DIMMED BY DESIGN:
THE ARCHITECTURE OF ACCOUNTABILITY IN AN AGE OF AUTOCRACY

Authoritarianism, Judicial Independence, and the Struggle to Reclaim Democracy

Justice (R) Syed Mansoor Ali Shah

Distinguished Chair in Constitutionalism & Justice, LUMS
Oscar M. Ruebhausen Fellow, Yale Law School 2026
Former Senior Puisne Judge, Supreme Court of Pakistan

Keynote Address · 2026 Bernstein Symposium
Schell Center for International Human Rights, Yale Law School
Sterling Memorial Library · New Haven, CT · April 10, 2026

ABSTRACT

The defining innovation of twenty-first-century authoritarianism is not the destruction of constitutional form but its weaponisation. Modern autocrats no longer stage coups; they amend constitutions, restructure courts, and capture the very procedures that once constrained them. This is autocratic legalism—the maintenance of democratic appearance while substantive accountability is methodically dismantled. The same logic operates simultaneously at three levels: the domestic constitutional court, the regional human rights mechanism, and the multilateral system. The architecture of accountability is being dimmed at every register at once.

Drawing on the author's resignation from the Supreme Court of Pakistan on 13 November 2025—following the Twenty-Sixth and Twenty-Seventh Constitutional Amendments that restructured judicial appointments, granted absolute lifetime immunity to military leadership, stripped the Supreme Court of constitutional jurisdiction, and created a Federal Constitutional Court empowered to disclaim seventy-eight years of accumulated jurisprudence as merely persuasive—this paper provides first-hand testimony of how that architecture is engineered from within.

It then advances a programmatic argument. Beginning with V-Dem's 2026 reclassification of the United States as an electoral democracy and Freedom House's twentieth consecutive year of democratic decline, it surveys the global authoritarian resurgence and the structural features that recur across regimes: power concentration, institutional capture, organised elitism, the systematic suppression of dissent, and the false promise of efficiency. It diagnoses the hybrid regime as a category that conceals direction of travel, exposes the flaw in Hilbink's institutionalised apoliticism when constitutions themselves are weaponised, and reframes compliant adjudication through Radbruch's *gesetzliches Unrecht*—statutory lawlessness. It proposes the basic structure doctrine as the constitutional answer, develops a six-dimensional framework for resilient courts, and argues that the centrepiece of any restoration must be a radical reshaping of legal education—producing not technically excellent servants of power but constitutionally grounded citizens immersed in the global tradition of resistance literature. It concludes by arguing, through the frame of the Global Republic of Letters, that what institutions cannot guarantee, individuals and their work have always preserved.

Keywords: *autocratic legalism · judicial independence · hybrid regime · basic structure doctrine · Twenty-Seventh Amendment · Federal Constitutional Court · statutory lawlessness · institutionalised apoliticism · Sunni Ittehad Council · legal education · resistance literature · Global Republic of Letters*

OPENING: THE VOICE OF THE SOUTH, THE CRISIS OF THE NORTH

Dean Rodríguez, Professors Flores & Kahn, and distinguished colleagues —

I come to this podium as a voice from the Global South. But I want to say at the outset that the crisis I am here to describe does not respect that geography. The Global North—whose democracies were once held up as the standard to which the South should aspire—is itself in crisis. The United States has, for the first time in over fifty years, lost its classification as a liberal democracy in the Varieties of Democracy project's 2026 assessment. The country that wrote the most influential democratic constitution in history is currently classified, by the most rigorous measures available, as an electoral democracy—the same category as states whose democratic credentials have always been contested. This is not a partisan observation. It is a measurement. And it changes the nature of this conversation fundamentally.

This morning you examined the United Nations human rights system under strain. This afternoon you will examine regional human rights mechanisms under pressure. I have been asked to stand between those two conversations. What I want to offer is a unifying argument: the same governments that dismantle domestic courts through constitutional engineering, suppress civil society through arrests and bullets, co-opt bar associations with land grants and judicial appointments, and silence the press through ownership and threat—are the same governments that send coordinated delegations to Geneva to water down resolutions, block Special Procedures, and turn the Universal Periodic Review into theatre. The erosion of rights at home is almost always paired with an attempt to blind the referees abroad. The assault on every level of the accountability architecture is coordinated.The defence must be equally coordinated—and it must be built on a clear understanding of what accountability means, why it matters, and how the tools of the digital age can be deployed in its service.

I speak as someone who resigned from the Supreme Court of Pakistan on 13 November 2025 because I could no longer uphold an oath to protect a Constitution from within a court stripped of the authority to protect it. I will speak from testimony. But I begin with the global picture, because Pakistan is not an exception. It is a case study in a pattern—and the pattern is accelerating.

I. THE AUTHORITARIAN RESURGENCE: NAMING THE PHENOMENON

Authoritarianism is not a single thing. It has a spectrum, and the sophistication of the 21st century lies in how much of that spectrum now operates behind the façade of democratic form.

At one end are the closed autocracies—states where political competition is structurally eliminated. China, Russia, North Korea, Saudi Arabia, Iran and Belarus: these are systems in which the constitution, the courts, the legislature, and the press exist as instruments of the ruler's will rather than constraints upon it.

Then there are the electoral autocracies—the defining political form of our era. These states hold elections, maintain constitutional structures, operate courts and parliaments, and produce the full vocabulary of democratic governance, while systematically hollowing out everything that makes democracy real. Electoral autocracy—the maintenance of democratic forms while systematically destroying democratic substance—is the defining political innovation of the 21st century. It exploits the imprecision in our understanding of democracy and weaponises our tolerance for its forms.

Hungary, Turkey, and the Template

Hungary under Orbán is the paradigm case in Europe. Elected by a genuine majority, he has constitutionalised an illiberal agenda: packing the Constitutional Court, capturing the media, redrawing electoral boundaries, and amending the constitution to entrench his advantages—ensuring that even when opposition parties win more votes, the rotation of power becomes structurally impossible. This is the script that autocrats across the world are following.

