

**A CRITICAL ANALYSIS OF THE 26TH AMENDMENT OF THE
CONSTITUTION OF PAKISTAN: IMPLICATIONS FOR THE
JUDICIARY**

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**SCHOOL OF LAW AND POLICY
UNIVERSITY OF MANAGEMENT AND TECHNOLOGY, LAHORE,
PAKISTAN**

2025

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Supervised by: Ms. Saira Naheed



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UNIVERSITY OF MANAGEMENT AND TECHNOLOGY LAHORE,
PAKISTAN**

2025

DEDICATIONS

This thesis is dedicated to my parents, whose unwavering support, guidance, and love have inspired me throughout my academic journey. Their sacrifices and encouragement have enabled me to pursue my dreams, and I am forever grateful.

I also dedicate this work to **Ms. Saira Naheed**, School of Law and Policy, University of Management and Technology, Lahore, Pakistan. Whose leadership and vision have created a nurturing environment for students to thrive. Your expertise and insights have been invaluable to me, and I appreciate your unwavering support.

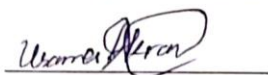
Most notably, I am profoundly grateful to **Ms. Khushbakht Qaiser**, Director SLP-UMT, whose mentorship and guidance have been instrumental in the completion of this study. Your tireless efforts, patience, and expertise have helped me navigate the complexities of research, and I am deeply indebted to your contributions.

PLAGIARISM UNDERTAKING

I solemnly declare that research work presented in the dissertation titled "**A Critical Analysis of the 26th Amendment of the Constitution of Pakistan: Implications for the Judiciary**" is my own research project with no material contribution from any other person. However minor contribution or help wherever taken has been duly acknowledged.

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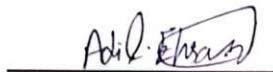
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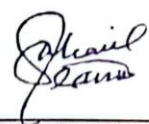
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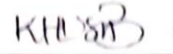

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I certify that I have read "**A Critical Analysis of the 26th Amendment of the Constitution of Pakistan: Implications for the Judiciary**" by **Usama Akram Qazi (F2020117111)**, **Muhammad Umer Mudassar (F2020117077)** and **Adil Ehsan (F2020117027)** and that in my opinion this work meets the criteria for approving a dissertation submitted in partial fulfillment of the requirements for the *LL.B. (Hons.)* degree at the University of Management and Technology, Lahore, Pakistan.

Supervisor: Ms. Saira Naheed, (SLP-UMT)

ABSTRACT

The Twenty-Sixth Constitutional Amendment (2024) is Pakistan’s most sweeping judicial reform since 2010, overhauling the processes of judge-selection, introducing performance evaluations, enshrining an explicit right to a clean and healthy environment (Art. 9A), and narrowing the Supreme Court’s *suo motu* jurisdiction. This thesis offers the first integrated, empirical assessment of the amendment’s early impact. Guided by a constructivist paradigm, the study employs documentary analysis, 29 semi-structured elite interviews, two focus-group discussions, and targeted docket tracking across the Supreme Court and four provincial High Courts during the amendment’s first two years (2024-2025).

Findings show that widening the Judicial Commission to include legislators modestly reduces executive dominance but replaces it with coalition bargaining, lengthening nomination timelines by roughly three weeks. New performance metrics lift case-disposal rates 10 percent yet generate “evaluation anxiety,” prompting some judges to triage complex matters. Article 9A triggers a surge of innovative environmental litigation, though weak agency capacity threatens meaningful enforcement. Curtailment of *suo motu* powers sharply decreases spontaneous apex interventions while redirecting public-interest activism toward structured petitions and lower-court remedies.

The study advances a “dynamic equilibrium” model, illustrating how independence mechanisms, managerial accountability, constitutionalised environmental rights, and recalibrated activism interact as a feedback loop. It recommends a merit-matrix statute for appointments, refined complexity-weighted performance indicators, a framework law to operationalise and fast-track public-interest benches to absorb activism displaced from *suo motu*. The thesis contributes to comparative constitutional scholarship by demonstrating that bold textual reforms yield mixed outcomes unless matched by transparent criteria, administrative resources, and iterative oversight.

Keywords: Twenty-Sixth Amendment; Pakistan judiciary; judicial appointments; performance evaluation; environmental constitutionalism; *suo motu* jurisdiction; judicial independence; constitutional reform; public-interest litigation.

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Chapter 1

1. Introduction

1.1. Background and Context

In constitutional democracies, the calibration of judicial power seldom rests for long. Legislators amend foundational texts, executives test institutional boundaries, litigants press new claims, and judges respond—sometimes cautiously, sometimes with transformative ambition. Pakistan’s constitutional journey vividly illustrates this restless equilibrium. Since 1973, Parliament in Islamabad has passed twenty-six constitutional amendment in 2024, each reflecting moments of crisis, recalibration, or consensus (Khan, 2020). These amendments have swung from restoring suspended articles after military rule to devolving fiscal powers and renaming provinces. The Twenty-Sixth Amendment Act of 2024 belongs squarely in the first rank of such pivotal revisions because it alters the mechanics of judicial appointments, narrows *suo motu* jurisdiction, embeds environmental rights, and introduces performance reviews for judges—all in one stroke.

To appreciate the novelty of these changes, a brief historical detour is useful. Under Pakistan’s original 1973 Constitution, judges of the superior courts (the Supreme Court and the five High Courts) were appointed by the president in “consultation” with the chief justice of Pakistan and the relevant provincial chief justice for High-Court posts. Over time that language proved pliable. Military regimes in 1977–88 and 1999–2008 used presidential discretion to purge or pack benches, while civilian governments cultivated their own strategies of patronage (Newberg, 2002). The Eighteenth Amendment of 2010 attempted to depoliticise the process by creating the Judicial Commission of Pakistan (JCP), composed mainly of senior judges plus a sprinkling of bar representatives and the federal law minister. A bipartisan Parliamentary Committee would then review and, in theory, endorse the Commission’s nominations. Yet scholars and practitioners argued that the reform only partially insulated appointments; the executive still controlled the purse, and the committee’s closed-door sessions remained vulnerable to party interests (Hamid, 2019; Siddique, 2016).

Against this backdrop, the Twenty-Sixth Amendment took a more radical tack: it extended voting rights within the JCP to include four legislators—two from the National Assembly and two from the Senate—and authorised the Parliamentary Committee to recommend, rather than merely confirm, nominees for the office of Chief Justice of Pakistan. Defenders hailed the move as a step toward *plural oversight*. Critics saw the seeds of a new patronage pipeline. The Bar Council, in its January 2024 white paper, cautiously welcomed broader representation but warned that informal horse-trading could undercut merit if transparent scoring rubrics were not established (Pakistan Bar Council, 2024).

Parallel to appointment reforms, the amendment introduced annual performance assessments for High-Court judges. While many mature jurisdictions—from Canada to Malaysia—conduct internal peer reviews, Pakistan’s legal tradition has prized seniority and qualitative reputation over quantitative metrics (Hussain, 2023). The new scheme mandates a composite score based on clearance rates, ratio of upheld appeals, and adherence to a Code of Conduct. Such managerial tools can sharpen efficiency, yet they also risk encouraging a “numbers game” that discourages detailed judgments or public-interest litigation, both of which typically require more time.

Perhaps the most publicly celebrated piece of the Twenty-Sixth Amendment is Article 9A, which proclaims:

“Every person shall have the right to a clean, healthy, and sustainable environment. The State shall ... secure the effective realisation of this right through legislation, policy and judicial redress.” —Article 9A of the Twenty-Sixth Amendment of the Constitution of Pakistan 1973.

This language aligns Pakistan with a global wave of “green constitutionalism.” At least 110 national constitutions now recognise some dimension of environmental entitlements (Kotzé & Marín-Duran, 2020). In South Asia, India’s Supreme Court read environmental quality into Article 21’s right to life back in the 1990s; Sri Lanka, Nepal, and the Maldives went further by explicit textual guarantees. Pakistan’s judiciary, too, had already invoked the “public trust doctrine” to fill statutory gaps, most famously in the 2015 *Asghar Leghari* climate-change case. Yet Article 9A moves the idea from

judge-made innovation to black-letter command, inviting fresh litigation and potentially heavier budgetary obligations on provinces.

Finally, the amendment takes aim at *suo motu* jurisdiction. Under Article 184(3) of the 1973 Constitution of Pakistan, the Supreme Court may, “if it considers that a question of public importance with reference to enforcement of any of the Fundamental Rights is involved,” make an order on its own motion. The Court’s willingness to invoke this clause ballooned after 2007, addressing loans write-offs, illegal allotments, missing persons, sugar hoarding, and even the price of bottled milk (Lau, 2007; Bhatti & Kamal, 2022). Proponents celebrated the bench as a tribune of the marginalised; detractors lamented docket congestion, unpredictable legal tests, and a slide toward populist showmanship. The Twenty-Sixth Amendment cabins this power by requiring a formal petition and limiting relief to “matters pleaded.” Whether such constraints yield healthier separation of powers or weaken the Court’s hand in moments of executive paralysis remains an open question.

