



ADB Working Paper Series

**THE RULE OF LAW APPROACH FOR
MORE RESILIENT INSTITUTIONS:
JUDICIAL ACCOUNTABILITY AND
INDEPENDENCE, AND GLOBAL
ECONOMIC ACTIVITIES**

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Abstract

This policy paper explores the judiciary's pivotal role in development, covering property rights, government accountability, and contract enforcement. It underscores the importance of impartial judicial institutions, focusing on independence, accountability, and their role in stabilizing global supply chains and financial systems. In the first part, we derive three key policy implications from two research papers. First, we stress the significance of independent judicial appointments to enhance decision-making and economic integrity. Appointments based on merit, rather than political favoritism, bolster public trust and guard against judicial compromise. Second, we advocate for understanding the interplay between cultural norms and political institutions. We propose measures to separate religious and political power, including affirmative action in religious education regions and secularization of bureaucracies. Lastly, we call for the creation of judicial selection procedures to insulate judges from political influence, promoting an independent and accountable judiciary.

Keywords: presidential appointment, religious elites, governance, courts

JEL Classification: D72, K40, 017, K10, Z12

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1. INTRODUCTION

The judiciary, as an indispensable pillar of governance, holds an enormous weight of responsibility in the trajectory of a country's institutional, political, and economic development. By means of its unique position and authority, it has the power to not only safeguard the sanctity of property rights but also to act as an essential bulwark against government excesses and arbitrary conduct. Furthermore, it has a decisive role in the enforcement of contracts, thus providing predictability and assurance to global market participants, which is a vital component for healthy and consistent economic progress.

This policy paper is organized into two main parts. The first part focuses on how we can construct impartial judicial institutions, emphasizing the importance of their independence and accountability. The second section examines the potential contributions of a fair and impartial judicial system, as well as the principle of equality before the law, in stabilizing global supply chains and strengthening the foundations of a resilient global financial system. These two sections are interrelated as follows: The first part discusses how we can develop appropriate institutions to ensure judicial accountability and independence, and the second part discusses how the rule of law grounded by these appropriate judicial institutions could contribute in turn to the global economy, in terms of global supply chains and financial architecture.

In the first part, we present three key policy implications based on two research papers: one on judicial appointments (Mehmood 2022) and the other on the relationship between the judiciary, religion, and politics in Pakistan (Mehmood and Seror 2023).

In considering how to guarantee judicial independence and accountability in institutions and how they should operate, social and cultural aspects cannot be ignored. Particularly in developing countries, religion plays a very important role. Religion has woven itself into the sociocultural fabric of societies to such an extent that its influence is profound and far-reaching, impacting the development of institutions, politics, and economies in more ways than one. It informs people's worldviews, molds their ethical conduct, and even shapes the way they engage with the political system and economic activities. This impact is especially significant in countries where religious beliefs and practices are deeply entrenched in everyday life and are used as guiding principles in decision-making processes.

However, despite these notable contributions, there is a noticeable lack of understanding in certain areas. The mechanisms through which the judiciary can be further enhanced, and made more efficient and fairer, are not comprehensively understood. Furthermore, the specific ways in which religion interfaces with formal justice, shaping its course and conduct, remain a subject of interest yet insufficiently explored. This gap in understanding is even more pronounced in the context of developing countries where religion holds an eminent place in societal dynamics and the rule of law is yet to gain a firm foothold.

In these countries, the symbiotic relationship between religious customs and formal legal structures might not be entirely harmonious, and there might exist notable discrepancies between the law as it is written and as it is practiced. For these nations, understanding how to strengthen the judiciary and correctly gauge the interplay between religious traditions and formal justice could play a crucial role in promoting societal harmony, advancing the rule of law, and steering their course towards sustainable development. Therefore, there is an urgent need for comprehensive research and informed dialogue in these domains.

In this comprehensive policy brief, we shed light on three paramount policy implications extrapolated from a careful examination of two research papers. These papers include a critical study on the process of judicial appointments (Mehmood 2022) and a compelling exploration of the complex relationship between the judiciary, religion, and politics as witnessed in the context of Pakistan (Mehmood and Seror 2023).

To begin with, we underscore the vital role that judge appointment procedures play in shaping judicial decision-making and, by extension, impacting the nation's economic landscape. We propose the argument that in situations where the prerogative of appointing judges rests solely with the President, there is a tangible risk of undermining the cornerstone of judicial independence. This could, in turn, lead to unfavorable distortions in the economy due to the prevalence of political favoritism.

Next, we strongly endorse the need for policymakers and international aid agencies to develop a more nuanced understanding of the existing cultural norms. Specifically, the focus should be on understanding how these cultural norms interact with political institutions and the judiciary. Our extensive research on Pakistan reveals a paradoxical scenario. Under the guise of democratic reforms, military regimes often implement measures intended not to increase democratic accountability but rather to solidify the power of ruling elites and elevate religious leaders to positions of authority. Hence, our analysis leans towards supporting policies aimed at bolstering the separation of power between religion and politics, thereby preventing undue influence and ensuring a healthy balance of power. Lastly, we advocate for backing or formulating judge selection procedures that inherently insulate them from the potential sway of political influence. This will serve to foster an environment where the judiciary can function independently and impartially. Such a judiciary not only promotes economic growth by ensuring equitable and predictable enforcement of the law but also strengthens political institutions by upholding the rule of law and maintaining checks and balances within the political system.

In summary, the first part, so far, has focused on the judicial appointment process and the interplay between the judiciary, religion, and politics, with specific attention to Pakistan. It underscores the importance of a fair judicial appointment process for maintaining judicial independence and warns against presidential monopolies. The brief also encourages understanding of local cultural norms and their interactions with political institutions, highlighting misuse of democratic reforms to consolidate elite power in Pakistan. It supports policies ensuring separation between religion and politics, and calls for judge selection procedures resistant to political influence, thereby promoting economic growth, reinforcing political institutions, and maintaining the rule of law.