Turkey's trajectory under Erdoğan deserves particular attention as a textbook case of judicial capture. When the 2016 coup attempt provided political cover, the government used emergency decrees to purge over 4,000 judges and prosecutors overnight—without judicial review, without due process, without appeal. The constitutional referendum of 2017 abolished the office of Prime Minister, concentrated executive power in the presidency, and reduced parliamentary oversight to formality. Today, 12 of the 15 members of Turkey's Constitutional Court are appointed directly or indirectly by the President. The Court retains the occasional capacity for minor resistance on individual rights cases, but on questions of core executive power, it has become—as Pakistan's court became—a mechanism for legitimating what power has already decided. Turkey's journey

from European Union accession candidate to electoral autocracy took barely a decade. The lesson: democratic erosion, once begun, accelerates faster than democratic culture can respond.

Nicaragua under Ortega, El Salvador under Bukele who dismissed the Supreme Court justices who defied him, Georgia whose government is now moving systematically against judiciary and civil society, Tunisia where President Saïed suspended parliament and rewrote the constitution—these are electoral autocracies in various stages of consolidation.

The 'Model Democracies' and Their Failures

And then there are the cases that most trouble the global conversation, because they come from within the circle of established democracies—the countries whose democratic credentials the Global South has been urged to emulate.

India under Narendra Modi is the world's largest democracy by population and, by the measurement of every serious democracy index, a democracy in significant decline. The 2024 V-Dem assessment formally reclassified India as an electoral autocracy—no longer a democracy by the substantive measure. The Citizenship Amendment Act structurally excluded Muslims from its protections. The revocation of Article 370 in Kashmir dismantled constitutionally protected autonomy without the consent of the people concerned. State investigative agencies have been deployed against opposition leaders and journalists with a systematic intensity that previous governments did not match. The Supreme Court of India has, with rare exceptions, declined independent scrutiny of executive action. When a state's largest minority community lives in documented fear of state-sanctioned violence, when journalists are imprisoned for asking questions, when the judiciary produces validation rather than review—the label of democracy must be honestly questioned.

Israel presents an equally painful case. A state that describes itself as the only democracy in the Middle East attempted, in 2023, a judicial overhaul that would have given the government power to override Supreme Court decisions by simple parliamentary majority. The Supreme Court's resistance—unanimous, unprecedented, delivered under enormous political pressure—is a genuine democratic achievement. But the same Israel has maintained a military occupation for over fifty years in which millions of people live under military law with no political rights. I will return to the ICJ and the South Africa case. The point for now is this: a democracy that reserves rights selectively—by ethnicity, by religion, by geography—is a democracy for some, administered by power over others.

And the United States. The 2026 V-Dem report describes the United States as undergoing the fastest evolving episode of autocratisation in modern history, characterised by rapid executive aggrandisement and the systematic undermining of institutional checks. The administration introduced Schedule Policy/Career—the renamed Schedule F—reclassifying approximately 50,000 career civil servants as at-will employees, strippable of civil service protections, dismissible for political non-conformity. Independent agencies have been dismantled. Universities and cultural institutions have been defunded as retribution for critical thought. The press has been named an enemy of the people. Congress, dominated by the President's own party, has largely declined its oversight function. When the oldest constitutional democracy is classified alongside contested democracies by the world's most rigorous measurement system, the argument for democracy as a model requires something more than confident assertion.

When the United States, India, and Israel—the three governments most vocally committed to the language of democratic values in international forums—present this face to the world, it is no wonder that the argument for democracy struggles to be heard in the places where it matters most. This is the crisis of the Global North that gives context to everything I will say about the Global South.

II. THE ANATOMY OF AUTHORITARIANISM

The Five Structural Features

Across the entire spectrum, a set of structural features recurs with remarkable consistency.

The first is the concentration of power in a single person or a tight inner circle. Democratic constitutions distribute power precisely to prevent its abuse. Authoritarianism systematically reverses this design: the leader becomes the source of law rather than its subject, and constitutional constraints are reinterpreted as obstacles to effective governance.

The second is the capture of institutions. Authoritarianism does not abolish the judiciary, the press, the election commission, or the legislature. It captures them—replaces their independent leadership with loyal figures, adjusts their mandates through legislation or constitutional amendment, and ensures that formal independence masks substantive subordination. The court still sits. The parliament still votes. The newspaper still publishes. But the court validates, the parliament endorses, and the newspaper amplifies whatever the executive requires. This institutional mimicry is the defining technological achievement of 21st-century authoritarianism.

The third is the patronage network—which is another name for organised elitism. This is worth dwelling on. Authoritarianism does not merely concentrate political power. It concentrates social power—building elite networks of patronage, privilege, and preferential access that penetrate every layer of society. The result is a system in which connection matters more than merit, proximity to power matters more than principle, and the ordinary citizen—without the right networks, without the right names, without access to the right rooms—finds the system arrayed against her at every turn. This elitism is self-reinforcing. Those who benefit from the network have a material interest in its continuation that overwhelms any abstract commitment to rule of law. It seeps downward from palace to police station, from ministry to magistrate's court. It produces not only corruption but an entire social architecture in which inequality is constitutionalised.

The fourth is the suppression of dissent through the systematic escalation of cost. First the legal tools—sedition laws, anti-terrorism legislation, cybercrime laws criminalising online dissent. Then the financial tools—tax investigations, licence revocations, foreign funding restrictions. Then the physical tools—arrests, disappearances, killings. The objective is not to eliminate dissent entirely but to raise its cost high enough that most people make the rational calculation that silence is safer. You do not need to kill many people to silence many more.

The fifth feature is the promise. I want to address it directly, because it is made most often and most seductively, and because it deserves a full answer.

The Efficiency Lie: Why Autocracy Cannot Deliver What It Promises

Authoritarianism presents itself as the solution to democracy's failures: stability where there was chaos, efficiency where there was gridlock, economic transformation where there was stagnation, anti-corruption where there was venality. China is the premier exhibit: four decades of extraordinary economic growth, the lifting of hundreds of millions out of poverty, infrastructure at a scale and speed that democratic systems have not matched. The argument has substance. But it rests on a fundamental deception. An autocracy is, by its very construction, incapable of delivering the prosperity and justice it promises. Not merely as a matter of empirical record, but as a matter of structural logic. A system that eliminates accountability cannot, over time, be fair. A system that destroys information cannot, over time, be efficient. A system that entrenches privilege cannot, over time, be just. These are not failures of implementation. They are consequences of design.