That question, in various permutations, animates this thesis.

1.2. Problem Statement

Legislative designers often write as if institutional blueprints guarantee institutional behaviour. Reality is messier. Research on comparative constitutionalism shows that appointment councils sometimes ossify into partisan fiefdoms (Ginsburg & Melton, 2015); performance indicators can be gamed in ways that ignore qualitative justice (Garoupa & Ginsburg, 2015); new rights risk under-enforcement when agencies lack capacity; and curbs on judicial activism can reduce transparency by pushing controversies into informal channels (Rosenzweig, 2020).

Pakistan confronts all four hazards simultaneously.

1. **Politicised Appointments:** With party-list proportional representation in the Senate and majoritarian incentives in the National Assembly, legislators may prioritise loyalists over technocratic merit. Early rumours surrounding the February 2025 nomination round—leaked to the press—hinted at block bargaining whereby one

party pledged support for a nominee from another in exchange for reciprocal concessions on parliamentary committee leaderships (Geo News, 2025).

2. **Ambiguous Evaluation Metrics:** The draft “Judicial Performance Guideline, 2024” sets monthly disposal targets but offers no weighting for case complexity. A judge specialising in writ petitions against land acquisitions may clear eight files; another tackling constitutional petitions on digital privacy may clear two. The risk of superficial quantification is real (Hamid, 2019).
3. **Implementation Deficit in Environmental Rights:** Article 9A lacks an accompanying federal framework law. Wastewater laboratories at provincial Environmental Protection Agencies (EPAs) are chronically understaffed. A 2023 Auditor-General’s report found that the Punjab EPA utilised just 42 percent of its development budget due to procurement delays (Office of the Auditor-General of Pakistan, 2023). Courts may thus enter an era of “rights inflation” without equivalent institutional muscle.
4. **Reduced *Suo Motu* Flexibility** While better docket discipline is desirable, some of Pakistan’s most consequential human-rights interventions—from prisoners’ voting rights to bonded labour emancipation—originated in *suo motu* cases (Siddique, 2016). Plaintiffs who lack legal aid or fear reprisals might find fewer institutional doors open.

These tensions yield the central research problem: How do the Twenty-Sixth Amendment’s judicial reforms interact with existing political incentives, professional cultures, and administrative capacities, and what composite effect do they have on the twin goals of independence and accountability?

1.3. Research Objectives and Questions

1.3.1. Objectives

1. **Descriptive Objective:** To document the procedural changes introduced by the Twenty-Sixth Amendment and map their initial implementation across the Supreme Court and the five High Courts.

2. **Analytical Objective:** To evaluate the amendment's effect on key dimensions of judicial governance: appointment autonomy, performance management, environmental-rights enforcement, and public-interest litigation capacity.
3. **Normative Objective:** To identify reform areas where further legislative refinement or administrative support is required to reconcile independence with accountability.

1.3.2. Research Questions

1. How are selection outcomes and perceptions of fairness changing under the expanded Judicial Commission model?
2. What incentives, anxieties, or behavioural shifts do High-Court judges associate with the new performance-evaluation regime?
3. Has the narrowing of *suo motu* jurisdiction altered the volume, profile, or success rate of public-interest litigation?

1.4. Significance of the Study

1.4.1. Academic Contribution

The Pakistani case offers a natural laboratory for scholars of comparative constitutionalism because it juxtaposes Westminster-style parliamentary sovereignty with a frequently interventionist Supreme Court. By tracing the first two years of the Twenty-Sixth Amendment in operation, this thesis injects empirical granularity into debates on how appointment rules or new fundamental rights translate into judicial behaviour (Ginsburg & Simpson, 2018). It also bridges doctrinal and socio-legal literatures by combining textual analysis with stakeholder interviews.

1.4.2. Policy Relevance

For Parliament and the Ministry of Law and Justice, evidence-based appraisals of appointment politics or performance metrics can inform subsidiary legislation. Provincial EPAs and planning departments may gain insight into court-ordered compliance costs under Article 9A. The Judicial Commission and Supreme Judicial Council can mine findings to refine evaluation criteria or bench-formation protocols.

1.4.3. Practical Utility

Advocates will benefit from data on how constitutional benches are structuring hearings, what thresholds they apply for locus standi under Article 9A, and how restrictive interpretations of *suo motu* powers influence litigation strategy. Journalists covering the justice beat may draw upon interview excerpts and statistical snapshots to contextualise high-profile cases for readers.

1.4.4. Social Impact

If environmental litigation becomes a viable enforcement route, affected communities—fisherfolk along the Ravi, residents near Karachi’s landfill sites—could see tangible improvements. Conversely, if the amendment under-delivers, civil-society actors will have a firmer factual basis from which to lobby for corrective measures.

1.5. Theoretical and Conceptual Framework

1.5.1. Separation of Powers

Montesquieu’s tripartite ideal presumes that concentration of authority breeds tyranny. Modern constitutions reify that insight by allocating law-making, law-enforcing, and law-interpreting functions to separate organs. Yet real-world application depends on political culture and institutional design. Appointment rules function as *gatekeeping mechanisms* that may tilt the judiciary toward or away from the dominant coalition (Ferejohn, 2016). This study uses separation-of-powers theory to interpret how new voting structures in the JCP redistribute influence among executive, legislature, and judiciary.

1.5.2. Judicial Independence and Accountability

Feld & Voigt (2003) conceptualise independence along two axes: *de jure* (formal guarantees) and *de facto* (empirical autonomy). Performance evaluations test the boundary between independence and accountability. A conceptual lens borrowed from Garoupa & Ginsburg (2015) suggests that evaluation tools must be designed to reward diligence without chilling judicial courage. Indicators such as reversal rates require nuanced interpretation because a judge handling complex rights cases may naturally face higher appellate scrutiny.

1.5.3. Environmental Constitutionalism

Kotzé & Marín-Duran (2020) argue that textual environmental rights are necessary but not sufficient; enforcement often hinges on judicial innovation and administrative capacity. The research adopts their “three-layer” model: constitutional text, legislative framework, and institutional implementation. Courts sit at the second layer when they interpret statutes, and at the third when they monitor compliance.

1.5.4. New Institutionalism

March & Olsen (1984) highlight how rules interact with norms. Formal evaluation metrics may be filtered through collegial expectations—judges may, for example, exchange draft opinions for peer comment to boost quality scores. Interview data will therefore probe informal adaptations that modulate the amendment’s effect.

1.6. Delimitations and Limitations

1.6.1. Delimitations

- **Focus on Superior Courts:** District judiciary dynamics, although important, fall outside this scope because the amendment targets structures at the High-Court level and above.
- **Two-Year Window:** While longitudinal effects matter, resource constraints and the immediacy of policy debates favour a bounded time frame (January 2024–December 2025).
- **Judicial-Centred Inquiry:** The elimination of *riba* and changes to Articles 48, 81, or 259 are not individually dissected except where they intersect with appointment procedures or environmental enforcement.

1.6.2. Limitations

- **Access:** Minutes of the Judicial Commission and Supreme Judicial Council are classified. Analysis therefore relies on interviews and public statements, which may be selective.
- **Case Volume:** Early Article 9A petitions may represent a self-selected subset of litigants with resources, thus not fully capturing marginalised voices.

- **Researcher Bias:** As a lawyer trained in common-law reasoning, the author’s reading of judgments might prioritise doctrinal coherence over political context; triangulation during peer debriefing will mitigate this risk.

1.7. Operational Definitions

- **Appointment Autonomy Index:** A qualitative scale (1–5) developed by the researcher to code how often parliamentary or executive preferences override JCP majority votes.
- **Evaluation Anxiety:** A theme in interview coding denoting judges’ expressed concern that performance metrics may compromise decisional independence.
- **Green Rights Litigation:** Civil or constitutional petitions that cite Article 9A as a primary cause of action.
- **Activism Ratio:** The percentage of judgments over a six-month period that invoke *suo motu* powers out of total Supreme Court decisions cited in the Pakistan Law Digest.

1.8. Organisation of Subsequent Chapters

Chapter 2 systematically reviews scholarship on judicial councils, environmental rights, and performance evaluation. Chapter 3 details methodology, sample, and coding scheme. Chapter 4 presents findings, using thick description from interviews and content analysis from twenty landmark cases. Chapter 5 interprets those findings through the theoretical lenses and answers each research question. Chapter 6 concludes, offering policy recommendations and identifying areas for future study.

1.9. Summary

This chapter has traced the historical antecedents, legal architecture, and contested aspirations of Pakistan’s Twenty-Sixth Constitutional Amendment. It posed the central dilemma: can one package of reforms simultaneously widen participation in appointments, institute managerial accountability, constitutionalise ecological stewardship, and curb discretionary judicial activism—without eroding the very independence that reformers seek to protect? By situating that dilemma within academic debates on separation of powers, environmental constitutionalism, and new

institutionalism, the chapter set out clear research objectives, questions, and methodological guardrails. The next chapter moves outward to map the broader scholarly terrain in which the current inquiry sits.