In the second part of this policy paper, we relate these judicial institutions that are independent and free from political captures to global supply chains and global financial architecture. We discuss how we can fortify global supply chains using a rule-based approach, guided by the principles of the rule of law. Furthermore, we extend our discussion to how global financial architecture can be revamped using a rule-based approach. In both cases, we present policy recommendations to governments and international aid agencies. Our main message is as follows: Strengthening the judiciary system ensures a fair and transparent legal environment. This will subsequently bolster the rule of law, providing a more predictable and secure environment for economic activities. These improvements are instrumental in making global supply chains more resilient, by promoting transparency, and facilitating the speedy resolution of disputes. A stronger rule of law also mitigates risks and vulnerabilities in the supply chain, thereby reducing disruption and increasing reliability. Moreover, the rule of law plays a pivotal role in revamping the global financial architecture. By fostering an environment

of trust and predictability, it enhances investor confidence, promotes financial stability, and drives economic growth. A stronger financial architecture, governed by the rule of law, will be more robust in the face of economic shocks and uncertainties.

2. UNDERSTANDING JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

In this section, we examine two scholarly articles and deliberate on the types of policies necessary to enhance both judicial independence and accountability. First, Mehmood (2022) investigates the impact of a change in the judge selection procedure in Pakistan from presidential appointments to peer appointments. Empirical analysis found that this shift led to fewer rulings in favor of the government and improved the quality of judicial decisions. It suggests that the way judges are appointed can significantly influence judicial outcomes. Second, Mehmood and Seror (2023) systematically examine the impact of historical religious institutions on the rule of law in Pakistan. This research demonstrates that districts with a higher historical presence of such institutions have a weaker rule of law, a situation likely perpetuated by religious leaders securing political office. This significant and persistent degradation of the rule of law seems to be influenced by these leaders' use of their legitimacy to undermine the courts. It suggests that the manipulation of the legal system by religious leaders equates to expropriation of about 0.06% of the annual GDP.

2.1 Context

Pakistan gained its independence from British colonial rule in August 1947. It houses about 3% of the world population and is the fifth most populous country in the world (UN 2019). Pakistan is home to the largest number of ancient Sufi shrines (Aziz 2001), constructed around the 12th and the 13th centuries as tombs of Sufi saints. These shrines have continued to be places of worship and great reverence (Suvorova 2004). Religious leaders associated with the shrines are believed to be direct descendants of the Prophet Muhammad of Islam. They still enjoy great legitimacy among the local population, who seek shrine custodians' attention for divine intercession to resolve their problems.

2.2 Fit with Broader Literature

The research contributes to several strands of the existing literature on the independence of regulatory authorities and judicial behavior across the world. First, it speaks to the literature that studies the conditions for establishing rule of law in societies, and its consequences (e.g., Posner 1983; North and Weingast 1989; La Porta et al. 2004; Balas et al. 2009; Anderson 2018). For instance, Glaeser and Shleifer (2002) argue that the pressure exerted on the judiciary by the state in 12th- and 13th-century England and France may explain why these countries adopted common law or civil law systems. Indeed, a large literature has argued that the adoption of civil or common law systems had consequences for institutional development and economic growth across the world.¹ We complement and contribute to this literature, first, as we study the impact of selection procedures of public officials, and second, as we study how religion – another pillar of prosperity of societies – interacts with judicial decision-making and politics.

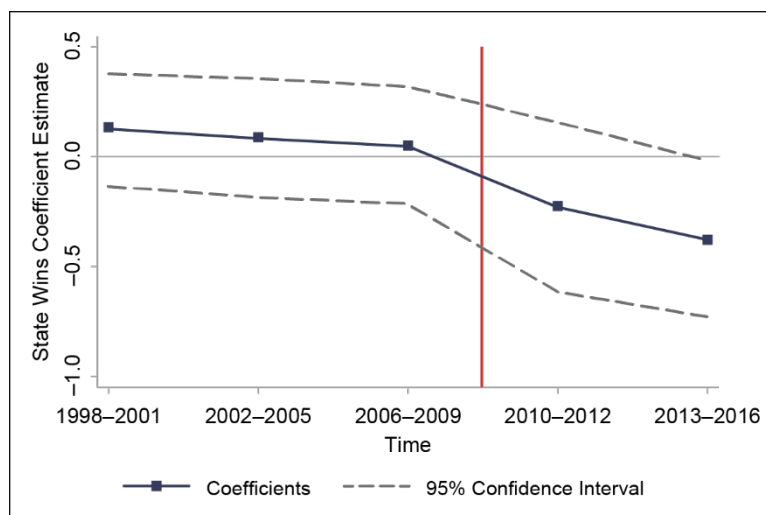
¹ See La Porta, Lopez-de Silanes, and Shleifer (2008) for a review of this literature.

Second, the independence of regulatory authorities and judges and the role played by selection and retention mechanisms are widely studied across the world. For instance, Lim (2013) studies the case of the selection of judges in the United States to show that elected judges rule differently than governor-appointed judges. The current research contributes to this research by providing another study of the selection mechanism of public officials where we compare selection by the President to selection by meritocratic judicial commissions.

2.3 Presidential Appointment of Judges Undermines Judicial Independence

Mehmood (2022) provides systematic empirical evidence that the institution of Presidential appointment exerts considerable influence on judicial independence, decision quality, and development in Pakistan. We find that a change in the procedure of selecting judges from Presidential appointment to appointment by judge peers significantly reduces rulings in favor of the government and that this reduction reflects an improvement in the quality of judicial decisions and development outcomes. Likewise, we find that the impact of selection reform is persistent, as demonstrated graphically in Figure 1. The analysis of mechanisms reveals that the results are explained by rulings in politically salient cases and by judges who are politically active prior to their appointments.

Figure 1: Time Varying Impact of the Judicial Selection Reform (90% CI)



Note: The figure presents coefficients and the corresponding 90% confidence intervals in the regressions of state wins on the fraction of newly appointed judges, instrumented with mandatory retirements together with case, judge, and district controls as well as district and year-fixed effects. The vertical line marks the timing of selection reform in 2010.

