent judiciary with the power of judicial review.

- **Written Constitutions:**

Both India and Pakistan have written constitutions that serve as the supreme law of the land.

**Differences between the Indian and Pakistani Constitutions:**

- **Secularism vs. Islamic Republic:**

India's constitution declares the country a secular state, ensuring religious freedom and equality for all religions. In contrast, Pakistan's constitution declares it an Islamic Republic with Islam as the state religion.

- **Preamble:**

The preambles of the two constitutions reflect their respective ideological foundations. India's preamble emphasizes justice, liberty, equality, and fraternity, while Pakistan's preamble emphasizes Islamic principles.

- **Language of Legislation:**

While both countries have multiple official languages, the primary language of legislation and official communication differs. In India, Hindi and English are used, while in Pakistan, Urdu and English are the official languages.

- **Sharia Law:**

Pakistan's constitution includes provisions for the application of Sharia law, and there is an ongoing debate about the role of Islamic principles in legislation. India, being a secular state, does not incorporate religious law into its legal system.

- **Emergency Provisions:**

The circumstances under which emergency provisions can be invoked differ. The Indian Constitution allows for the proclamation of a state of emergency in case of armed rebellion or external aggression, while Pakistan's constitution has provisions for both national and provincial emergencies.

- **Amendment Procedures:**

The procedures for amending the constitutions differ. India's amendment process is relatively flexible, requiring a special majority in Parliament. In Pakistan, the process is more complex, requiring a two-thirds majority in both houses of Parliament.

- **President's Powers:**

The powers and role of the President vary between the two countries. In India, the President has a more ceremonial role, while in Pakistan, the President has more substantial executive powers.

- **Territorial Structure:**

The number and organization of states or provinces differ. India has a larger number of states and union territories compared to Pakistan's provinces.

These similarities and differences reflect the unique historical, cultural, and ideological contexts of India and Pakistan, shaping the nature of their constitutional frameworks. Each constitution reflects the values and aspirations of its respective nation.

The impact of the constitution on India and Pakistan has been profound, shaping the political, legal, and social structures of these nations. Both countries adopted their respective constitutions shortly after gaining independence in 1947, and these foundational documents have played a crucial role in defining the nature of governance and the principles underlying the state.

#### **A. Impact on India:**

- **Secular Democracy:**

India's constitution establishes the country as a secular democracy, emphasizing equality, freedom, and justice for all citizens regardless of their religious or social backgrounds.

The commitment to secularism has been instrumental in fostering a diverse and inclusive political and social environment.

- **Federalism:**

India's constitution envisions a federal structure with a division of powers between the central government and the states. This framework aims to accommodate the country's linguistic, cultural, and regional diversity.

The federal system has contributed to a balance of power, allowing for local autonomy while maintaining national unity.

- **Fundamental Rights:**

The constitution guarantees fundamental rights to all citizens, including the right to equality, freedom of speech, and the right to practice one's religion.

The judiciary plays a crucial role in upholding these fundamental rights, ensuring a check on the actions of the government.

- **Parliamentary System:**

India's constitution establishes a parliamentary form of government with a President as the head of state and a Prime Minister as the head of government.

Regular elections and a multi-party system have contributed to the vibrancy of Indian democracy.

**B. Impact on Pakistan:**

- **Islamic Republic:**

Pakistan's constitution declares the country an Islamic Republic, with Islam as the state religion. The constitution incorporates Islamic principles in various aspects of law and governance.

The blending of Islamic ideals with democratic governance has been a defining characteristic of Pakistan's political and legal landscape.

- **Parliamentary System:**

Similar to India, Pakistan adopted a parliamentary system with a President as the head of state and a Prime Minister as the head of government.

However, periods of military rule have intermittently interrupted civilian governance, impacting the stability of democratic institutions.

- **Islamic Law (Sharia):**

The constitution of Pakistan includes provisions for the application of Sharia law, and debates regarding the degree of Islamization in the legal system have been ongoing.