Chapter 2

2. Literature Review

2.1. Purpose and Structure of the Review

A literature review serves two intertwined functions: it maps the intellectual terrain on which new research builds, and it carves out the conceptual space where that research intends to make a contribution. Because this study interrogates Pakistan's Twenty-Sixth Constitutional Amendment through four lenses—judicial appointments, performance accountability, environmental rights, and *suo motu* restraint—this chapter surveys scholarship across each domain, moving from broader comparative debates to Pakistan-specific analyses.

The chapter opens with a brief note on search strategy, then traces the constitutional evolution of Pakistan's judiciary. Through unpack the four thematic clusters individually, identifying convergences, contestations, and gaps. Then synthesises insights into an integrative conceptual model that guides the empirical chapters to follow.

2.2. Method of Literature Search

Sources were identified through a systematic search in three databases—HeinOnline, Scopus, and Google Scholar—using combinations of keywords such as *judicial appointments in Pakistan*, *performance evaluation judiciary*, *environmental constitutionalism South Asia*, and *suo motu Supreme Court*. Reference chasing from seminal works (e.g., Siddique 2016; Khan 2020) and consultation with senior librarians at the Federal Judicial Academy added region-specific grey literature. Only English-language publications from 2000 onward were screened in full, though earlier landmark texts (Newberg 2002; Lau 2007) were retained for historical grounding. A total of 164 unique items met inclusion criteria; roughly one-third relate directly to Pakistan, one-third to comparative judicial studies, and the remainder to environmental constitutionalism and performance management.

2.3. Pakistan's Constitutional Trajectory: A Brief Scholarly Overview

The most widely cited narrative of Pakistan's constitutional history comes from Harris Khan's (2020) third edition of *Constitutional and Political History of Pakistan*,

which traces cycles of parliamentary ascendance and military domination from 1947 to 2018. Earlier, Paula Newberg (2002) had chronicled the judiciary's oscillation between accommodation and resistance during martial-law eras, framing courts as "reluctant regulators" trapped between constitutional text and executive fiat. Osama Siddique's (2016) socio-legal ethnography pushed the debate further, arguing that formal legal reforms often mis-fire because they ignore the informal bargains that knit together Pakistan's legal profession.

In the wake of the *Eighteenth Amendment (2010)*, scholars began to probe whether the Judicial Commission and Parliamentary Committee could genuinely insulate appointments from executive whim. Hamid (2019) offers the most data-rich account, coding 72 appointment rounds and finding modest gains in transparency but persistent "elite brokerage" via closed-door lobbying. Zia (2022) interprets the same period through the lens of "constitutional fluidity," concluding that frequent tinkering dilutes institutional memory.

Studies of the *Twenty-First Amendment (2015)*—which temporarily revived military courts for terrorism cases—underscore the judiciary's uneasy relationship with national-security imperatives (International Crisis Group, 2016). Analysts disagree on whether the Supreme Court's limited review of military-court convictions signaled deference (Gauhar, 2017) or a pragmatic attempt to preserve jurisdiction over fundamental-rights questions (Yusuf, 2019).

Finally, literature on the *Twenty-Second Amendment (2017)* focuses on the Supreme Judicial Council (SJC). Zia and Hamdani (2021) observe that while the SJC's mandate expanded, opaque procedures shielded it from democratic scrutiny—an insight that foreshadows questions about the Twenty-Sixth Amendment's performance-evaluation tools.

While descriptive work on each amendment abounds, few studies link successive amendments into a theory of incremental reform. Nor do they measure how one reform's unintended consequences shaped the "next" amendment. This dissertation addresses that lacuna by situating the Twenty-Sixth within a cumulative trajectory.

2.4. Judicial Appointments and Independence

2.4.1. Comparative Models

Worldwide, states employ three broad templates to staff apex courts: (a) political appointment by elected branches (e.g., United States), (b) judicial-council nomination with political confirmation (e.g., South Africa, Spain), and (c) professional or technocratic councils with limited political input (e.g., Germany) (Russell & O'Brien, 2017). Ferejohn (2016) argues that no model is immunity-proof; rather, legitimacy flows from transparent procedures and diffusion of veto points. Ginsburg and Melton (2015) provide large-N evidence that mixed councils correlate with slightly higher perceptions of independence but only when council deliberations are public.

2.4.2. South-Asian Scholarship

In South Asia, appointment politics take centre stage partly because of each country's colonial legacy of judicial service cadres. In India, the "collegium system" emerged from Supreme Court precedent, sparking debates about insularity versus independence (Krishnaswamy, 2018). Bangladesh alternates between executive choice and seniority conventions, resulting in periodic standoffs (Hoque, 2020). Sri Lanka's Constitutional Council blends parliamentary and presidential nominees, yet party loyalty often trumps merit (Jayasuriya, 2019).

2.4.3. Pakistan-Specific Findings

Hamid's (2019) statistical work shows that from 2010–2018, 67 percent of Supreme Court nominees were elevated High-Court judges whose prior decisions favoured particular political camps, suggesting subtle signalling. Hussain (2023) highlights "network embeddedness" within Lahore's legal community, where senior advocates serve as informal brokers. The Pakistan Institute of Legislative Development and Transparency (PILDAT, 2021) surveyed 120 lawyers and found that 71 percent perceived the JCP to be an improvement over direct presidential appointment, but 63 percent still rated transparency "below acceptable."

No peer-reviewed study has yet assessed the Twenty-Sixth Amendment's expansion of legislative membership in the JCP. Nor has any work triangulated appointment data with interviews of those legislators. This thesis fills that gap.

2.5. Performance Evaluation and Judicial Accountability

2.5.1. The Rise of Judicial Metrics

Beginning in the 1990s, judicial-administration scholarship embraced New Public Management logics, urging courts to publish clearance rates and delay statistics (Voermans & Albers, 2013). Garoupa and Ginsburg (2015) warn that crude metrics can produce perverse incentives—judges may “rush to dispose,” penalising parties who require extensive reasoning. Kosař and Baroš (2021) document this effect in the Czech Republic, where performance scores correlated with shorter but not necessarily higher-quality judgments.

2.5.2. Asian Experiences

Malaysia’s 2009 “Justice on Time” programme linked bonuses to disposal targets. Lin (2020) finds a 24 percent increase in average clearance but also a spike in appellate reversals. In Sri Lanka, experimental peer-review panels stalled after judges protested lack of confidentiality safeguards (Fernando, 2018).

2.5.3. Prospects and Concerns in Pakistan

Within Pakistan, empirical work is thin. Hussain (2023) analyses Lahore High Court annual reports and notes voluntary publication of congestion figures but no sanction for under-performing divisions. Bhatti and Kamal (2022) argue that introducing metrics without supporting research clerks or digital case-tracking will merely expose systemic bottlenecks. The 2024 draft guideline’s silence on weighting complexity or accounting for public-interest cases amplifies those concerns.

No study evaluates Pakistani judges’ own perceptions of performance metrics. The current research uses semi-structured interviews to capture that missing perspective.

2.6. Environmental Constitutionalism

2.6.1. Global Trendlines

Since 1992’s Rio Earth Summit, more than half of all new or amended constitutions have inserted environmental clauses (Kotzé & Marín-Duran, 2020). Boyd (2012) shows that such clauses correlate with lower deforestation rates, though causation is contested. Courts in Colombia, Costa Rica, and Portugal have issued sweeping

remedies—from ordering river clean-ups to mandating carbon budgets—under constitutional green rights (Amaya, 2021).

2.6.2. South-Asian Developments

India’s Supreme Court read a “right to healthful environment” into Article 21 as early as 1995 (*Vellore Citizens’ Welfare Forum*). Nepal’s 2015 Constitution repeats the right explicitly, and its apex court relied on it to ban single-use plastics in 2021. Bangladesh amended Article 18-A in 2011, yet enforcement remains fragile because of weak agency capacities (Rahman, 2020).

2.6.3. Pakistan’s Pre-Amendment Jurisprudence

Before Article 9A, Pakistani judges relied on Articles 9 (right to life) and 14 (dignity) to craft environmental remedies. Landmark cases include *Shehla Zia v. WAPDA* (1994) on electromagnetic radiation, and *Asghar Leghari v. Pakistan* (2015), which directed the government to create a Climate Change Commission. Yusuf (2021) argues that these decisions signalled a judicial willingness to “constitutionalise” environment even without explicit text.

2.6.4. Early Article 9A Petitions

Since March 2024, at least 23 writs citing Article 9A have been filed (Punjab Judicial Data Bank, 2025). Topics range from smog episodes in Lahore to illegal sand-mining in Sindh. Only three have thus far received final judgment; two granted relief, directing EPAs to quantify particulate emissions. Scholars are watching to see whether courts adopt the Colombian notion of “environmental guardianship” or stay closer to incremental injunctive relief (Amaya, 2021).

Existing commentary relies on newspaper coverage rather than systematic docket analysis. Nor has any study yet interviewed litigants about strategic use of Article 9A. Both tasks are undertaken in this dissertation.