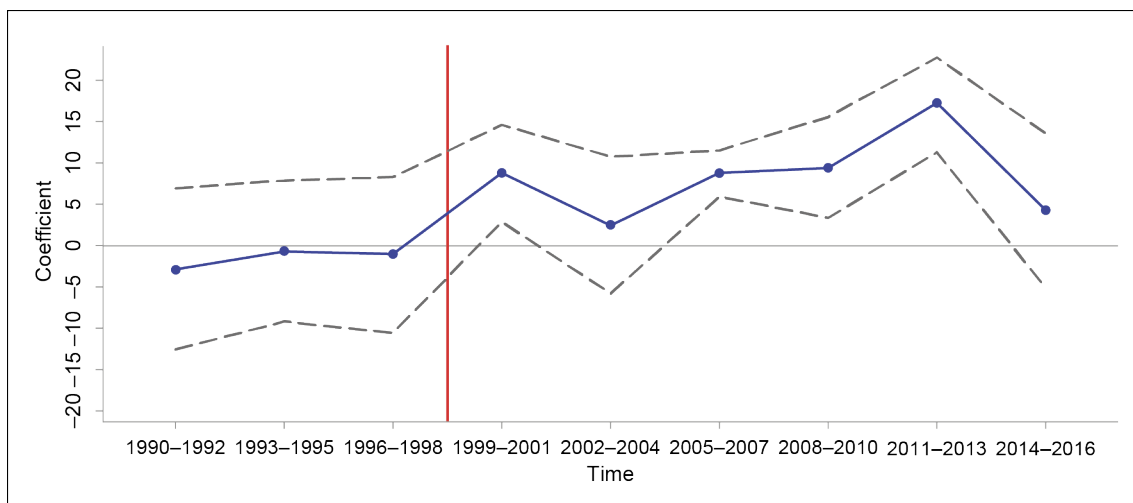
One should be careful in drawing policy conclusions from this study (Mehmood 2020) for contexts that are different from Pakistan. For instance, some judges are appointed by the President in the United States and France. However, the results of this study should *not* be extrapolated to these contexts where there are several checks to Presidential power in the judicial appointment. More importantly, the mechanism of reduced rulings in land expropriation cases by judges appointed by their peers is unlikely to hold in these countries. Nevertheless, there are several contexts where the

results of this paper may hold. For instance, India and Nigeria are both large countries where the results of this study may be valid. This is because these countries inherit a similar British colonial judicial structure and appoint judges similar to what was done prior to the 2010 selection reform in Pakistan.

2.4 Under Military Rules, Religion Decreases Judicial Independence

With data covering thousands of judicial cases, we demonstrate that in Pakistan, under military rule, in districts that had a higher historical shrine density, the fraction of judicial cases won by local governments is substantially larger. The effect of religion on judicial independence is substantial. On average, a one standard deviation increase in the number of shrines in a given district leads to a decrease in judicial independence of about 5 percentage points. The effects seem to be persistent, as shown in Figure 2. For instance, Aziz (2001) argue through extensive ethnographic and historical fieldwork that shrines in Pakistan can serve as a reasonable proxy for religious attitudes.

Figure 2: Time Varying Impact of Military Coup
(90% CI)



Note: The figure presents coefficients and the corresponding 90% confidence intervals in the regressions of state wins on two-year interval dummies interacted with shrine density in the district together with case, judge, and district controls as well as district and year-fixed effects. Cross sections between 1986 and 1989 are held as the comparison group. The vertical line marks the timing of the military coup that occurred in 1999.

Further, we show that religious shrines also lead to a lower quality of judicial decisions, while the effect is mostly observed in *politically salient* cases, which involves human rights, or land disputes with the state.

2.5 Decentralization Reforms Make Religious Elites Become Politicians

We provide evidence that a political channel explains our empirical findings. In particular, we demonstrate that under military rules, shrine leaders become local politicians. Indeed, once in power, the militaries *systematically* decentralize

political institutions, as they expect religious leaders to win local-level elections, and to assist them in consolidating their rule.

3. POLICY IMPLICATIONS

Using both our empirical evidence and a political economy theory, we make three key policy recommendations. These policy implications are in line with the policy suggestions that recent empirical and review papers propose (Liu et al. 2022; Ramos and Chen unpublished; Poblete-Cazenave 2023).

3.1 Avoiding the Trap of Always Supporting, or Designing, Seemingly Democratic Reforms when Religious Beliefs Are Rampant

3.1.1 Research Highlights

Our research highlights, first, the importance of carefully understanding the cultural context when evaluating, or designing, political reforms in the developing world. Seemingly democratic reforms may, in fact, have significant adverse impacts on the functioning of institutions. In the case of Pakistan, under military rules, major institutional reforms that instituted local elections were primarily aimed at entrenching the rulers rather than democratizing. Political decentralization favored the emergence of a new local political elite composed of religious leaders. The religious leaders, in turn, took advantage of their divine legitimacy in the eyes of local populations to influence judges in politically salient judicial cases.

3.1.2 Lessons Learned

The case of political reforms in Pakistan during military rule provides salient lessons regarding the potential pitfalls of pushing for ostensibly democratic reforms in a sociocultural context steeped in religious beliefs. These lessons underscore the intricacies and potential unintended consequences of such reforms, informing a more nuanced approach to policy design and implementation.

The Complex Interplay between Politics and Religion

One of the key lessons learned is the complex interplay between political reforms and religion in shaping the local political landscape. In the case of Pakistan, the religious leaders not only filled the power vacuum created by decentralization but also leveraged their religious legitimacy to influence judicial decisions, thereby bypassing democratic processes. This points to the necessity of a more nuanced understanding of the intersectionality of politics and religion when designing democratic reforms.

Unintended Consequences of Decentralization

While political decentralization is often lauded as a democratic ideal, the Pakistani case demonstrates that it can inadvertently facilitate the emergence of alternative power structures. The ascendancy of religious leaders to political power following decentralization signals the need for a more cautious and calculated approach to power devolution, ensuring that appropriate checks and balances are in place to prevent the co-opting of the political system by specific interest groups.

Democratization vs. Entrenchment

Ostensibly democratic reforms can sometimes serve to entrench existing power structures rather than democratize them. The institutional reforms under Pakistan's military rule sought to solidify the control of the rulers rather than promote genuine democratic processes. This underscores the importance of critically assessing the underlying motivations and potential impacts of proposed reforms, rather than simply endorsing them based on their "democratic" label.

The Importance of Institutional Independence

The influence wielded by religious leaders over judicial decisions highlights the critical need for institutional independence. The integrity and impartiality of institutions, particularly the judiciary, can be severely compromised without safeguards protecting them from undue external influence. This reiterates the importance of building robust, independent institutions as a cornerstone of democratic reforms.