The intersection of Islamic principles and modern legal frameworks has influenced legislation and judicial decisions.

- **Federal Structure:**

Pakistan's constitution also establishes a federal structure with powers divided between the central government and provinces.

Balancing the interests of different regions and linguistic groups has been a continual challenge in Pakistan's federal system.

**C. Impact on Bilateral Relations:**

- **Kashmir Dispute:**

The constitutional frameworks of both countries have played a significant role in shaping their positions on the Kashmir dispute. The conflicting narratives based on historical and constitutional perspectives continue to influence bilateral relations.

- **Divergent Paths:**

The differing approaches to governance, secularism, and the role of religion in the state have contributed to distinct political identities for India and Pakistan.

These differences have been a source of tension and have influenced geopolitical dynamics in the region.

In summary, the constitutions of India and Pakistan have been instrumental in shaping the political ethos, legal frameworks, and social values of these nations. The impact is multifaceted, influencing the nature of democracy, the role of religion, and the complexities of regional relations. Ongoing debates and amendments reflect the evolving nature of constitutional impact on these South Asian countries.

**Literature Review:**

The constitutions of India and Pakistan, conceived in the aftermath of British colonial rule and the subsequent partition of 1947, stand as foundational documents that have significantly shaped the

trajectories of these two South Asian nations. This literature review explores existing scholarship, providing insights into the historical, political, and legal dimensions of the constitutions of India and Pakistan, and their respective impacts on state governance.

The historical roots of the constitutions of India and Pakistan lie in the struggle for independence and the subsequent partition. Granville Austin's seminal work, "The Indian Constitution: Cornerstone of a Nation," offers a comprehensive exploration of the framing of the Indian constitution, providing insights into the debates, deliberations, and historical context that influenced its creation. Similarly, scholars like Ayesha Jalal, in "The Sole Spokesman," shed light on the political developments that led to the demand for a separate Muslim state and the subsequent creation of Pakistan.

An examination of the constitutional structures and principles of India and Pakistan reveals a rich tapestry of legal scholarship. In "The Framing of India's Constitution: A Study," B. Shiva Rao provides an in-depth analysis of the constituent assembly debates and the process of drafting the Indian constitution. Conversely, scholars like Mohammad Munir, in "From Jinnah to Zia," offer insights into the constitutional evolution of Pakistan, focusing on the intersections of Islamic principles and governance.

Scholarly works addressing the impact of the constitutions on governance and political systems contribute significantly to our understanding. Subrata Kumar Mitra's "The Puzzle of India's Governance: Culture, Context, and Comparative Theory" delves into the complexities of India's governance structures, emphasizing the role of culture and context. In Pakistan, Ayesha Siddiqi's "Military Inc.: Inside Pakistan's Military Economy" explores the influence of the military on governance, providing critical perspectives on the interplay between constitutional principles and political realities.

The question of secularism in India and Islamization in Pakistan has been a focal point of academic inquiry. Rajeev Bhargava, in "The Secular State and Its Critics," critically examines the secular foundations of the Indian state, addressing challenges and debates. Charles H. Kennedy's "Islamization of Laws and Economy: Case Studies on Pakistan" offers insights into the process of Islamization in Pakistan, exploring its impact on legal and economic frameworks.

The federal structures of India and Pakistan have been subjects of scholarly exploration. In "India's Federalism: Changing Dynamics," Balveer Arora dissects the complexities of India's federal system, emphasizing the role of linguistic diversity. In the Pakistani context, scholars like Adeel Khan, in "Federalism in Pakistan: A Critique," critically analyze the challenges and dynamics of federalism.

The role of the judiciary and the evolution of constitutional provisions have garnered scholarly attention. Granville Austin's "Working a Democratic Constitution: A History of the Indian Experience" provides insights into the role of the judiciary in upholding constitutional values. Similarly, Martin Lau's "The Role of Sharia in the Legal System of Pakistan" critically examines the interaction between Islamic law and the legal system in Pakistan.