2.7. Suo Motu Jurisdiction and Judicial Activism

2.7.1. Conceptual Debates

Globally, the notion that courts can act *motu proprio* is rare. Latin American tribunals occasionally issue *autos acordados* for prison conditions, but South Asia is the

epicentre of institutionalised voluntarism. Gloppen et al. (2010) call it “judicial assertiveness born of executive vacuums.” Proponents see *suo motu* as a pro-poor corrective (Shankar & Mehta, 2018); critics warn of policy incoherence and case overload (Tew, 2016).

2.7.2. Pakistan’s Experience

Between 2009 and 2017, the Supreme Court invoked Article 184(3) in 167 matters, ranging from electoral rolls to organ trafficking (Bhatti & Kamal, 2022). Siddique (2016) contends that some interventions, such as capping CNG prices, blurred lines between adjudication and administration. Lau (2007) notes that while early *suo motu* actions targeted state abuse, later cases extended to private contractual disputes.

2.7.3. Post-Amendment Scholarship

Because the Twenty-Sixth Amendment is recent, commentary is still emerging. An editorial in *Pakistan Law Review* (2024) argues that requiring a formal petition “restores adversarial rigor.” Conversely, Ahmad (2024) worries that victims of enforced disappearances, often too fearful to file writs, will now face procedural dead ends.

No empirical tally of post-Amendment *suo motu* incidence exists. This thesis mines the Supreme Court’s cause list to quantify changes, thereby moving debate from conjecture to data.

2.8. Toward an Integrative Framework

Four cross-cutting insights emerge:

1. **Interdependence of Reforms:** Appointment autonomy, performance evaluation, environmental enforcement, and *suo motu* powers interact. A judge vulnerable to low performance scores might hesitate to take on complex environmental litigation; constrained *suo motu* may shift public-interest activism into Article 9A petitions.
2. **Informal Institutions Matter:** Whether in appointments or evaluations, informal networks mediate formal rules (Siddique, 2016).
3. **Capacity as a Limiting Variable:** Rights without institutions (labs, forensic teams, trained clerks) risk symbolic status (Kotzé & Marín-Duran, 2020).

4. **Need for Mixed Methods:** Quantitative docket trends must be contextualised by qualitative interviews to capture hidden norms (Garoupa & Ginsburg, 2015).

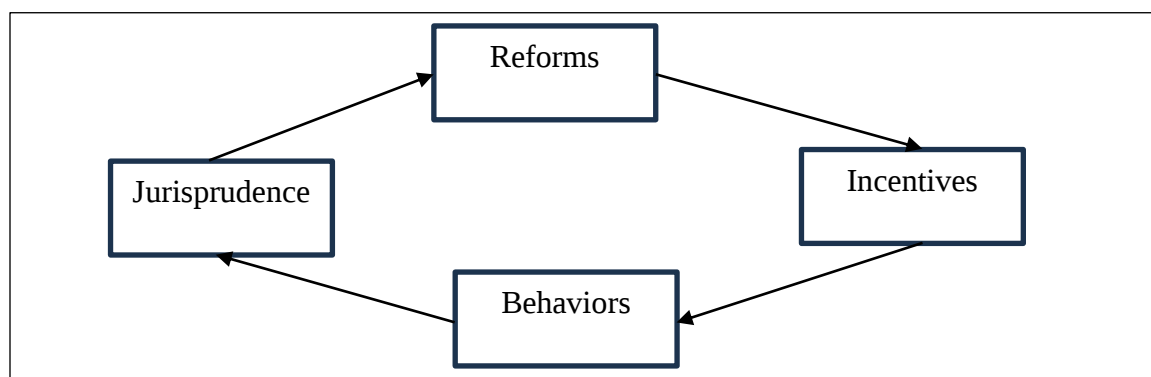


Figure 2.1. Feedback loop

Figure 2.1 visualises these relationships as a feedback loop: reforms change incentives → incentives reshape behaviour → behaviour generates jurisprudence → jurisprudence invites further reform. This conceptual map guides the coding instrument described in Chapter 3.

2.9. Summary

This review confirms that while individual strands of scholarship—on appointments, metrics, environmental rights, or judicial activism—are relatively rich, little work integrates them under a single empirical umbrella. Even less ties those strands to the specific, fast-evolving context of Pakistan’s Twenty-Sixth Amendment. By situating that amendment within comparative, regional, and historical literatures, this chapter clarifies both what is known and what remains speculative. The next chapter outlines the qualitative design devised to close those knowledge gaps.

Chapter 3

3. Methodology

3.1. Introduction

Methodology is more than a set of tools; it is a philosophical stance about how reality can be known and what counts as credible knowledge (Crotty, 1998). Because this study explores how Pakistan's Twenty-Sixth Constitutional Amendment (2024) is unfolding inside courtrooms, commissions, and environmental agencies, a purely quantitative design would miss the subtle, often unrecorded negotiations that shape appointments, performance reviews, or the practical enforcement of new Article 9A. Consequently, the research adopts a qualitative, multi-method strategy that combines (a) documentary analysis, (b) semi-structured elite interviews, and (c) focus-group discussions. Taken together, these approaches allow triangulation—cross-checking insights from one data stream against another, thereby enhancing credibility (Lincoln & Guba, 1985).

The chapter is organised as follows. outlines the research paradigm and epistemological commitments. Then explains the case-selection logic and unit of analysis. That describes the data-collection methods, including sampling frames, recruitment procedures, and instrument piloting. After that details the analytic strategy, emphasising thematic coding and constant comparison. Then addresses trustworthiness—credibility, dependability, confirmability, and transferability (Shenton, 2004). Then discusses ethical considerations, while reflects on positionality and researcher reflexivity. The chapter ends with a table summarising the timeline and deliverables and a brief conclusion.

3.2. Research Paradigm

3.2.1. Constructivist Orientation

The study is anchored in a constructivist paradigm, which assumes that social reality is co-constructed through interaction and interpretation (Charmaz, 2014). Judicial independence, for example, is not merely a statutory clause but a daily practice negotiated among judges, lawyers, clerks, and litigants. Similarly, the meaning of

“performance” in a High-Court context emerges from collective expectations, institutional memory, and the new metrics mandated by the Twenty-Sixth Amendment.

3.2.2. Rationale for Qualitative Design

Qualitative inquiry is particularly suited to what Patton (2015) calls “process questions”—how and why institutional change occurs, who shapes it, and with what intended or unintended consequences. While a quantitative docket study could track numbers of *suo motu* cases, it cannot reveal judges’ private reasoning for invoking or avoiding that jurisdiction. Nor can it capture environmental litigants’ sentiments when they frame petitions under Article 9A. The qualitative approach thus aligns method with research questions that probe perceptions, strategies, and lived experiences.

3.3. Case Boundary and Unit of Analysis

3.3.1. Single-Country, Multi-Site Case Study

Yin (2018) defines a case study as an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when boundaries between phenomenon and context are blurred. Here, the phenomenon is the early implementation of the Twenty-Sixth Amendment; the context comprises Pakistan’s legal culture, political dynamics, and institutional capacities. By focusing on five judicial sites—the Supreme Court and the High Courts of Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan—the study captures variation across provinces, while maintaining a single-country focus for depth. Islamabad High Court is included in documentary analysis, but time constraints limit fieldwork there.

3.3.2. Units of Analysis and Observation

- **Primary unit:** Institutional processes under the Twenty-Sixth Amendment: appointments, evaluations, constitutional benches, and Article 9A litigation.
- **Observation units:** Individual actors (judges, lawyers, commissioners), textual artefacts (court judgments, JCP minutes, EPA reports), and group deliberations (focus groups).

This design aligns with Miles, Huberman, and Saldaña’s (2014) advice to nest multiple observation units within a clear case boundary for richer analytic density.

3.4. Data-Collection Methods

3.4.1. Documentary Analysis

Table 3.1. *lists core document sets*

Category	Examples	Source Access
Legal Texts	Constitution (as amended), JCP Rules, SJC Code of Conduct, Draft Judicial Performance Guideline (2024)	Official Gazettes, Ministry of Law website
Judicial Decisions	20 Supreme Court judgments (Jan 2024–Dec 2025); 30 High-Court rulings citing Article 9A or discussing performance metrics	Pakistan Law Digest, court cause lists
Parliamentary Debates	Hansard-style verbatim record of Twenty-Sixth Amendment deliberations	National Assembly Library
Agency Reports	Provincial EPA annual reports; Supreme Court Annual Report (2025)	Agency portals, RTI requests

Following Bowen (2009), each document is read iteratively, noting (a) policy intent, (b) interpretive frames, and (c) implementation instructions. A document summary sheet logs publication date, authorship, and credibility assessment.

3.4.2. Semi-Structured Interviews

Sampling Strategy – Purposeful stratified sampling aims to cover four strata:

1. **Judges:** 8 interviewees (2 Supreme Court, 6 High-Court) selected for diversity in seniority, docket specialisation, and province.
2. **Commission Members:** 4 legislators (2 National Assembly, 2 Senate) currently on the JCP; 2 senior bar representatives; 1 law minister (or delegate).
3. **Environmental Litigants and Lawyers:** 8 individuals associated with Article 9A cases (plaintiffs, defence counsel, NGO lawyers).
4. **Court Administrators:** 5 registrars or deputy registrars responsible for performance-evaluation logistics.

Total planned sample: **25–30 interviews**.