These lessons emphasize the complexities of implementing democratic reforms in regions where religious beliefs predominate. The interplay between religion, politics, and the decentralization process can yield unexpected outcomes that can, in turn, impact the success of democratic transitions. It is thus crucial for policymakers to take these lessons into account, in order to better anticipate potential challenges and design more effective, contextually appropriate reforms.

3.1.3 The Roadmap of Practical Implementation

Contextual Analysis

A deep understanding of the cultural, religious, and societal landscape is pivotal prior to initializing political reforms. In-depth research should be undertaken to comprehend these nuances, which involves a thorough investigation into the historical context, prevalent religious and societal norms, and the intricacies of political power dynamics. This contextual analysis should form the cornerstone of policy design, allowing policymakers to anticipate potential unintended consequences, thereby shaping more effective and nuanced reform strategies.

Stakeholder Engagement

Active involvement of local stakeholders is a critical ingredient in the policy design and implementation process. This engagement should extend beyond government officials to include political, religious, and community leaders, and even grassroots organizations and civil society. By creating avenues for dialogue and collaboration, these diverse voices can offer invaluable insights into the sociopolitical dynamics that could influence the outcome of the reforms. Such an inclusive approach also fosters a sense of local ownership and buy-in, which can enhance the legitimacy and sustainability of the reforms.

Long-term Monitoring and Evaluation

The impact of reforms cannot be ascertained without a robust system for long-term monitoring and evaluation. This requires the establishment of clear metrics for success, and a commitment to regular, thorough assessments of the reforms' progress and effectiveness. Policymakers must recognize that reforms are not a "one-size-fits-all" solution and should be ready to revisit, recalibrate, and fine-tune the strategies according to the evolving context and outcomes of the evaluation process.

Building Institutional Capacity

Policies should focus on strengthening institutional capacity to prevent the usurpation of power by nonstate actors. This involves measures to promote good governance practices, such as transparency, accountability, and participation. It also requires efforts to build the capacities of public officials, fostering a culture of professionalism and respect for democratic principles. Investing in the training of these officials, particularly in areas such as judicial independence and rule of law, can play a crucial role in ensuring that institutions can function autonomously and effectively, thereby making them resistant to undue influence.

Promoting Public Awareness and Participation

Successful democratic reforms necessitate an informed and active citizenry. Policies should therefore include initiatives aimed at promoting public awareness of democratic principles and processes, as well as the specific objectives and implications of the proposed reforms. This can be achieved through various means, such as education programs, public consultations, and media campaigns. Encouraging public participation in political processes, from elections to policy formulation, can further enhance the sense of democratic ownership and accountability.

By incorporating these elaborated recommendations into the policy design and implementation process, policymakers can mitigate the risks associated with seemingly democratic reforms in contexts where religious beliefs predominate, and instead foster a more resilient and inclusive democratic system.

3.1.4 Concluding Messages

Political reforms in regions where religious beliefs predominate need to be carefully designed and implemented, taking into account the sociocultural context and power dynamics. By adopting a nuanced approach and incorporating the above recommendations, international policymakers can avoid the pitfalls associated with unconditional support for seemingly democratic reforms. In doing so, we can work towards the goal of meaningful, sustainable democratic reform that respects and acknowledges the complexities of different societies, promoting truly inclusive political participation.

3.2 Promoting More Separation Between Religion and Politics

3.2.1 Research Highlights

Our research demonstrates a need for stringent policies that promote the separation of religion and politics in developing countries. We discovered that not only is the judiciary susceptible to manipulation by the military elite but it also risks being influenced by religious elites who ascend to political office. By enacting reforms and legislations that limit the potential for religious political leaders to hold office, we can reduce the chances of religious leaders abusing their power.

3.2.2 The Dangers of Elite Capture

The intricate entanglement of religious elites in politics, particularly when they transition into local political roles, poses a significant risk to democratic governance in developing countries. The term “elite capture” refers to a situation where individuals or groups in positions of power and influence, in this case religious elites, wield their authority to sway policy decisions and resource allocations

to their benefit, thus undermining democratic processes and institutions. This phenomenon, when left unchecked, can destabilize the integrity of crucial democratic institutions, with the judiciary being a prime example.

Undermining Judicial Independence

Judicial independence is a cornerstone of democratic societies, ensuring fair and unbiased rulings that uphold the rule of law. However, when religious elites ascend to political power, they often exploit their positions to sway judicial decisions. This undermines the impartiality of the judiciary, thereby eroding public trust and confidence in legal institutions.

Concentration of Power

Religious political leaders often leverage their divine legitimacy to consolidate power and influence within local communities. This concentration of power can distort democratic processes and decision-making, leading to policies and resource allocations that favor specific religious or sectarian groups at the expense of overall societal development.

Potential for Abuse of Power

The entrenchment of religious elites in political office creates conditions ripe for abuse of power. By exploiting their political positions and religious influence, these elites can manipulate political, economic, and societal outcomes for their own benefit, exacerbating inequalities and fostering social unrest.

Hindrance to Democratic Development

The pervasive influence of religious elites in politics can stifle democratic development. By dominating political discourse and decision-making, these elites can hinder the evolution of a diverse and pluralistic political environment, thwarting the growth of other political factions and curtailing the broader democratic process.

Risk of Sectarian Tensions

The rise of religious political leaders can exacerbate sectarian tensions, particularly in religiously diverse societies. As religious leaders ascend to political power, they may advance policies that favor their own religious groups, leading to discrimination and potential conflict among different sects.

In light of these potential dangers, it is imperative to implement robust policies that mitigate the risks of elite capture by religious political leaders. Such strategies should aim to promote the separation of religion and politics, reinforce judicial independence, and foster political pluralism in developing countries.

3.2.3 Policy Recommendations

To address the issue of elite capture in developing countries where religious political leaders can potentially abuse their power, a multi-pronged approach is necessary. The following policy recommendations present a road map for creating more robust barriers between religion and politics, particularly within the judiciary.

Implementing Legislative Constraints

Legislation should be enacted to curtail the extent to which religious political leaders can hold office. This might encompass restrictions on religious leaders holding dual roles in religious and political institutions, or it may involve implementing “cooling-off” periods between holding religious and political offices. Such legislation would help ensure the separation of religious and state affairs, thereby reducing potential conflicts of interest and abuses of power.