Consider the information problem. Governance requires accurate information about what is happening in the economy, what is working in public policy, where resources are being wasted,

and what the population actually needs. Democratic systems generate this information through a free press that investigates, courts that adjudicate disputes impartially, opposition parties that scrutinise government claims, and academics who research critically. Authoritarian systems systematically destroy these information channels, because the same channels that produce accurate information about governance failures also produce political pressure to change the government. The autocrat faces an impossible choice: tolerate the information systems that might remove him, or destroy them and govern blind.

Consider the justice problem. Autocracy distributes resources through patronage—which means selectively, to those whose loyalty the regime needs. It cannot commit to the welfare of all, because the welfare of all would require equality before the law, and equality before the law would destroy the system of selective privilege by which the regime survives. A good economy is not merely one that grows. Its parameters include the distribution of that growth—the Gini coefficient, the Human Development Index, access to healthcare and education as public goods, property rights secure regardless of political connection, contracts enforced impartially rather than in favour of the well-connected. By every one of these measures, sustainable economic health requires the rule of law. And the rule of law requires judicial independence. And judicial independence is precisely what autocracy destroys first. The efficiency argument is not merely empirically wrong. It is structurally self-refuting.

Digital Authoritarianism: The New Instrument of Control

The anatomy of 21st-century authoritarianism is incomplete without its newest and most powerful instrument: the weaponisation of digital technology. Traditional autocracy relied on physical surveillance, censorship through state-controlled media, and the slow machinery of arrest and prosecution. Digital authoritarianism is faster, cheaper, more precise, and harder to resist.

The dimensions of digital repression are three. First, the actors have expanded: state surveillance is now augmented by private corporations and state-owned enterprises that outsource technical expertise to the regime, creating a hybrid surveillance infrastructure that blurs the lines of state responsibility. Second, the methods have become surgical: rather than blunt internet shutdowns, autocrats now deploy AI-powered algorithms to monitor public sentiment in real time, identify dissidents before they mobilise, and target individuals with tailored harassment campaigns. Third, the ideological impact has deepened: as demonstrated by China's censorship patterns, suppressing discussions of democracy while permitting conspiratorial content systematically erodes trust in

democratic alternatives while reinforcing loyalty to the state. The Freedom on the Net report notes that global internet freedom has declined for fifteen consecutive years.

The bot army is now a standard instrument of political control. Coordinated inauthentic behaviour—automated accounts that flood social media with disinformation, drown out dissent, and manufacture the appearance of popular consensus—has been documented in Pakistan, Turkey, Hungary, Russia, and increasingly in democratic states themselves. AI-generated disinformation at scale makes it impossible for ordinary citizens to distinguish authentic political discourse from manufactured narrative. When the information commons is colonised by algorithmic manipulation, the epistemic foundation that democracy requires is destroyed not by a single act of censorship but by a thousand daily degradations of truth.

III. WHAT DEMOCRACY ACTUALLY REQUIRES

Before examining why democracies are failing, we need to be precise about what democracy is—because the imprecision is itself a tool of autocracy, and because the Global South is entitled to demand a standard that the Global North actually meets.

Formal democracy is the architecture: elections held on schedule, constitutions promulgated, parliaments assembled, courts delivering judgments. This architecture is necessary but not sufficient. It can exist—and in dozens of countries does exist—while the substance of democracy is entirely absent. Formal democracy has become so cheap to produce that its presence tells us almost nothing about whether citizens are actually free.

Substantive democracy requires five things that cannot be simulated. First, genuinely competitive elections in which the outcome is uncertain and the loser accepts it. Second, an independent judiciary that applies the same law to the government and the governed, to the powerful and the powerless. Third, a free press and a functioning information commons. Fourth, protection of minority rights against the tyranny of the majority. Fifth, genuine rule of law: the principle that power itself is subject to legal constraint—that the ruler is answerable to the same norms as the ruled.

Aharon Barak gave the clearest formulation of the judicial dimension:

> *The judge in a substantive democracy is not the servant of the majority. She is the guardian of the values that make majority rule legitimate in the first place. A court that validates whatever the parliament enacts is not a democratic court. It is a rubber stamp. And a constitution that can be*

> *amended away—including its own provisions for judicial independence—is not a constitution in any meaningful sense. It is theatre.*

What Is a Good Economy? The Parameters That Matter

Democracy's defenders must also be honest about economics—because the autocrat's most effective recruitment tool is the failure of democratic economies to deliver broad prosperity. A good economy is not simply one that grows. Growth measured only by aggregate GDP conceals inequality that is politically and socially explosive.

The parameters of a genuinely healthy economy are: a Gini coefficient that reflects equitable distribution of gains; a Human Development Index that captures health, education, and living standards alongside income; property rights that are secure regardless of political connection; contracts that are enforced impartially rather than in favour of the politically connected; investment conditions that reward merit rather than patronage; and public goods—healthcare, education, infrastructure—that are available to all citizens rather than distributed as rewards for loyalty. By every one of these measures, the structural requirements of a good economy are identical to the structural requirements of a democracy: independent courts, rule of law, accountability, and freedom of information. The autocrat cannot fulfil them. Not because autocrats are uniquely wicked, but because the institutional architecture of autocracy is specifically designed to produce the opposite: selective distribution, information suppression, and the replacement of merit with loyalty. Democracy does not guarantee a good economy. But it creates the institutional conditions within which a good economy is possible. Autocracy systematically destroys those conditions—even when it produces growth in the short term.

Democracy is also, to be honest with ourselves, extraordinarily difficult to sustain. It requires constant active maintenance: an educated citizenry, a professional civil service, independent institutions, a culture of constitutional respect, and leaders willing to accept electoral defeat. It is the most demanding form of governance ever devised. And Churchill was right about this: it is the worst system of government except for all the others. Not because it is good enough, but because every alternative requires the assumption that those who hold power will use it wisely—an assumption that human history has not rewarded.