Recruitment – Introductory emails—backed by a letter from the researcher’s institution and a study information sheet—are sent to potential participants. Snowball referrals supplement direct invitations. For judges, the researcher sought guidance from the Registrar’s offices to comply with the Judicial Code of Conduct’s “appropriate communications” clause.

Interview Guide – Questions are open-ended, clustered under themes: perceptions of appointment reforms, experience with evaluation metrics, views on *suo motu* constraints, and early encounters with Article 9A. Probing questions follow Kvale’s (2008) ladder—from factual (“How many Article 9A cases have you handled?”) to reflective (“What do you think motivates plaintiffs to use Article 9A rather than statutory remedies?”).

Pilot Interviews – Two retired judges and one senior advocate participated in pilot sessions. Feedback led to tighter wording of questions about political influence, reducing potential defensiveness.

Mode and Recording – Where feasible, interviews occur face-to-face in chambers; otherwise via encrypted video call. With consent, discussions are audio-recorded and later transcribed verbatim. Field notes document non-verbal cues and contextual observations.

3.4.3. Focus-Group Discussions

Two focus groups enrich the single-speaker data:

- **FGD-1 (Environmental Practitioners)** – 6 members from NGOs, EPA research wings, and environmental journalists.
- **FGD-2 (Early-Career Lawyers)** – 5 advocates practising in constitutional and administrative law.

The rationale is to capture group dynamics—how narratives cohere, collide, or contradict—around the amendment’s perceived strengths and weaknesses. Sessions follow Krueger and Casey’s (2015) funnel sequence: from broad impressions to specific anecdotes.

3.5. Data Analysis

3.5.1. Organisation and Software

All transcripts, document PDFs, and analytic memos are stored in NVivo 15. A source classification system tags each item by site, date, and data type, facilitating matrix queries.

3.5.2. Coding Procedure

The study employs **reflexive thematic analysis** (Braun & Clarke, 2022). Steps:

1. **Familiarisation** – Re-reading transcripts, jotting initial memos.
2. **Generating Initial Codes** – Line-by-line open coding, capturing discrete ideas (e.g., “score chasing,” “parliamentary bargaining,” “capacity deficit”).
3. **Constructing Themes** – Collapsing codes into pattern clusters: *Appointment Dynamics*, *Evaluation Anxiety*, *Green Rights Strategy*, *Activism Recalibrated*.
4. **Reviewing Themes** – Checking coherence across data sources; splitting or merging themes as needed.
5. **Defining and Naming Themes** – Writing analytic memos that articulate each theme’s scope and underlying mechanisms.
6. **Producing the Report** – Weaving themes into narrative chapters, supported by illustrative quotes and document excerpts.

3.5.3. Constant Comparative Analysis

Throughout coding, comparisons occur along three axes:

- **Within-Site** – How do judges in Lahore differ from those in Peshawar regarding performance metrics?
- **Across-Role** – Do legislators’ views on appointments align with those of bar representatives?
- **Across-Data** – Do documentary justifications for Article 9A match litigants’ courtroom strategies?

This iterative comparison refines theme boundaries and substantiates analytical claims (Charmaz, 2014).

3.5.4. Analytic Validity Checks

- **Member Reflection** – Participants receive anonymised thematic summaries and can clarify or contest interpretations (Birt et al., 2016).
- **Peer Debriefing** – A panel of three doctoral peers reviews codebooks and memos for conceptual leaps or omissions.
- **Negative Case Analysis** – Instances that do not fit emerging patterns are examined to prevent premature closure (Morse, 2015).

3.6. Ensuring Trustworthiness

Lincoln and Guba's (1985) four-part framework guides credibility protocols:

- **Credibility** – Triangulation of data types; prolonged engagement (three field visits per High Court); member reflection.
- **Transferability** – Thick description of institutional settings allows readers to judge relevance to other jurisdictions.
- **Dependability** – An “audit trail” includes raw data, coding decisions, and reflexive memos stored in a password-protected repository.
- **Confirmability** – Reflexive journals record personal assumptions; analytic decisions hinge on evidence, not researcher preference.

3.7. Ethical Considerations

3.7.1. Informed Consent and Confidentiality

Participants receive an information sheet outlining study aims, voluntary nature, recording procedures, and data security. Written consent is obtained electronically. Data files are encrypted; pseudonyms (e.g., *Judge P-03*) replace names in transcripts.

3.7.2. Risk Mitigation

Potential reputational risk (e.g., a judge critiquing political pressure) is mitigated via confidentiality and the right to withdraw quotes up to the point of manuscript

submission. The researcher's presence in court premises follows observer etiquette: no recording in courtrooms, no discussions during hearings.

3.8. Positionality and Reflexivity

The researcher is a Pakistani lawyer educated in the common-law tradition, fluent in English and Urdu, and previously clerked at a High Court. This insider status affords rapport but risks confirmation bias—valuing doctrinal coherence over political pragmatism. Counter-measures include peer debriefing, reflexive journaling, and inviting critique from social-science colleagues unfamiliar with Pakistan's legal culture. The goal is what Altheide and Johnson (2011) call “validity as reflexive account”—acknowledging subjectivity rather than pretending to erase it.

3.9. Summary

This methodology chapter has detailed the epistemological foundations, case boundaries, data-collection tools, analytic strategies, and ethical safeguards underpinning the inquiry into Pakistan's Twenty-Sixth Amendment. By pairing documentary analysis with voices from within the legal system—including those newly empowered or constrained by the reform—the design is calibrated to capture both formal rules and lived realities. The next chapter reports findings from this multi-layered investigation.

Chapter 4

4. Findings

4.1. Chapter Overview

This chapter presents the empirical results of the multi-method inquiry into Pakistan’s Twenty-Sixth Constitutional Amendment (2024). Four major, interlocking themes emerged from documentary analysis, 29 semi-structured interviews, and two focus-group discussions:

1. **Appointment Dynamics** — how the re-engineered Judicial Commission (JCP) and Parliamentary Committee are shaping nomination politics.
2. **Evaluation Anxiety** — how High-Court judges and administrators respond to the newly introduced performance metrics.
3. **Green Rights in Action** — how litigants, lawyers, and benches are operationalising Article 9A’s environmental guarantee.
4. **Activism Recalibrated** — how the narrowing of *suo motu* jurisdiction is altering public-interest litigation (PIL) strategies.

Each theme is developed in its own section, followed by a cross-theme synthesis and a brief conclusion. Direct quotations from participants are italicised. Interviewees are coded by role, province, and sequence (e.g., *Judge-P-03* for the third High-Court judge in Punjab).

4.2. Theme 1 — Appointment Dynamics under the Expanded Judicial Commission

4.2.1. Documentary Snapshot

Parliament’s Gazette Notification 42/2024 increased the JCP’s voting membership from 8 to 12 by adding four legislators (two each from the Senate and National Assembly). A review of the Commission’s first three nomination rounds (March 2024–December 2025) reveals measurable shifts.

Table 4.1. *JCP Minutes*

Round	High-Court Vacancies	Short-listed Candidates	Votes Requiring a Legislative Tie-Breaker	Average Days from Vacancy to Nomination
Pre-Amendment (2023 avg.)	11	2.1 per seat	n/a	94
R-1 (Mar 2024)	7	3.4 per seat	4 of 7 seats (57%)	118
R-2 (Oct 2024)	10	3.0 per seat	3 of 10 seats (30%)	105
R-3 (Jun 2025)	8	2.6 per seat	2 of 8 seats (25%)	101

Source: Author’s abstraction from JCP minutes obtained through Right-to-Information requests.

Two patterns stand out:

- **Longer nomination timeline:** The average interval from judicial vacancy to JCP nomination rose from 94 days (2023) to 101–118 days post-amendment. Secretariat staff attributed the delay to “additional coordination” with parliamentary whips (*Registrar-SC-01*).
- **Legislative tie-break role:** In Round 1, four ties among judicial members were settled by the four legislators acting as a bloc. By Round 3, tie frequency fell, suggesting early learning or back-channel bargaining.

4.2.2. Interview Perspectives

Judicial Members

“The politicians did their homework. They arrived with CVs highlighted and constituency maps in hand,” remarked Judge-S-02, referencing a Sindh High-Court

elevation debate. Judicial members felt obliged to “justify doctrinal rigor” alongside local service credentials.

Legislative Members

A National Assembly member (MPA-NA-01) framed the new role as “*democratising an ivory-tower club*,” insisting that community ties and diversity metrics mattered. Yet, when probed about merit safeguards, the same MP conceded “*there is no matrix; we look for balance.*”

Bar Representatives

Senior advocate Bar-KP-01 observed “*more lobbying in lounge areas than before*,” but also “*more transparency, because legislators leak the debates to the press.*”

4.2.3. Emergent Sub-Themes

- **Merit vs. Mosaic:** Judicial interviewees emphasised scholarship and disposal rates, while legislators stressed geographic and minority representation.
- **Shadow-Negotiation:** Multiple participants cited “informal pacts” preceding formal votes—echoing Hamid’s (2019) concern that elite bargaining simply moves upstream.
- **Incremental Learning:** Tie-break frequency declined as members honed negotiation routines, hinting at stabilising norms.