Strengthening Judicial Independence

It is vital to safeguard the judiciary from undue external influence by bolstering institutional safeguards. Mechanisms need to be established to uphold principles of transparency, impartiality, and accountability within the judicial system. Furthermore, capacity-building initiatives for judicial officers should be implemented, providing them with training on managing potential influences and pressures, upholding the rule of law, and delivering impartial judgments.

Promoting Political Pluralism

Fostering an environment of political pluralism can help dilute the concentration of power among religious political leaders. Policies should be introduced to encourage representation from diverse religious, ethnic, and socioeconomic backgrounds, ensuring a more balanced, inclusive, and resilient political system. Such pluralism can foster healthy debate and decision-making that truly reflects the diverse interests of the society.

Public Awareness and Participation

Active public engagement is integral in mitigating the risks posed by the amalgamation of religion and politics. Policies should be designed to engage the public in open conversations about the role of religion in politics and the dangers of its misuse. This can be facilitated through education programs, public debates, town hall meetings, and media campaigns. Furthermore, the public should be encouraged to participate actively in democratic processes, from elections to policymaking, thereby enhancing democratic ownership and accountability.

International Support and Oversight

In our interconnected world, international bodies can play a critical role in overseeing the implementation of reforms and providing technical assistance. The international community can apply diplomatic pressure and offer resources to support the separation of religion and politics. Additionally, international monitoring can help ensure adherence to democratic principles and prevent potential abuse of power by religious political leaders.

These elaborated policy recommendations present a comprehensive strategy for promoting the separation of religion and politics in developing countries. It's crucial that these recommendations be tailored to the specific context and culture of each country to ensure their effectiveness and sustainability.

3.2.4 Concluding Messages

Promoting a clear demarcation between religion and politics, especially in societies where the two are deeply intertwined, presents a significant challenge. However, as the dangers of elite capture by religious political leaders indicate, it's a necessary pursuit to safeguard the integrity of democratic institutions, particularly the judiciary, and to uphold democratic governance.

The interplay between religion and politics is complex and dynamic. While religion can undoubtedly play a positive role in shaping societal values and norms, its amalgamation with politics can often lead to an imbalance of power, the potential abuse of power, and the undermining of democratic institutions. Particularly in developing countries, where institutional checks and balances may not be robust, this risk is heightened.

Our proposed policy recommendations offer a comprehensive and multifaceted approach to mitigating these risks. By implementing legislative constraints, strengthening judicial independence, promoting political pluralism, fostering public awareness and participation, and seeking international support, we can move towards achieving a healthier separation of religion and politics.

Nevertheless, it's essential to acknowledge the complexity of this task. The cultural, societal, and historical contexts of each country must be considered when designing and implementing these policies. Broad, one-size-fits-all solutions are unlikely to be effective; instead, strategies must be nuanced, context-specific, and flexible enough to evolve over time in response to changing circumstances and outcomes.

The road to promoting a greater separation between religion and politics may be long and fraught with challenges. However, with the right policies in place, coupled with a commitment to democratic principles and human rights, it's a path that can lead towards more equitable, inclusive, and resilient societies. Thus, it's a journey well worth undertaking, for the sake of current and future generations.

3.3 Designing Selection Procedures for Judges that Detach Them from Political Influences

3.3.1 Research Highlights

Developing countries, especially when religious beliefs are rampant, require stronger safeguards to protect judges from bribes and threats from politicians. For instance, in Pakistan, legislations preventing executive orders such as the "Prime Minister's Assistance Package" for judges that rewards judges with houses may be deemed illegal. More broadly, the procedures for the selection of judges by executive office holders may also contribute to the entrenchment of political elites in the judicial structure. For instance, the move away from Presidential appointment of judges to appointment by judge peers improved the level of judicial independence in Pakistan (Mehmood 2022). Such reforms that insulate the judiciary from both religious and political elites may also contribute to improving institutional development.

3.3.2 The Threat to Judicial Independence

The independence of the judiciary is a fundamental pillar of any democratic society. It serves as a bulwark against arbitrary governance and ensures that the rule of law is upheld. However, in developing countries, particularly those where religious beliefs are prominent, this crucial independence is often threatened by various mechanisms that can exert undue political and religious influence. Herein lies the twofold threat: bribery and direct political interference in the selection of judges.

Bribery and Coercion

In countries where political and religious beliefs intertwine, politicians often leverage their influence to manipulate judicial outcomes. One common method is through bribery and coercion, where judges may be offered financial incentives or threatened with punitive measures should they fail to rule in the politicians' favor. An example of this is the "Prime Minister's Assistance Package" in Pakistan, which rewards judges with tangible assets such as houses. Such actions not only undermine the integrity of the judiciary but they also erode public trust in the legal system.

Political Interference in Judge Selection

Another major threat to judicial independence arises from the procedures employed for selecting judges. When executive office holders, who are often political elites themselves, play a significant role in appointing judges, there is a risk of politicizing the judiciary. This involvement may lead to the entrenchment of political elites within the judicial structure, compromising its neutrality and creating an inherent bias towards the ruling political establishment. This form of political influence can have long-lasting implications, as the judiciary becomes less a guardian of the rule of law and more an instrument of the political elite.

Absence of Merit-based Selection

The lack of a transparent, merit-based selection process for judges is another factor contributing to the erosion of judicial independence. When appointments are made based on political affiliations, personal connections, or religious biases rather than on merit and capability, the judiciary's effectiveness and credibility are significantly compromised.

Lack of Institutional Safeguards

Developing countries often lack robust institutional safeguards to protect the judiciary from political and religious interference. This includes legislation to deter and penalize interference, strong professional standards and codes of conduct, and independent oversight bodies to monitor the judiciary's integrity.

Societal Pressure and Cultural Norms

In societies where religion is deeply ingrained, societal pressures and cultural norms can also exert indirect influence on the judiciary. Judges may face pressure to rule in ways that conform to the prevailing religious beliefs and norms, even when these conflict with the principles of justice and fairness.

Addressing these threats is crucial in safeguarding judicial independence. This requires implementing policies that mitigate political influence, adopting fair and transparent judge selection procedures, enhancing judicial training, and fostering a culture of integrity within the judiciary.

3.3.3 Policy Recommendations

To effectively combat the threats to judicial independence, a comprehensive and nuanced approach is needed. The following policy recommendations are designed to insulate the judiciary from both political and religious influences, ensuring its position as a steadfast guardian of justice, fairness, and the rule of law.