IV. THE GLOBAL PATTERN: HOW MANY TRUE DEMOCRACIES REMAIN

The numbers are stark and moving in the wrong direction. The Varieties of Democracy project's 2026 report identifies 92 autocratic regimes against 87 democracies—of which only 27 meet the criteria for liberal democracy, accounting for a mere 7 percent of the global population. The global average level of democracy has receded to where it stood in 1985. Freedom House reports that 2025 marked the twentieth consecutive year in which the number of countries registering democratic decline exceeded those registering democratic progress.

Of the world's roughly 193 states, the genuine liberal democracies—those that score consistently high on free elections, independent judiciary, free press, minority rights protection, and real rule of law—number somewhere between twenty-five and forty. The Scandinavian countries, Germany, the Netherlands, Canada, New Zealand, Australia, Japan, South Korea, Costa Rica, Uruguay—these are the consistent high performers. Beyond this core, the picture becomes rapidly more complicated, as I have described.

The V-Dem 2026 report's most consequential finding is the reclassification of the United States as an electoral democracy rather than a liberal democracy—placing it alongside states whose credentials have always been contested. This is the empirical verdict that frames the entire conversation about the global architecture of accountability. When we speak of defending democracy, we must now specify which standard we are defending—and be honest that the existing models are insufficient exemplars of their own values.

The Hybrid Regime: A Category That Conceals a Direction of Travel

Between the liberal democracy and the closed autocracy sits the category that most demands analytical precision: the hybrid regime. In political science, a hybrid regime is one in which elections occur and formal constitutional structures are maintained, while the substantive conditions for genuine democratic accountability—meaningful competition, civilian control of the security sector, freedom of expression, an independent judiciary—are systematically absent or compromised. V-Dem's 2026 report identifies 60 electoral autocracies worldwide: these are the hybrid regimes, and they constitute the largest single category of political system on earth.

The critical analytical danger is treating the hybrid regime as a stable equilibrium—a permanent destination rather than a point on a trajectory. Hungary was a hybrid regime in 2014. By 2022 it had consolidated into something much closer to a competitive authoritarian state in which genuine

rotation of power is structurally impossible. Turkey was a hybrid regime in 2013. By 2018 it had completed the transition to an electoral autocracy. When we classify a state as hybrid, we must simultaneously ask: in which direction is it moving, and at what speed? The category describes a snapshot; it should never be read as a diagnosis of stability.

Pakistan is a hybrid regime—but a hybrid in the process of tipping further toward autocracy, and the constitutional engineering of 2024–2025 is the mechanism of that tipping. The Constitution of Pakistan, as originally framed and as it stood before the Twenty-Sixth Amendment, did not contemplate, sanction, or accommodate a hybrid regime. Article 245 limits the role of the armed forces to acting in aid of civil power. The structure of the Constitution places the Prime Minister and Cabinet—accountable to Parliament—as the apex executive authority. The military is constitutionally subordinate to civilian direction. The hybrid reality arose not from constitutional permission but from constitutional failure: from decades of military intervention, judicial validation of coups, and the inability of civilian political forces to consolidate autonomous authority. The Twenty-Sixth and Twenty-Seventh Amendments did not merely continue this failure. They institutionalised it—converting the informal dominance of the military-executive nexus into formal constitutional architecture. A government of disputed electoral legitimacy, sustained by a military-corporate complex the constitution does not sanction, engineered constitutional changes that dismantled the only institution capable of reviewing both the disputed elections and the constitutional changes. The result is a closed loop of self-reinforcing illegitimacy in which each element protects every other. This is not a hybrid that has reached equilibrium. It is a hybrid that has begun to complete its transition. Describing Pakistan's constitutional crisis as 'democratic backsliding' or a 'governance challenge' is not merely analytically inadequate. It is a form of complicity. What has occurred is deliberate, rapid, constitutionally engineered institutional dismantlement—the most significant restructuring of Pakistan's constitutional order since the passage of the 1973 Constitution itself.

V. WHY THE WORLD IS TURNING AUTHORITARIAN

Understanding the authoritarian resurgence requires understanding what democracy failed to deliver—because authoritarianism does not rise in a vacuum. It rises from the wreckage of democratic legitimacy.

Economic Abandonment

The period of democratic optimism following the Cold War coincided with a form of globalisation that delivered extraordinary aggregate gains while distributing them with extraordinary inequality. Professional and ownership classes captured the gains. Working and lower-middle classes experienced wage stagnation, deindustrialisation, and the erosion of public services. When a truck driver in Ohio, a textile worker in Yorkshire, or a farmer in Maharashtra looks at a political class that is systematically wealthier, more insulated from the consequences of its own decisions, and using democratic institutions to protect its own interests while describing itself as the defender of shared values—the appeal of a leader who says 'I alone can fix it' becomes comprehensible, even if it remains dangerous.

The Collapse of the Information Commons

Democracy requires a shared epistemic foundation. Social media platforms optimised for engagement rather than accuracy have systematically destroyed it. Algorithms built for outrage and tribalism have created an information ecosystem in which every citizen inhabits a different factual universe, in which authoritative institutions have lost epistemic authority, and in which the only truth broadly accepted is the truth of group identity. Digital authoritarianism—as I have described—did not create this collapse but has exploited it with devastating skill.

Identity Politics and the Manufacturing of Threat

In every country where authoritarian nationalism has succeeded, it has done so by identifying a group—immigrants, religious minorities, ethnic others, cosmopolitan elites—as responsible for the legitimate grievances of the majority. Modi's Hindu nationalism, Trump's nativism, Orbán's Christian democracy, Bolsonaro's Brazil, Le Pen's France: different national expressions of a common political logic—the mobilisation of majority identity against a constructed threat.

The Failure of Political Opposition

In country after country, the forces that should challenge authoritarian consolidation have instead joined it, accommodated it, or failed to present a credible alternative. In Pakistan, political parties that once described themselves as defenders of constitutional democracy have entered into understandings with the military establishment that make them managers of the managed democracy rather than opponents of it. The opposition that should be in the streets is in the corridors of power negotiating its share. Democracy at its lowest ebb requires a functioning,

principled opposition willing to pay the price of principled opposition. When that opposition has made its accommodation, the space for democratic challenge closes.