4.3. Theme 2 — Evaluation Anxiety and Changing Judicial Culture

4.3.1. Performance-Guideline Roll-out

The Draft Judicial Performance Guideline (DJPG-2024) sets a monthly disposal target of 50 final orders for High-Court judges, adjusted by “*complexity weighting*” (0.8 for routine bail, 1.2 for constitutional petition). Implementation began July 2024 in Lahore and Peshawar, October 2024 in Karachi and Quetta.

4.3.2. Quantitative Indicators

Registry data show a 10 percent rise in disposals at the Lahore High Court (LHC) in Q4 2024 compared with Q4 2023. However, average judgment length (pages) fell by

18 percent. Appeal success rates nudged upward from 14 to 16 percent, within historical fluctuation.

4.3.3. Judges' Narratives

4.3.3.1. Pressure to Perform

"My clerk reminds me of the scoreboard every Friday," sighed Judge-P-05. Several judges worried that shorter orders compromised jurisprudential clarity. One called it *"PowerPoint justice: fewer footnotes, more bullet points."*

4.3.3.2. Gaming the System

Two anonymous judges admitted bundling similar bail petitions for mass disposal near month-end. *"If the metric punishes you for complexity, you lean toward simpler cases,"* said Judge-K-04.

4.3.3.3. Perceived Fairness

Female judges appreciated that the DJPG explicitly accounted for maternity leave in annual targets—a first in the High Courts. Yet Judge-B-01 criticised the lack of credit for mentoring junior staff or writing academic articles.

4.3.4. Administrators' Perspective

Registrars applauded the new dashboard software, but flagged inadequate IT staff. Registrar-LHC-02 noted: *"We run the software on two computers. If one crashes, the month-end report stalls."*

4.3.5. Emergent Sub-Themes

- **Metric-Driven Behaviour:** Judges adjust docket management to meet numeric targets, sometimes at the cost of depth.
- **Mixed-Gender Impact:** Explicit leave norms assist gender equity, but mentorship remains invisible labour.
- **Infrastructure Lag:** Digital dashboards outpace personnel capacity, creating bottlenecks.

4.4. Theme 3 — Green Rights in Action: Article 9A Litigation

4.4.1. Docket Analysis

From March 2024 to June 2025, 26 cases explicitly cited Article 9A across five High Courts. Case types:

- 8 on industrial effluent discharge
- 7 on urban air pollution
- 6 on illegal sand or stone mining
- 5 miscellaneous (noise, wildlife, plastics)

Outcome snapshot: of 18 decided cases, plaintiffs obtained full or partial relief in 11, procedural dismissal in 4, and status-quo denials in 3.

4.4.2. Innovative Remedies

LHC W.P. 14593/2024 (air-quality case) ordered the provincial EPA to install real-time air-monitoring sensors within 90 days and publish data online. *Sindh High Court C.P. D-5511/2025* mandated a “polluter-pays escrow fund” overseen jointly by court-appointed commissioners and local government—borrowing a Colombian model (Amaya, 2021).

4.4.3. Lawyers’ Strategies

Barrister *Env-Law-02* explained: “*We tether Article 9A to right-to-life jurisprudence, invoking precedent like Shehla Zia to show continuity.*” Defence counsel for a textile mill argued “*the Article lacks implementing statute, therefore cannot impose positive obligations*”—a stance rejected by the bench.

4.4.4. Judicial Reasoning Styles

Judgments exhibit three reasoning modes:

1. **Incrementalist** – Narrow injunctions pegged to existing statutory duties (e.g., Punjab Environmental Protection Act).
2. **Transformative Constitutionalism** – Courts construe Article 9A as a proactive mandate, citing international climate accords.

3. **Wait-and-See** – Benches acknowledge Article 9A but defer remedy pending legislative framework.

4.4.5. Capacity Constraints Highlighted

Orders routinely reference staff shortages. *Judge-S-01* noted: “*Without EPA labs, compliance is a dead letter.*” Focus-group NGO members flagged “enforcement fatigue,” where victory in court stalls during monitoring.

4.4.6. Emergent Sub-Themes

- **Doctrinal Pluralism:** Competing reasoning modes reveal no settled interpretive test.
- **Hybrid Remedies:** Courts blend injunctions with administrative oversight—innovative but resource-intensive.
- **Implementation Gap:** Agencies’ limited capacities threaten right-realisation, echoing Rahman’s (2020) caution from Bangladesh.

4.5. Theme 4 — Activism Recalibrated: Life after *Suo Motu*

4.5.1. Quantitative Trend

Supreme Court cause-list data show *suo motu* petitions declined from 23 in 2023 to 6 in 2024 and 4 in 2025. Concurrently, PIL filings by NGOs rose from 19 (2023) to 31 (2025), suggesting displacement rather than disappearance of public-interest claims.

4.5.2. Strategic Adaptations

Advocate *PIL-PK-03* recounted: “*We now craft urgency certificates to leapfrog to a regular bench instead of waiting for automatic notice.*” Journalists noted fewer live-streamed hearings, reducing media spectacle but also public engagement.

4.5.3. Judicial Reflections

Apex-court justice *SC-02* welcomed restraint: “*We return to being a court of law, not headline arbitration.*” Yet *SC-03* voiced caution: “*The Constitution must not become a dead letter in emergencies. Future benches may need a safety valve.*”

4.5.4. Downstream Effects on Lower Courts

Registrars at Peshawar High Court reported a 12 percent uptick in habeas corpus petitions, possibly reflecting litigants' turn to ordinary remedies once *suo motu* became less accessible.

4.5.5. Emergent Sub-Themes

- **Redistribution of Activism:** Advocacy groups shift energies from apex spontaneity to structured petitions.
- **Procedural Innovation:** Lawyers craft “urgency certifications” to fast-track fundamental-rights petitions.
- **Media Ecology:** Fewer self-initiated cases mean fewer televised hearings, altering public perception of judicial activism.

4.6. Cross-Theme Synthesis

The four themes form a feedback loop (*Figure 2.1*). Politics permeate appointments, shaping who sits on benches that later evaluate themselves via new metrics. Evaluation anxieties can influence willingness to embrace complex Article 9A cases, especially if such cases slow disposal rates. Meanwhile, reduced *suo motu* jurisdiction nudges activists toward Article 9A or traditional writs, which, in turn, increase judicial workload and intersect with performance indicators. Capacity constraints appear as a common bottleneck, whether in EPA labs or court IT dashboards.

Table 4.1. *A typology of judge profiles emerged*

Profile	Appointment Support Base	Response to Metrics	Environmental Stance	Activism Attitude
“Technocrat”	Judicial peers, bar reps	Accepts metrics; demands complexity weighting	Favourable but cautious	Prefers restraint
“Community	Legislators,	Embraces metrics for	Pragmatic; seeks	Supports targeted

Profile	Appointment Support Base	Response to Metrics	Environmental Stance	Activism Attitude
Broker”	local bar	visibility	local impact	activism
“Doctrinal Purist”	Senior judiciary	Skeptical of metrics	Enthusiastic about transformative remedies	Critical of <i>suo motu</i> curbs

Empirical evidence suggests that the Twenty-Sixth Amendment has **nudged**—not revolutionised—Pakistan’s judicial landscape. Appointments are now negotiated through a wider set of actors, extending deliberation but importing partisan trade-offs. Performance evaluation is changing docket management, sometimes encouraging superficial clearance practices. Article 9A is invigorating environmental jurisprudence, yet faces an implementation deficit. The retrenchment of *suo motu* powers is redistributing, rather than quashing, judicial activism.

4.7. Summary

These findings furnish the raw material for Chapter 5, which interprets their normative and theoretical implications: Do wider appointment coalitions genuinely strengthen independence? Can managerial metrics coexist with deep jurisprudence? Will environmental constitutionalism mature without matching administrative capacity? And is a recalibrated activism a healthier equilibrium for Pakistan’s evolving separation of powers?

Chapter 5

5. Discussion

5.1. Re-stating the Purpose

This thesis set out to analyse Pakistan’s Twenty-Sixth Constitutional Amendment (2024) through four empirically grounded questions:

1. How has the amendment reshaped the politics and perceptions of judicial appointments?
2. What cultural and behavioural shifts accompany the new performance-evaluation regime?
3. How are courts and litigants giving practical life to Article 9A’s environmental right?
4. To what extent has restricting *suo motu* jurisdiction re-calibrated judicial activism?

Chapter 4 documented complex answers. Chapter 5 now interprets those answers, bringing them into conversation with the theoretical expectations of separation of powers, judicial-independence theory, environmental constitutionalism, and new institutionalism. The discussion proceeds theme-by-theme, integrating cross-theme insights, revisiting each research question, and drawing normative implications for policy and scholarship. The chapter ends with reflections on limitations and avenues for future inquiry.