Legislative Reforms

Legislative measures should be enacted to prohibit practices that allow for political manipulation of the judiciary. Such measures might include laws that make it illegal for executive orders to offer tangible benefits to judges. This legislative approach not only prevents the fiscal incentivization of judges by political entities but also sends a clear message that such behavior is not condoned in a democratic society.

Reforming Selection Procedures

Moving away from an executive-centric appointment system towards a more balanced and independent selection process is critical. Judge selection should be carried out by a judiciary council composed of judges and legal professionals to minimize political interference. This process should emphasize transparency, impartiality, and merit above all else, ensuring that only the most competent individuals are chosen to uphold the law.

Robust Judicial Training

Judges should be equipped with the necessary tools and knowledge to uphold their independence in the face of potential political or religious pressures. This can be achieved through rigorous training programs focused on ethical conduct, resistance to bribery, handling of political pressures, and adherence to the rule of law. These programs should also highlight the importance of maintaining a clear separation between personal beliefs and professional responsibilities.

Establishing Independent Oversight Bodies

Independent bodies should be set up to monitor the judiciary, ensuring adherence to professional standards and providing a mechanism to investigate and address allegations of misconduct. These bodies can also help to promote transparency in judicial appointments and decision-making, further bolstering the public's trust in the judiciary.

Public Awareness Campaigns

Engaging the public through awareness campaigns can help foster a culture of judicial independence. These campaigns can inform the public about the importance of an independent judiciary, the dangers of political interference, and the role of the judiciary in upholding democratic principles. Public engagement can also foster a sense of civic duty to hold the judiciary accountable.

International Cooperation

Partnering with international bodies can provide additional support in efforts to promote judicial independence. These organizations can provide resources for training, policy development, and legislative reform. Additionally, they can serve as external monitors of judicial processes, further ensuring transparency and fairness. By implementing these elaborated policy recommendations, we can mitigate the influence of political elites in the judicial structure, promote judicial independence, and contribute to the broader goal of institutional development in developing countries. The recommendations are not meant to be one-size-fits-all solutions; they should be adapted to fit each country's unique sociopolitical context for effective implementation.

3.3.4 Concluding Messages

The imperative of safeguarding judicial independence in developing countries, particularly where religious beliefs predominate, cannot be overstated. It's the linchpin that upholds the rule of law, ensures fair treatment, and fosters public trust in the judicial system. When judicial independence is compromised through bribery, coercion, and biased selection procedures, it undermines the very fabric of democratic governance.

However, achieving and maintaining judicial independence is not a straightforward process, nor is it a one-off effort. It requires a concerted and ongoing commitment, supported by comprehensive and multifaceted policy initiatives. These include implementing legislative reforms that curb political interference, adopting peer-based judge selection procedures, instituting robust judicial training, establishing independent oversight bodies, raising public awareness, and fostering international cooperation.

Yet, it's vital to recognize that each of these policy recommendations needs to be tailored to the specific sociopolitical, religious, and cultural context of each country. No two societies are alike, and therefore a one-size-fits-all approach can prove to be counterproductive. Contextual adaptation and localization of policies are key to their success.

Inevitably, obstacles will be encountered along the path to securing judicial independence. These can stem from resistance by entrenched political elites, societal reluctance to change, or institutional inertia. However, overcoming these challenges is not an insurmountable task. With the right blend of political will, societal commitment, and international support, significant strides can be made in shielding the judiciary from political and religious influences.

Judicial independence is not merely an abstract concept or an ideal to aspire to. It's a crucial factor that can shape the course of a nation, influence the lives of its people, and determine the strength of its democratic institutions. And so, the efforts to uphold judicial independence in developing countries should remain a high priority on the global governance agenda.

4. TOWARD A RULE-BASED APPROACH TO MAKING GLOBAL SUPPLY CHAINS MORE RESILIENT

In this section, we broaden our discussion to explore how we can fortify global supply chains using a rule-based approach, guided by the principles of the rule of law.

4.1 The Current State of Global Supply Chains

Global supply chains play a crucial role in today's interconnected world economy. They enable the movement of goods, services, and capital across nations, fostering economic growth and prosperity. However, the complexity and vast geographical reach of these chains also pose considerable challenges. This section aims to provide a comprehensive overview of the current state of global supply chains.

4.1.1 Vulnerabilities and Challenges

Today's supply chains face multiple vulnerabilities due to their expansive and intertwined nature. They span across many countries, often depending heavily on a limited number of critical nodes or regions. This structure poses risks as a disruption in one node could lead to a ripple effect across the entire chain. Global supply chains are vulnerable to a range of disruptions, including but not limited to:

Geopolitical Tensions

Trade wars, tariffs, embargoes, and political instability can lead to abrupt changes in trade routes and costs, potentially causing supply chain disruptions.

Natural Disasters and Climate Change

Natural disasters such as earthquakes, floods, and hurricanes, or prolonged climate events like droughts, can interrupt production and transportation routes. Climate change exacerbates these threats with the increased frequency and intensity of extreme weather events.

Global Pandemics

As illustrated by the COVID-19 pandemic, public health crises can severely disrupt global supply chains by impacting labor availability, causing sudden shifts in demand, and leading to policy measures such as lockdowns and travel restrictions that interrupt normal business operations.

Cybersecurity Threats

As supply chains become more digitally interconnected, they are increasingly susceptible to cyber threats, including hacking, ransomware, and data breaches, potentially causing significant disruptions.

4.1.2 Interdependency and Risk

Global supply chains are characterized by a high degree of interdependency. A product may be designed in one country, manufactured in another, assembled in a third, and sold worldwide. This complexity can magnify the impact of disruptions, causing them to propagate along the chain.

Moreover, the risk is further amplified by the lack of standardized rules and regulations for managing and mitigating supply chain risks on a global scale. Different countries have their own laws, regulations, and standards, which can create discrepancies and uncertainties, adding another layer of complexity to supply chain management.

4.1.3 Technological Transformations

The ongoing digital transformation of supply chains presents both opportunities and challenges. Technologies such as the Internet of Things (IoT), artificial intelligence (AI), blockchain, and automation can significantly enhance supply chain efficiency, transparency, and resilience. However, they also introduce new risks, such as cybersecurity threats, data privacy issues, and a dependence on reliable digital infrastructure.