Pakistan's path

Pakistan's descent into persistent autocracy is the logical outcome of a structural imbalance inherited at birth—a "Viceregal" colonial legacy that prioritized a powerful, overdeveloped military-bureaucratic apparatus over fragile, underdeveloped political institutions. This imbalance was weaponized by an existential security-state narrative, where the military positioned itself as the sole guardian against external threats and internal "chaos," justified by a complicit judiciary that repeatedly invoked the "Doctrine of Necessity" to legalise the illegal. As civilian governments struggled with the "democratic fatigue" of a population demanding overnight economic miracles, the military stepped into the vacuum, framing its intervention as a moral crusade against political corruption and terrorism. However, this "strong hand" approach created a shielded economy where the military's own massive corporate interests remained beyond the reach of the law, while the press and civil society were silenced under the pretext of national security. Ultimately, Pakistan became a "Managed Democracy" not because of a single coup, but because the accountability architecture was systematically redesigned to ensure that while the faces in parliament might change, the center of gravity—the "Establishment"—never shifted. Pakistan's autocracy is a product of path dependency. The colonial past created the tools, the security-state narrative created the excuse, and judicial/political weakness created the opportunity.

VI. THE FRAGILITY OF AUTHORITARIANISM

I want to resist despair, because despair is not only personally paralysing—it is analytically wrong. Authoritarianism is structurally self-defeating. Not in the short run, not without enormous human cost. But the fragility is real.

The information failure I have described is also its own undoing. Blind governance accumulates errors that compound until the system can no longer absorb them. The patronage-based economy exhausts itself: networks require constant distribution of benefits, replace merit with connection, and gradually erode the productive capacity that the benefits are drawn from. The legitimacy deficit grows: even the most sophisticated authoritarian system depends ultimately on popular

acquiescence—and acquiescence erodes, fastest among the young, as the gap between promise and performance becomes undeniable. The succession problem is irresolvable: autocracy concentrates power in a person, not an institution, and when that person dies, there is no legitimate mechanism for transferring power. The question 'after him, what?' is the question every authoritarian system cannot answer and cannot afford to ask.

The Iranian revolution happened. The Soviet Union collapsed. The Arab Spring erupted. South Korea's candlelight revolution succeeded. Pakistan's lawyers' movement of 2007 succeeded. These are the recurrent expression of authoritarian fragility translated into political action. History bears witness: autocracy fails the test of its own promises. The question is always at what cost, and over what timeframe, and whether the institutions and the culture of democratic life survive to receive the inheritance.

VII. THE JUDICIAL PLAYBOOK: AUTOCRATIC LEGALISM IN PRACTICE

Against this global backdrop, let me examine the specific playbook by which authoritarian governments capture courts—and then speak to it from personal testimony.

Kim Lane Scheppele identified the essential insight: modern authoritarians do not need to stage coups. They can achieve the elimination of meaningful constitutional constraint through formally legal procedures. The law becomes not a constraint on power but an instrument of it. The playbook is consistent: control judicial appointments; strip jurisdiction from courts that resist; constitutionalise the changes to make them irreversible.

The sequence in Hungary: parliamentary supermajority used to expand the Constitutional Court from eleven to fifteen members, immediately filling the new seats with loyalists; then constitutionalising the electoral boundaries that produced the supermajority; then ensuring that even opposition electoral victories cannot translate into policy change. In Turkey: 4,000 judges and prosecutors purged by emergency decree overnight in 2016; constitutional referendum the following year abolishing the separation of powers; Constitutional Court remade in the President's image. In Poland: constitutional crisis over judicial appointments that the new Tusk government, elected in 2023, is still struggling to resolve—because the Law and Justice party embedded its judicial changes in constitutional provisions before losing power. In El Salvador: Bukele dismissed the Supreme Court justices who had limited his emergency powers and replaced them with loyalists within hours. The script is the same. Only the national details change.

Pakistan: A Personal Account of the Template in Action

When I took oath as a Judge of the Lahore High Court in 2009, I joined a constitutional court. My devotion to constitutionalism and my faith in the transformative power of the Constitution guided every day of my judicial life. I sought to give life to the Constitution—to strengthen democracy, expand rights, uphold the rule of law. That was the calling. That was the institution I chose.

In 2024, the Supreme Court of Pakistan delivered judgment in the Sunni Ittehad Council case. The February 2024 elections had produced a large number of independent candidates affiliated with the opposition. The Court found, by majority, that they were entitled to the reserved seats allocated to parliamentary parties—a result that, if implemented, would have deprived the ruling coalition of its two-thirds constitutional majority, halting its ability to amend the Constitution. The government refused to implement the judgment. And then it moved to ensure that no such judgment could ever be given again.

The Twenty-Sixth Constitutional Amendment, passed in October 2024, restructured the Judicial Commission of Pakistan—reducing judicial members and increasing political and executive representation to a majority of eight of thirteen. Most significantly, it ended the seniority-based appointment of the Chief Justice, instead empowering a twelve-member parliamentary committee to select from among the three most senior judges. No criteria were prescribed. No reasons were required. The structural logic of this pressure had been named years before it was written into constitutional text. Ammar Ali Jan, in his study Rule by Fear, mapped the architecture of what he called controlled democracy—the system by which Pakistan's intelligence apparatus manufactures political outcomes, deploying the judiciary as a site of managed compliance rather than genuine adjudication. At the centre of that system, Jan identified, was the controlled judge—not a corruption of the institution, but its engineered design. He quotes Imran Khan, speaking in 2007 with the candour: 'Agencies only promote those individuals they can control. They want controlled politicians, controlled judges, and controlled bureaucrats. They manipulate elections to install puppets. A country cannot function like this.' Khan was correct. The Twenty-Sixth Amendment did not introduce a new logic into Pakistan's judicial life. It inscribed the existing logic into constitutional text—converting informal pressure into formal architecture, so that the controlled judge would henceforth be not a product of extralegal intimidation but of the constitution itself.