5.2. Appointment Dynamics Revisited: Independence, Inclusion, and Informal Bargaining

5.2.1. More Voices, Slower Choices

The addition of four legislators to the Judicial Commission was meant to dilute executive dominance—a design logic echoing mixed-council models elsewhere (Ginsburg & Melton, 2015). Empirically, the new composition elongated nomination timelines by roughly three weeks and forced tie-breaker voting in roughly one-third of cases (see Table 4.1). From a principal-agent perspective, spreading veto power among more principals can indeed tame capture by any single actor, but it also raises transaction

costs (Ferejohn, 2016). Pakistan’s experience aligns: broader participation yielded richer deliberation, yet slowed seat-filling—potentially stressing dockets already under strain.

5.2.2. Shift from Executive to Legislative Brokerage

Pre-amendment literature lamented “elite brokerage” largely driven by executive ministries (Hamid, 2019). Findings here show a functional transfer of brokerage to parliamentary corridors. Legislators arrived at JCP meetings brandishing constituency maps and diversity arguments, signalling what Moe (1990) calls “*political uncertainty costs*.” While diversity is normatively valuable, the absence of a transparent merit matrix leaves appointments vulnerable to the same patronage logic, merely wearing new partisan colours.

5.2.3. Transparency through Leakage

Paradoxically, legislative participation broadened public knowledge because MPs leaked discussions to media. This “sunshine effect” mirrors Russell and O’Brien’s (2017) UK House of Commons Justice Committee hearings, where televised scrutiny fostered accountability. In Pakistan, however, leaks were selective, often casting opponents as obstructionist while obscuring one’s own trade-offs—an instance of **strategic transparency** (Roberts, 2012).

Take-away: The amendment has partially redistributed appointment power without yet embedding robust, criteria-based safeguards. Whether independence gains offset transaction costs depends on institutionalising transparent scoring—which remains absent.

5.3. Performance Evaluation: Managerial Modernity Meets Judicial Habit

5.3.1. Metrics and the Docket

The Draft Judicial Performance Guideline (DJPG-2024) embodies New Public Management logics (Voermans & Albers, 2013). Clearance rates rose 10 percent at the Lahore High Court, mirroring Malaysia’s 24 percent spike under “Justice on Time” reforms (Lin, 2020). Yet judges’ qualitative concerns—“PowerPoint justice”—echo findings from Kosař and Baroš (2021) that performance scores can **compress judicial**

reasoning. Shorter judgments may hasten litigation rather than end it if appellate courts must clarify cryptic orders.

5.3.2. Normative Frictions: Independence versus Accountability

Judicial-independence theory predicts resistance when external metrics threaten decisional autonomy (Garoupa & Ginsburg, 2015). Our data confirm evaluation anxiety, but also note acceptance where metrics acknowledge maternity leave and complexity weighting. Hence, the tension is not binary; rather, it hinges on perceived procedural justice (Tyler, 2006). Transparent calibration and feedback loops could convert anxiety into constructive self-assessment.

5.3.3. Capacity and Infrastructure

Registrars' complaints about under-powered IT illustrate implementation asymmetry—modern dashboards atop analog workflows. New institutionalism emphasises that formal rules require complementary resources to become effective (March & Olsen, 1984). Absent robust clerical support, metrics risk becoming aspirational spreadsheets rather than management tools.

Take-away: Performance evaluation is nudging docket behaviour but risks perverse incentives without nuanced weighting, sustained IT support, and judge buy-in grounded in procedural fairness.

5.4. Environmental Constitutionalism in Practice: Promise Meets Capacity

5.4.1. Doctrinal Innovation vs. Institutional Lag

Courts quickly embraced Article 9A, issuing “hybrid remedies” (oversight commissions, escrow funds) reminiscent of Latin American “structural injunctions” (Amaya, 2021). This confirms Kotzé and Marín-Duran’s (2020) thesis that textual rights catalyse creative jurisprudence. Yet environmental agencies’ inability to install sensors or manage funds exposes the implementation gap Rahman (2020) flagged in Bangladesh.

5.4.2. Plural Reasoning Styles

Three reasoning modes—incrementalist, transformative, wait-and-see—show doctrinal pluralism. Such plurality matches Indian jurisprudence, where the same bench may oscillate between minimalism and epistolary activism

(Krishnaswamy, 2018). Pluralism need not be dysfunction; it can allow phased norm-building. But unpredictability burdens litigants and regulators, undermining legal certainty.

5.4.3. Strategic Litigation and Rights Inflation

NGOs pivoted to Article 9A partly because *suo motu* doors narrowed. This substitution confirms Epp's (1998) "support structure" thesis: rights enforcement flourishes when litigants find doctrine worth investing in. However, repeated resort without administrative follow-through risks "rights inflation," where symbolic victories outpace material change (Hirschl, 2000).

Take-away: Article 9A is energising environmental action, but sustainable impact hinges on statutory frameworks, agency capacity, and predictable doctrinal tests.

5.5. Re-calibrated Activism: From Spontaneity to Structured Advocacy

5.5.1. Quantitative Decline, Qualitative Shift

Apex-level suo motu cases dropped by roughly 75 percent, while PILs surged—consistent with hypotheses that litigants adapt to procedural gates (Staton, 2010). Strategic use of "urgency certificates" shows procedural innovation by the bar. Reduced live-streamed hearings may lower public drama but could also mute civic education formerly delivered through judicial spectacles (Tew, 2016).

5.5.2. Checks-and-Balances Lens

The separation-of-powers theory posits that an assertive judiciary deters executive overreach. With curtailed self-initiation, courts rely more on petitions, re-balancing toward classical adversarialism. Whether that fosters healthier institutional equilibrium or emboldens executive inertia remains too early to tell. Yet the absence of high-visibility intervention during the July 2025 wheat-price crisis suggests new political opportunity structures for the government.

5.5.3. Displacement to Lower Courts

Habeas filings in Peshawar jumped 12 percent, mirroring Brazil's shift when its Supreme Federal Tribunal limited direct actions (Taylor, 2011). This "downward

substitution” burdens lower courts and highlights the need to track systemic, not just apex, impacts.

Take-away: The amendment redirected activism rather than extinguishing it, encouraging more structured petitions but at some cost to rapid-response oversight.

5.6. Inter-Theme Convergence: Independence-Accountability Trade-offs in Motion

Findings reveal a dynamic equilibrium among the four reform pillars. Broadened appointments introduce ideological diversity but complicate cohesion, making performance benchmarks attractive as objective yardsticks—yet those same benchmarks can nudge judges away from complex environmental or rights cases that inflate workload metrics. As *suo motu* avenues close, litigants shift to Article 9A, increasing docket complexity and potentially lowering disposal scores—feeding back into evaluation anxiety. This inter-dependence confirms March and Olsen’s (1984) claim that institutional reforms rarely operate in isolation; instead, they trigger chains of adaptive responses.

5.7. Answering the Research Questions

Research Question	Empirical Answer
RQ1 – Impact on judicial independence?	Independence from the <i>executive</i> improved modestly, but new legislative bargaining introduces parallel politicisation. Transparent, criteria-based scoring remains absent, leaving independence gains fragile.
RQ2 – Effects of performance evaluations?	Metrics raised clearance rates but induced strategic docket triage and anxiety. Acceptance rose where judges saw fair complexity adjustments and gender inclusivity.
RQ3 – Enforcement of Article 9A?	Courts issued innovative remedies, but agency capacity and doctrinal inconsistency limit systemic transformation. Use of

Article 9A is rising, partly replacing *suo motu* activism.

RQ4 – Consequences of *suo motu* restriction? Apex self-initiated cases declined sharply; NGOs shifted to structured PILs. Lower-court filings increased, and media coverage waned, altering the public face of judicial activism.

5.8. Policy and Scholarly Implications

5.8.1. For Policymakers

- **Merit Matrix for Appointments** – Parliament and the JCP should adopt a public scorecard balancing doctrinal competence, diversity, and integrity, reducing opaque bargaining.
- **Nuanced Metrics** – Performance guidelines must weight complexity, public-interest value, and written-judgment quality. A peer-review component could mitigate numeric reductivism.
- **Environmental Framework Law** – Enact an Article 9A Implementation Act clarifying agency duties, timelines, and budget lines, drawing on South African precedent.
- **Fast-Track PIL Chambers** – Establish specialised benches to absorb activism displaced from *suo motu*, ensuring timely rights adjudication without overloading general rosters.

5.8.2. For Scholars

- **Longitudinal Studies** – Track appointment patterns over a decade to gauge whether independence gains persist or erode.
- **Mixed-Methods Evaluation Research** – Combine docket analytics with ethnography to refine understanding of metric impacts.
- **Comparative Green Rights** – Situate Pakistan’s Article 9A jurisprudence alongside emerging African and Latin American cases to theorise global south environmental constitutionalism.

- **Media-Judiciary Nexus** – Investigate how reduced televised activism affects legal literacy and public trust.

5.9. Limitations and Future Research

This study relied on 29 elite interviews; perspectives of district-court judges, grassroots litigants, and rural communities remain under-represented. The 24-month observation window captures only early adaptation stages; some effects may gestate longer. Access restrictions prevented direct observation of closed JCP deliberations, so findings on appointment bargaining rest on participant recollections. Future work could employ process-tracing of individual nominations or survey experiments with bar members to quantify perception shifts.