4.1.4 Sustainability Concerns

In the face of climate change and increasing societal expectations, there is a growing emphasis on sustainability in supply chains. However, implementing sustainable practices, such as reducing carbon footprint, sourcing from ethical suppliers, and minimizing waste, can be challenging given the complexity and scope of global supply chains.

Given these vulnerabilities, risks, transformations, and sustainability concerns, it is evident that the current state of global supply chains demands an effective, standardized, and comprehensive approach to enhance their resilience. As this paper argues, the principles of the rule of law and a rule-based approach offer a promising way forward.

4.2 Rule of Law and Global Supply Chains

As we discussed above, the global economy is an intricately interconnected web of supply chains. Every transaction we make, every product we purchase, is a complex culmination of various processes – from the sourcing of raw materials to manufacturing and distribution, each stage involving numerous entities across countries and continents. The COVID-19 pandemic has brought to the fore the vulnerabilities of these global supply chains, causing severe disruptions to international trade and commerce.

Supply chains today have evolved into complex global networks. Their vast geographical span, coupled with an increasing dependence on a limited number of key suppliers or regions, has made them vulnerable to a multitude of risks. These risks, including natural disasters, geopolitical tensions, trade disputes, and global pandemics, have the potential to cause significant disruptions, as seen recently.

Moreover, the interconnectedness of global supply chains means that disruptions in one part of the chain can have a ripple effect, causing widespread damage to the global economy. This has been glaringly apparent during the COVID-19 pandemic, where the initial disruption in the supply of raw materials from the People's Republic of China (PRC) led to global shortages of various products, ranging from automotive parts to medical supplies.

Despite their complexity and vulnerability to disruptions, global supply chains play a crucial role in driving economic growth, creating jobs, and promoting development. They are vital for businesses to reach new markets, access diverse resources, and achieve efficiencies of scale. Therefore, it is imperative that these supply chains are made more resilient to mitigate the risks and minimize the impact of future disruptions.

This section puts forth the argument for reinforcing the rule of law and a rule-based approach as a means of achieving this resilience. The rule of law, with its emphasis on fairness, equality, and predictability, can provide a stable framework for managing and mitigating risks in global supply chains. Meanwhile, a rule-based approach can standardize procedures, promote transparency and accountability, and ensure an efficient and effective response to disruptions.

The following sections will delve deeper into the concept of the rule of law and its implications for global supply chains, propose a rule-based approach for increasing supply chain resilience, and offer recommendations on how to implement this approach effectively. The goal is to stimulate discussion, prompt action, and ultimately contribute to making our global supply chains more resilient, sustainable, and capable of withstanding future disruptions.

4.3 A Rule-Based Approach to Resilient Supply Chains

A rule-based approach is fundamental to fortifying the resilience of global supply chains. This method establishes clear standards and protocols, enhancing predictability, fostering transparency, and ensuring accountability. This approach comprises several key components, outlined in detail below:

Establishment of International Supply Chain Standard

A primary aspect of the rule-based approach is to create international standards for supply chain operations. These rules should encompass a broad spectrum of issues, ranging from ethical sourcing of raw materials and fair labor practices to environmental responsibility, quality control, and efficient logistics. The development of these standards should be informed by comprehensive risk assessments, considering potential disruptions from a multitude of sources, including geopolitical tensions, environmental disasters, public health crises, and technological failures. These standards should also provide best-practice guidelines for risk mitigation and disaster response, tailored to different industries and regions.

Enforcement Mechanisms

To ensure the effectiveness of these international standards, strong enforcement mechanisms should be put in place. These mechanisms may include regular audits conducted by an impartial international body to monitor compliance, alongside penalties for violations to deter noncompliance. On the other hand, a system of incentives can be designed to reward organizations that consistently comply with the standards and demonstrate good practices in supply chain management. These incentives can range from tax breaks and subsidies to preferential market access and positive public recognition.

Transparency and Accountability

Transparency is key to a rule-based approach. All stakeholders should have access to accurate, timely information about the supply chain processes and operations. This includes data on sourcing, production, and distribution, as well as risk assessment and mitigation efforts. Clear mechanisms should be established to assign and enforce accountability at every level of the supply chain. Each entity involved – from suppliers and manufacturers to distributors and retailers – should be accountable for complying with the international standards and for addressing any breaches promptly and effectively.

Use of Technology

Technological innovations, such as blockchain, artificial intelligence, and the IoT, can significantly enhance the implementation of a rule-based approach. Blockchain technology can ensure data integrity and transparency, artificial intelligence can help in forecasting potential disruptions and in decision-making during crises, and the IoT can facilitate real-time monitoring of supply chain operations. These

technologies can also aid in the enforcement of rules by automating audits and the detection of noncompliance, thereby increasing efficiency and reducing the possibility of human error or bias.

Continuous Improvement

The rule-based approach should not be static; it should allow for continuous improvement. Regular reviews of the rules and their effectiveness should be conducted and adjustments made based on new information, changing circumstances, or lessons learned from past disruptions. This flexibility will ensure that the approach remains relevant, effective, and adaptable to the dynamic global supply chain landscape.

Through the integration of these various components, a rule-based approach can significantly enhance the resilience of global supply chains, making them more robust and better equipped to manage and mitigate the risks of future disruptions.

4.4 Recommendations

Strengthening the resilience of global supply chains through the rule of law and a rule-based approach requires concerted effort at multiple levels. Below are detailed recommendations that can help implement this approach effectively:

International Cooperation

The development and enforcement of international supply chain standards necessitate extensive cooperation among countries. Governments should work together, either bilaterally or multilaterally, to align their policies and regulations concerning supply chains. International organizations such as the World Trade Organization, the United Nations, and the World Customs Organization can facilitate this cooperation by acting as a platform for dialogue and negotiation, developing common standards, and monitoring compliance. Regional blocs like the European Union, ASEAN, and the African Union can also play a crucial role in harmonizing rules within their respective regions and ensuring adherence.

Stakeholder Engagement

The success of the rule-based approach hinges on the active participation of all supply chain stakeholders. These stakeholders, including suppliers, manufacturers, distributors, retailers, and consumers, possess unique insights into different aspects of the supply chain and thus should be involved in the development and implementation of the rules. Engagement can be facilitated through regular consultations, workshops, and training programs. Additionally, platforms can be created for stakeholders to share their experiences, concerns, and suggestions, fostering a sense of ownership and commitment towards the rules.