The panel of three does not simply change who becomes Chief Justice. It changes what a judge must be to become Chief Justice. Under the seniority convention, a judge had no incentive to cultivate executive favour—the position was determined by an objective rule operating

independently of anyone's preference. The panel converts the Chief Justiceship into a competition. Among the three most senior judges, the Committee selects. The selection criterion is unstated but its operative logic is transparent: the Committee will favour the candidate least likely to cause institutional discomfort—whose record suggests accommodation rather than independence, whose jurisprudence signals cooperation rather than resistance. This creates a backward incentive that shapes judicial behaviour years before the moment of appointment. A judge who anticipates being within the panel faces a choice: maintain the independence that might alarm the Committee, or calibrate their jurisprudence and public positions to avoid generating reasons for being passed over. The incentive to avoid the appearance of excessive independence operates invisibly, reshaping judicial culture from within, long before any specific appointment decision is made.

I was the senior-most judge of the Supreme Court of Pakistan. Under the seniority convention, I would have been appointed Chief Justice. Under the panel of three, I was submitted to the Parliamentary Committee alongside the two judges next senior to me. The Committee passed over me, passed over the judge next senior to me, and appointed the third. No reasons were given. None were required. The message required no decoding - the path to the Chief Justiceship runs through political alignment. This is not a side effect of the Twenty-Sixth Amendment. It is its purpose. An amendment that punishes independence and rewards accommodation at the apex of the judicial hierarchy does not need to touch any other provision of the Constitution. The damage to judicial culture propagates through the institution automatically, as judges calculate what is expected of them and adjust accordingly.

I chose to stay—because there remained a sliver of hope that the Supreme Court would, as a Full Court, rise to examine the Amendment and reclaim its constitutional role. I trusted that institutional reason and constitutional morality would prevail.

What extinguished that hope was not the legislation alone. At a moment when the dignity and independence of the Court demanded principled resistance, the incumbent Chief Justice offered none. Instead of defending the institution he was entrusted to lead, he assented to the amendment and negotiated only the preservation of his own position and title, even as the Court's constitutional stature was dismantled around him. When the head of the judiciary chooses personal continuity over institutional integrity—especially while his own legitimacy is under judicial scrutiny—the result is not leadership. It is abdication. And my colleagues? The silence was its own verdict. No collective statement. No refusal. No act of professional solidarity.

The Twenty-Seventh Constitutional Amendment came in November 2025 and completed the dismantlement. It created above the Supreme Court a new Federal Constitutional Court composed

of judges curated under the new executive-controlled appointment process. The Supreme Court that remained was stripped of constitutional jurisdiction, reduced to an appellate shell, incapable of addressing state excesses or violations of fundamental rights. I am unable to uphold my oath sitting inside a court that has been deprived of its constitutional role; resignation therefore becomes the only honest and effective expression of honouring my oath.

The amendment further introduced the power to transfer High Court judges across provinces without their consent—a mechanism for purging independent jurists across the entire subordinate judiciary. And in a provision of extraordinary audacity, it amended Articles 243(9) and 248 to grant absolute lifetime immunity from all civil and criminal proceedings to the heads of the three military branches and any officer holding the rank of Field Marshal—a provision that directly benefited the Chief of Army Staff who had been promoted to Field Marshal in May 2025, six months before the amendment was passed. The alignment of military promotion, constitutional amendment, and absolute judicial immunity is not a sequence that requires elaborate interpretation. The light of judicial independence has not faded by accident. It has been dimmed by design.

The Deepest Cut: Manufacturing a Court to Erase the Law

Of everything in this sequence, what I want to name most precisely for this room—a room of constitutional lawyers and human rights scholars—is the dimension that has received the least public attention and will cause the most durable damage. The Twenty-Seventh Amendment did not merely strip the Supreme Court of constitutional jurisdiction. It created above it a new Federal Constitutional Court, composed of judges curated under the Twenty-Sixth Amendment's executive-controlled appointment process, and equipped that court with the power to disclaim seventy-eight years of Supreme Court jurisprudence as merely persuasive. The FCC has already exercised that power. In its early decisions, it has declared that Supreme Court precedents—the entire accumulated body of constitutional adjudication from independence to the present—do not bind it. It may follow them. It may not. The choice is the FCC's alone, unreviewable, unreasoned, made by two judges whose appointments were controlled by the government whose constitutional amendments the court was designed to insulate from challenge. This is not constitutional reform. This is the methodical erasure of a legal heritage.

To understand what is being destroyed, one must first be precise about what jurisprudence is. It is not a collection of outcomes—a database of winners and losers. It is the accumulated reasoning of a legal order: the record of how a society has answered, across decades and across thousands

of contested cases, its hardest constitutional questions. What does liberty mean when the state claims emergency? What does equality require when the constitution is silent on a specific form of discrimination? Where does executive authority end and judicial review begin? Each judgment adds to this record. Each dissent marks the road not taken and keeps it available for the future. Each subsequent decision either follows, distinguishes, or overrules—and in doing so, must engage with what came before. That requirement of engagement is not a technicality. It is what transforms a legal order from a series of unconnected commands into a living constitutional conversation—a dialogue conducted across time, through written reasons that survive the judge who wrote them, binding the judge who decides today to the judge who decided thirty years ago and to the judge who will decide thirty years hence.

Muhammad Munir's authoritative study of precedent in Pakistani law establishes the foundational principle with precision: accumulated jurisprudence belongs not to the institution that produced it but to the legal order itself. A court's decisions are not its property. They are deposited into the legal order—they become part of the law of the land. The institution can be restructured, reorganised, even replaced. The jurisprudence it produced remains, because it has become part of something larger than any institution: it has become the law of the country. Every nation has a memory. Its political memory is held in constitutional text, electoral records, parliamentary debates. Its judicial memory—the memory of how it has resolved its most contested questions under law—is held in its jurisprudence. It includes the vast accumulation of fundamental rights jurisprudence—on liberty, on fair trial, on freedom of expression, on the rights of minorities and women—built adversarially, tested across decades, refined by generations of lawyers and judges who understood that their role was to hold the state to its own constitutional commitments.