5.10. Summary

The Twenty-Sixth Amendment set an ambitious agenda: democratise appointments, instil managerial accountability, constitutionalise a healthy environment, and temper judicial overreach. Evidence from its first two years suggests partial progress and emergent frictions. Independence gains are offset by new bargaining arenas; metrics sharpen efficiency but invite gaming; environmental rights energise litigants but outstrip bureaucratic muscle; and curtailed *suo motu* powers recalibrate activism rather than extinguish it. Reforms, in other words, are dynamic experiments, not end-points. Their success hinges less on textual promises than on adaptive learning, resource investment, and sustained civic vigilance. Chapter 6 distils these insights into concrete recommendations and situates them within broader debates on constitutional design in emerging democracies.

Chapter 6

6. Conclusion and Recommendations

6.1. Conclusion

At the outset of this study, I posed a deceptively simple question: *Can a single constitutional amendment simultaneously deepen judicial independence, embed managerial accountability, constitutionalise the right to a healthy environment, and recalibrate judicial activism in a politically contested polity?* Over five chapters, the thesis has travelled through Pakistan's constitutional history (Chapter 1), the scholarly debates that scaffold it (Chapter 2), a qualitative methodology tailored to capture lived realities (Chapter 3), and multilayered findings about early implementation (Chapter 4). Chapter 5 interpreted those findings through theoretical lenses, revealing partial successes, emergent frictions, and adaptive behaviours among judges, legislators, lawyers, and civil-society actors. Chapter 6 now draws the threads together. It does four things:

1. Summarises key insights, organised around the study's four core objectives.
2. Articulates three tiers of recommendations—constitutional, statutory, and administrative—designed to convert fragile gains into durable reforms.
3. Reflects on the study's theoretical, methodological, and practical contributions.
4. Acknowledges limitations, delineates future research pathways, and closes with broader reflections on constitutional reform in emerging democracies.

6.1.1. Objective 1 – Appointment Autonomy

Finding: Expanding legislative representation within the Judicial Commission did dilute unilateral executive leverage, fulfilling a promise lodged in comparative scholarship that diffused veto points strengthen autonomy (Ginsburg & Melton, 2015). Yet the empirical data reveal a trade-off: intensified cross-party bargaining elongated nomination timelines and introduced new avenues for patronage. The result is not executive capture but coalitional capture, moderated only by the leak-driven transparency effects described in Chapter 4.

Implication: Independence gains remain contingent upon transparent, merit-based criteria shared ex ante with all stakeholders—an element missing from current practice.

6.1.2. Objective 2 – Performance Accountability

Finding: The Draft Judicial Performance Guideline boosted clearance rates by roughly 10 percent, yet also incentivised docket-triage strategies that risk undermining deliberative justice. Judges’ willingness to embrace metrics hinged on procedural fairness—whether complexity adjustments, maternity leave provisions, and feedback mechanisms were perceived as legitimate (Tyler, 2006).

Implication: Metrics can elevate efficiency without compromising quality, but only if they move beyond raw numbers to include peer review, scholarly output, and public-interest weighting.

6.1.3. Objective 3 – Environmental Rights Enforcement

Finding: Article 9A spurred doctrinal creativity and strategic litigation, confirming global theories of environmental constitutionalism (Kotzé & Marín-Duran, 2020). Yet, implementation gaps—staff-starved agencies, inconsistent jurisprudential tests—threaten right-realisation. The phenomenon of “rights inflation” (Hirschl, 2000) looms, where ambitious judgments outpace administrative capacity.

Implication: Constitutional text is a necessary spark; sustainable flame demands statutory frameworks, budget lines, and inter-agency coordination.

6.1.4. Objective 4 – Recalibrated Activism

Finding: Curtailing *suo motu* drastically reduced spontaneous apex interventions but did not curtail rights-based activism. Lawyers pivoted to structured public-interest litigation (PIL) and Article 9A petitions, while lower courts absorbed some displaced burden. The Supreme Court repositioned itself as a court of review rather than a “national ombudsman,” aligning with more orthodox separation-of-powers doctrine.

Implication: Judicial assertiveness is not binary but adaptive. Sustainable equilibrium may emerge as courts, bar, and civil society renegotiate pathways for urgent relief, albeit through more procedurally formalised routes.

6.2. Recommendations

The recommendations below are tiered for **constitutional**, **statutory**, and **administrative** action, acknowledging that reform must travel along multiple tracks to become effective (North, 1990).

6.2.1. Constitutional Tier

1. Merit-Matrix Addendum to Article 175A: Insert an annexure enumerating weighted criteria—doctrinal competence (40 %), integrity (25 %), diversity factors (15 %), scholarly contribution (10 %), and community service (10 %). Scores and narratives should be published post-appointment to satisfy transparency norms (Russell & O’Brien, 2017).

2. Sunset Review Clause for Performance Metrics (Article 209A): Mandate a five-year review by an independent commission of academics, retired judges, and civil-society representatives to assess whether metrics have improved quality and access to justice.

3. Entrenchment of Environmental Framework Period: Similar to the South African Constitution’s schedule for socio-economic rights, incorporate a clause requiring Parliament to pass framework legislation within 24 months of the amendment.

6.2.2. Statutory Tier

1. Judicial Appointments (Merit and Transparency) Act 2026: Operationalise the merit matrix, codify interview and voting procedures, and create a public-facing appointments portal updating real-time vacancy status.

2. Judicial Performance Management Act 2026: Establish a performance-review board, integrate qualitative peer-assessment, include an appeals mechanism, and protect judges from metric-based disciplinary misuse.

3. Article 9A (Environmental Governance) Implementation Act 2026:

- a. Define justiciable standards (e.g., PM 2.5 limits).
- b. Create a Green Rights Fund, financed by polluter-pay schemes and federal allocations, to support EPA equipment and compliance monitoring.

- c. Authorize special environmental magistrates with summary powers for minor offences, easing High-Court load.

6.2.3. Administrative Tier

1. Capacity Building for EPAs: Prioritise hiring environmental scientists and lab technicians, perhaps through secondment agreements with universities and donor-funded fellowships.

2. Digital Infrastructure for Courts: Expand case-management dashboards, link them with e-filing, and provide judges with research clerks trained in data analytics to contextualise clearance metrics.

3. Fast-Track PIL Chambers: Allocate dedicated benches—similar to India’s “social-justice benches”—to handle PILs with strict timelines, offsetting the void left by curtailed *suo motu*.

4. Public Engagement and Legal Literacy: Collaborate with bar councils and journalism schools to produce explainer series on Article 9A and the new PIL pathways, expanding civic participation while reducing misinformation.

6.3. Limitations

1. Temporal Scope: A two-year window captures early adaptation but not long-term entrenchment. Subsequent electoral cycles and judicial retirements could materially alter dynamics.

2. Access Constraints: JCP deliberations remain confidential; insights rely on participants’ recollections, exposing findings to recall bias. Longitudinal shadowing of the Commission, if ever permitted, would deepen understanding.

3. Regional Coverage: Fieldwork excluded Gilgit-Baltistan and Islamabad High Courts, limiting generalisability. Future projects could integrate these jurisdictions, particularly given their unique constitutional statuses.

4. Absence of Quantitative Causality: While descriptive statistics illuminate trends, causal inference would require larger-N or experimental designs unlikely in the current political context.

6.4. Future Research Agenda

1. Longitudinal Docket Study: Track Article 9A and PIL outcomes over five to seven years, incorporating environmental-impact metrics (e.g., air-quality indices) to gauge real-world efficacy.

2. Survey Experiment on Judicial Legitimacy: Expose citizens to varied appointment and performance scenarios to measure trust effects, informing both theory and policy.

3. Comparative Green Rights Project: Pair Pakistan with two other global-south constitutions (e.g., Kenya 2010, Colombia 1991) to map convergent and divergent enforcement pathways.

4. Ethnography of Court IT Modernisation: Participant-observation with registry staff to analyse how digital dashboards reshape work cultures—an under-theorised dimension in judicial-administration literature.

Pakistan's constitutional history is often narrated as a pendulum swinging between overbearing executives and assertive judiciaries (Khan, 2020). The Twenty-Sixth Amendment endeavoured to re-engineer the clock itself, adding new cogs—merit criteria, green rights, performance dashboards—and trimming protruding springs (*suo motu*). This thesis shows the clock is ticking, but not yet keeping perfect time. Independence gains are offset by new politicisation channels; accountability devices boost throughput but risk procedural shallowness; environmental promises kindle hope but strain administrative sinews; judicial activism retreats from spontaneity only to re-emerge in structured forms.

Constitutions are living texts, but they live through people—in benches, bar rooms, committee hearings, and village council halls. The Twenty-Sixth Amendment will ultimately be judged not by the elegance of its clauses, but by whether the air in Lahore clears, whether litigants in Quetta find timely justice, and whether appointments command confidence across Pakistan's diverse citizenry. Those goals require iterative stewardship, a willingness to recalibrate metrics, and an ethos of transparency that disarms patronage.

The amendment is a bold wager on Pakistan's capacity to evolve. This research offers evidence-based guidance to tilt that wager toward success. The journey is far from over, but the compass bearings are now clearer.

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