Investment in Technology

The role of technology in enhancing supply chain resilience cannot be overstated. Governments and businesses should invest in the latest technological solutions like AI, blockchain, and the IoT to support the implementation of the rule-based approach. This may include developing or adapting these technologies to suit their specific needs, training staff to use these technologies effectively, and creating a regulatory environment that encourages technological innovation while ensuring data security and privacy.

Resilience-building Measures

While the rule-based approach provides a framework for managing supply chain risks, businesses should also undertake additional measures to increase their individual resilience. This includes diversifying their supply sources to reduce dependence on any single supplier or region, investing in advanced inventory management systems to manage stock efficiently, and developing contingency plans for various risk scenarios.

Public-Private Partnerships

Public-private partnerships (PPPs) can be instrumental in enhancing supply chain resilience. Governments and businesses can collaborate in areas such as infrastructure development, technological innovation, and training and education. These partnerships can leverage the strengths of both parties, with governments providing policy support and businesses bringing in industry expertise and innovation.

Education and Capacity Building

To ensure the effective implementation and sustainability of the rule-based approach, there needs to be a robust focus on education and capacity building. This involves educating stakeholders about the importance of supply chain resilience and their role in achieving it, training them in the use of technologies and best practices, and building their capacity to adapt to changes and respond to disruptions.

General Messages

These comprehensive recommendations aim to guide governments, businesses, and other stakeholders in their efforts to strengthen the resilience of global supply chains. By working together and adopting a rule-based approach guided by the rule of law, we can create more robust, efficient, and sustainable supply chains, capable of withstanding future disruptions and contributing to global economic stability and growth.

5. TOWARD A RULE-BASED APPROACH TO REVAMPING GLOBAL FINANCIAL ARCHITECTURE

In this section, we extend our discussion to how we can revamp global financial architecture using a rule-based approach. The global financial architecture (GFA) forms the core structure for international economic and financial systems, institutions, and rules. The latest financial crises and ongoing economic disparities underscore the critical need to reform the GFA, with the rule of law and a rule-based approach being key elements. This section aims to explore how implementing these principles can foster transparency, fairness, and stability, ultimately contributing to a more equitable global economy.

5.1 Rule of Law in the Global Financial Architecture

Definition and Importance

The rule of law is a principle of governance wherein all individuals, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. In the

context of the global financial architecture (GFA), the rule of law underpins the structure and integrity of international finance by ensuring that all players adhere to established norms, promoting transparency, accountability, and equitable treatment of countries. Adherence to the rule of law is critical in establishing a predictable and stable environment, deterring economic abuses and corruption, and protecting investors and countries from arbitrary treatment. It mitigates the risk of financial crises by enforcing financial regulations and standards. Furthermore, it ensures that every dispute will be subject to an impartial and nonarbitrary legal process, which can foster investor confidence and stability in the system.

5.1.1 Strengthening the Rule of Law in the GFA

Efforts to bolster the rule of law within the GFA must be multifaceted and comprehensive, encompassing institutional reforms, improvement of international legal frameworks, and robust enforcement mechanisms.

Enhancing Transparency and Accountability in IFIs

Decision-making processes within international financial institutions (IFIs) should be transparent and involve wider participation of member countries, minimizing the influence of dominant economies. The policies and decisions of these institutions should be clearly communicated and open to scrutiny, reducing opportunities for backdoor deals or biased decision-making.

Strengthening Legal and Regulatory Frameworks

To combat financial crimes like tax evasion, money laundering, and illicit financial flows, international legal and regulatory frameworks must be robust and harmonized. Stronger rules for cross-border transactions and financial reporting, with punitive measures for noncompliance, should be implemented. Countries must be encouraged to enact and enforce domestic laws in line with these international standards.

Improving Dispute Resolution Mechanisms

Existing dispute resolution mechanisms should be enhanced to deal with financial and trade disputes fairly and efficiently. These mechanisms should be accessible and cost-effective, ensuring that even economically weaker nations can engage without fear of financial ruin. Moreover, the arbitration and judgment processes should be clear, unbiased, and impartial.

Encouraging National Adherence to Rule of Law

While the rule of law at the global level is crucial, its national application is equally important. Nations must ensure that their domestic financial systems operate under the rule of law, effectively regulating financial markets, enforcing contracts, and ensuring property rights. International cooperation should be bolstered to support capacity-building efforts in developing nations to strengthen their legal and financial systems.

5.1.2 General Messages

By promoting the rule of law within the GFA, we can build a more just, stable, and resilient global financial system, instilling confidence and predictability in international financial transactions. It is a challenging task that requires international consensus and cooperation but is integral to ensuring a sustainable and equitable global financial future.

6. CONCLUDING REMARKS

In conclusion, the issues of judicial independence and accountability, the role of the rule of law in supply chain resilience, and its impact on global financial architecture are deeply interconnected. Enhancing judicial independence and accountability in developing nations is not merely a matter of domestic policy but a critical foundation for broader, more systemic transformations on the global stage.

Strengthening the judiciary system ensures a fair and transparent legal environment. This will subsequently bolster the rule of law, providing a more predictable and secure environment for economic activities. These improvements are instrumental in making global supply chains more resilient, by promoting transparency and facilitating the speedy resolution of disputes. A stronger rule of law also mitigates risks and vulnerabilities in the supply chain, thereby reducing disruption and increasing reliability.

The rule of law also plays a pivotal role in revamping the global financial architecture. By fostering an environment of trust and predictability, it enhances investor confidence, promotes financial stability, and drives economic growth. A stronger financial architecture, governed by the rule of law, will be more robust in the face of economic shocks and uncertainties.

In sum, the journey towards judicial independence and accountability in developing nations, and the enhanced role of the rule of law in global supply chains and financial structures, promises a future of greater economic stability, social justice, and resilience in the face of global challenges. As policymakers, we must drive this transformative process with determination, prudence, and an unwavering commitment to achieving a more equitable and sustainable global order.

Limitation

The policy implications drawn in this brief may be particularly relevant in countries geographically close to Pakistan. Indeed, shrine elites still play a key role in Pakistan, but also in India and Bangladesh. These countries are among the most populated in the world. Looking forward, then, the stakes of designing, supporting, and implementing efficient political reforms that promote more separation of powers, or that detach judges from political influences, may be particularly high.

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