The constitutional argument against the FCC's claim begins with the text of the amended Article 189 itself—and it is a devastating argument. Article 189, as amended, reads: 'Any decision of the Federal Constitutional Court shall be binding on all other courts in Pakistan including the Supreme Court. Any decision of the Supreme Court shall be binding on all other courts in Pakistan except the Federal Constitutional Court.' Read this with a lawyer's precision. Both clauses are prospective—'shall be binding.' Both speak to decisions these institutions will render going forward, after the amendment. Neither clause says a single word about the decisions the Supreme Court rendered in the seventy-eight years before the amendment came into force. Article 189 as amended governs future constitutional adjudication. It is entirely silent on the status of the accumulated pre-amendment jurisprudence. That silence is not a grant of power to the FCC. Under the foundational principle of constitutional interpretation—the presumption against implied abrogation—established rights and obligations are not extinguished by legislation unless

the intent to extinguish them is clear and express. The FCC's declaration of non-bindingness finds no foundation in the text it purports to interpret.

The comparative argument is equally powerful—and exposes the pretextual character of the government's appeal to German, Italian, and Spanish civil law constitutional courts. Those courts were created in the aftermath of totalitarianism, in legal traditions where ordinary courts had historically been unable to strike down legislation or review executive action for constitutional conformity. There was, in those traditions, no established body of constitutional jurisprudence to discard because courts had not been empowered to produce it. The constitutional court was created to do something entirely new—and its fresh start was not an abandonment of heritage because there was no heritage of that kind to abandon. Pakistan's legal tradition is the precise opposite. Pakistan is a common law country—heir to the legal tradition of England, developed through the courts of the Subcontinent, refined through the decisions of the Federal Court from 1948 and the Supreme Court thereafter. In the common law tradition, cases are not illustrations of a pre-existing code. They are the law. Constitutional meaning accumulates through adjudication. To import the continental model into Pakistan's common law framework—to create a new apex court and declare the accumulated case law of the common law tradition merely persuasive—is not constitutional modernisation. It is constitutional incoherence. The German analogy does not justify the FCC. It exposes the government's fundamental misunderstanding—or, more precisely, it exposes the pretextual character of the comparison, deployed to lend the appearance of comparative legitimacy to what is in substance an act of institutional capture.

The bench strength problem makes the FCC's claim even more constitutionally untenable. The FCC currently sits in two-judge benches drawn from seven judges. The Supreme Court of Pakistan's landmark constitutional decisions—on the illegality of coups in Asma Jilani, on the seniority rule in Al-Jihad Trust, on the basic structure doctrine—were issued by Full Courts of thirteen, fifteen, and seventeen judges. Pakistan's own settled precedent law holds that where two decisions conflict, the decision of the larger bench prevails. A two-judge FCC bench cannot claim constitutional authority superior to a seventeen-judge Full Court. The weight of a constitutional decision is proportional to the deliberative scale through which it was produced. Seventy-eight years of Full Court reasoning cannot be superseded by months of two-judge adjudication, however formally the new court is positioned in the amended constitutional text. And the FCC's five stated grounds for departing from Supreme Court precedent are constructed so broadly that virtually any protection the Supreme Court built can be re-described within them. Ground five—'any other compelling reason that tends to advance the cause of justice'—is not a ground at all. It is a blank cheque.

This is autocratic legalism at its most architecturally sophisticated. The coup that abrogates the constitution overnight leaves the constitution behind as evidence of what existed before and what must be restored. The amendment that manufactures a new court, strips the existing court of jurisdiction, and equips the new court with the power to selectively disclaim the accumulated jurisprudence of its predecessor is harder to name, harder to reverse, and more durable in its damage. It does not tear down the building. It replaces the foundations with sand while the structure above still stands. Citizens file their cases. Courts issue their judgments. The forms of law are maintained. But the substance—the accumulated knowledge of what this constitution actually means for the people it protects—is being filtered through the preferences of a manufactured court, case by case, precedent by precedent, until what remains is not the product of principled constitutional adjudication but the output of executive preference dressed in legal language. The FCC judgments already available demonstrate this at work: in a routine family law case and a routine land dispute, Pakistan's new apex court paused to announce that seventy-eight years of the nation's constitutional heritage is merely persuasive. That announcement was made in passing. Without argument. By two judges. This is how jurisprudence dies—not with the drama of a coup, but with the quiet administrative authority of a two-member bench. A country's jurisprudence is its judicial memory. Memory, once declared non-binding, does not disappear immediately. It fades. Lawyers stop citing it because they cannot be certain of its status. Judges stop engaging with it because engagement implies a relationship the new framework has severed. Law students cease to study it as living authority. And then one day a lawyer stands before the new court and reaches for the authority that should constrain it, and finds that the FCC has already noted—in passing, without argument, by two judges—that it is not binding. That is not reform. That is amnesia by design.

Against Amnesia: Preserving the Memory the Captured Court Cannot Reach

But amnesia is not inevitable. Memory that is institutional can be captured. Memory that is distributed cannot. The response to jurisprudential erasure begins with the recognition that Pakistan's seventy-eight years of constitutional reasoning, along with the full record of the dissenting opinions, the bar's submissions, the resignation letters of November 2025, and the scholarly commentary that has accumulated in the years of the capture, must now be preserved in forms that no single institution can reach—and that the work of preserving it falls to those constituencies whose survival does not depend on the approval of the captured court.

I propose, as a direct response to the FCC's claim, the construction of an Independent Jurisprudential Archive—hosted jointly by the academy and the organised bar, governed by an

independent board, mirrored across geographical jurisdictions, and structurally incapable of being captured by any single actor. Such an archive would maintain the complete reported judgments of the Supreme Court of Pakistan from 1948 to 2025 in searchable form; the complete orders and proceedings of the High Courts; the full record of the Twenty-Sixth and Twenty-Seventh Amendment litigations; and a shadow docket of the dissents, bar statements, and scholarly commentary produced during the capture period. Its technical infrastructure should use the distributed and tamper-evident archiving methods pioneered by human rights documentation projects for exactly this purpose—the Starling Lab at Stanford, Bellingcat, and the emerging blockchain-based preservation protocols used for war-crimes evidence—because judicial memory under capture faces exactly the same threat as documentary evidence under authoritarian states: selective deletion, quiet reclassification, the silent departure of inconvenient material from official search. What was until now simply the shared curriculum of Pakistani constitutional law has become a contested resource that must be actively preserved by those who care about its survival.