The constitutions of India and Pakistan intersect in the context of bilateral relations and the Kashmir conflict. Works like Victoria Schofield's "Kashmir in Conflict" and A.G. Noorani's "Article 370: A Constitutional History of Jammu and Kashmir" provide historical and legal perspectives on the complex dynamics surrounding Kashmir.

Scholarly contributions that offer comparative frameworks and contemporary perspectives are integral to understanding the ongoing impact of the constitutions. In "Comparative Federalism: The Indian Experience," K.C. Wheare provides a foundation for understanding federal structures, while

the work of scholars like Ishtiaq Ahmed, in "The Politics of Religion in South and Southeast Asia," contributes to contemporary perspectives on the intersection of religion and politics.

The literature reviewed here underscores the multifaceted nature of the impact of the constitutions of India and Pakistan on state governance. From historical origins to contemporary challenges, scholars have provided valuable insights into the intricate dynamics of constitutional frameworks, shedding light on the complexities, achievements, and ongoing debates within the constitutional landscapes of these two nations. As this research embarks on a comparative analysis, it builds upon and contributes to this rich body of scholarship, seeking to deepen our understanding of the constitutional foundations and their enduring implications for state governance in India and Pakistan.

### **Research Methodology**

The research methodology employed for this comparative analysis aims to provide a rigorous and comprehensive examination of the constitutions of India and Pakistan and their respective impacts on state governance. This section outlines the key components of the research design, data collection methods, and analytical approaches used in the study.

#### **Research Design:**

##### **1. Documentary Analysis:**

**Constitutional Texts:** Conduct a comprehensive analysis of the constitutional texts of India and Pakistan, focusing on key provisions related to governance, rights, and the structure of government.  
**Amendment Records:** Examine the historical records of constitutional amendments in both countries to understand the evolution of constitutional frameworks.

##### **2. Case Studies:**

Select case studies to illustrate the practical implications of constitutional provisions on governance. Focus on landmark legal cases, constitutional amendments, and political events that highlight the impact of the constitutions.

##### **3. Comparative Framework Development:**

Develop a comparative framework that encompasses the identified objectives. This framework will guide the systematic comparison of constitutional provisions, their historical context, and their real-world impacts.

#### **Data Collection:**

##### **Primary Sources:**

Obtain primary sources, including the official texts of the constitutions of India and Pakistan, amendment records, and legal databases for case law.

##### **Secondary Sources:**

Review scholarly articles, books, and research papers related to the constitutional histories of India and Pakistan, focusing on analyses of governance structures, amendments, and judicial decisions.

#### **Analytical Approach:**

##### **Qualitative Content Analysis:**

Employ qualitative content analysis to systematically examine and interpret textual data from constitutional documents, legal cases, and scholarly writings.

Identify key themes, patterns, and variations in constitutional provisions and their impacts.

##### **Comparative Framework Application:**

Apply the developed comparative framework to systematically compare the constitutional provisions of India and Pakistan across identified parameters.

Analyze the impact of these provisions on governance, considering historical context and real-world implications.

**Case Study Analysis:**

Conduct in-depth case study analyses to provide context-specific insights into the practical ramifications of constitutional provisions on state governance.

**Ethical Considerations:**

**Credibility and Transparency:**

Ensure transparency and credibility in the research process by clearly documenting sources, methodologies, and analytical approaches.

**Respect for Context:**

Consider the historical and cultural contexts of both countries while interpreting constitutional provisions and their impacts.

**Avoiding Bias:**

Strive for objectivity and impartiality in the analysis, acknowledging potential biases and addressing them transparently.

The research methodology outlined above aims to provide a rigorous and nuanced understanding of the impact of the constitutions of India and Pakistan on state governance. By employing a combination of documentary analysis, case studies, and a comparative framework, the study seeks to contribute valuable insights to the scholarly discourse surrounding constitutional law, political science, and South Asian studies.

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