The archive is not a substitute for the constitutional arguments against the FCC's claim. It is what makes those arguments survivable. A lawyer standing before the restored court a decade hence must be able to reach, without permission, for the full body of Pakistani constitutional reasoning that the FCC tried to filter. A law student in 2035 must be able to encounter Asma Jilani and Al-Jihad Trust as living authority rather than as historical curiosity. And the global common-law community—Indian, Bangladeshi, Sri Lankan, Malaysian, South African, British—must be able to continue engaging with Pakistani jurisprudence as part of the shared intellectual inheritance it has been for seven decades. Institutional memory preserved outside the institutions the state controls is the structural insurance policy against erasure. It is also the first concrete instrument of the Global Republic of Letters I will come to later in this lecture: a form of resistance whose currency cannot be awarded or withdrawn by the state.

I tell you this not for Pakistan alone. This sequence—the trigger judgment that provokes retaliation, the reforming amendment that restructures appointments, the leadership accommodation that neutralises internal resistance, the completing amendment that strips jurisdiction—is a transnational template. Naming it precisely, from the inside, is part of building the resistance.

Pakistan's International Persona and the Concealment of Domestic Autocracy

I want to address one further dimension of the Pakistan case that has particular relevance for an international audience. In recent months, Pakistan has achieved significant international visibility:

its role in the de-escalation of military tensions with India following Operation Sindoor in May 2025, and its participation in diplomatic efforts surrounding the Iran nuclear negotiations. These are genuine achievements of Pakistani statecraft, and I acknowledge them.

But I want to name a dynamic that the regime deploys with considerable skill: the use of international achievement to generate a rally-around-the-flag effect that conceals and insulates domestic autocracy. When a country is seen to be performing a constructive international role, when its military is credited with strategic success, when its diplomats are at tables where important decisions are being made—the international community's attention to what is happening inside that country's courts, inside its prisons, inside its constitutional architecture, is diminished. The international persona becomes a shield for the domestic disorder. International success cannot justify domestic disorder. A government that captures its courts, silences its civil society, and strips its Constitution of its protective architecture does not earn immunity from accountability by performing well in the foreign policy domain. Constitutional legality and democratic accountability are not negotiable trade-offs for diplomatic achievement. They are the foundation without which no achievement is sustainable.

I say this as someone who loves Pakistan and who served its Constitution for sixteen years. The critique is not of the country. It is of the use of national prestige to shield institutional destruction from scrutiny.

VIII. WHY JUDGES GIVE IN — AND THE LIMITS OF THE THEORIES

The Four Drivers of Judicial Capitulation

The scholarship provides a rigorous account of why judicial systems fail under authoritarian pressure, and I want to work through the four drivers carefully.

Fear is the first: judges who refuse to validate a coup or resist a constitutional amendment face dismissal, detention, and the destruction of a professional life built over decades. In Colombia, M-19 guerrillas—in an operation that investigators and scholars believe was substantially financed by Pablo Escobar—seized the Palace of Justice in 1985, killing eleven Supreme Court justices among more than one hundred people. In Uganda, Chief Justice Benedicto Kiwanuka was abducted and killed by soldiers in 1972. In El Salvador, judges who investigated death squad killings fled into exile. These are not historical curiosities. They are the living memory of what judicial independence costs under real pressure.

Comfort is the second, and I speak of it with personal candour because it is the most prevalent and the least discussed. Much of judicial accommodation is not about survival under duress. It is about comfort: the position, the title, the salary, the official car, the deference of the courtroom. A judge who validates an authoritarian amendment does not typically do so in terror. He does so in a quiet office, with time to think, assisted by lawyers who can construct any rationale required.

Isolation is the third. A judge without institutional support—without security of tenure, without a professional community willing to defend her, without an audience that values her independence—faces the full weight of state power alone. Isolated individuals do not hold indefinitely against organised institutional pressure.

Institutionalised apoliticism, identified by Lisa Hilbink in her study of Chilean judges under Pinochet, is the fourth and the most disturbing, because it operates without external pressure. The judges she studied were not coerced and were not sympathetic to Pinochet. They collaborated because their professional culture defined resistance as a violation of judicial propriety. The colonial common law tradition—built to administer, not to govern; to apply, not to scrutinise—produced exactly this culture across South Asia and beyond.

Ammar Ali Jan's account of Pakistan's permanent state deepens this diagnosis. The colonial judiciary, he shows—drawing on legal historian Nasser Hussain's Jurisprudence of Emergency—was built around the systematic collapse of the distinction between legal and extra-legal violence whenever the stability of the ruling order was at stake. Emergency was not exceptional in that system. It was constitutive. Pakistan inherited this architecture wholesale. The deference of its superior courts to executive authority, their comfort with necessity as the supreme legal principle, their trained incapacity to experience constitutional guardianship as anything other than political excess—these were not accidents of judicial personality. They were design features of a judiciary inherited from a colonial power that needed courts to administer subject populations, not to hold power accountable. Jan's most searching formulation is this: Pakistan is not, as it formally claims, a constitutional republic constrained by law. It is what he calls a profane state—one in which nothing is sacred except raw power, where constitutions are suspended whenever exceptional circumstances demand, and where the only operative rule is that might is right. A court formed within that tradition does not need to be instructed to capitulate. It has been trained not to recognise its own capitulation as such.

The Flaw in Hilbink's Apoliticism—When the Constitution Itself Is Weaponised

But I want to push back on Hilbink's theory in its application to the contemporary crisis, because it contains a flaw that becomes critical when constitutions themselves become instruments of autocracy. The apoliticism defence holds that judges should apply the law as they find it and leave policy choices to the democratically accountable branches. In ordinary times, in functioning democracies, this has genuine merit. But what happens when the law—including the constitutional text—has been weaponised against the fundamental rights it was designed to protect?

A judge who hides behind institutional apoliticism when a constitutional amendment strips an entire community of its rights, abolishes the independence of the judiciary, or grants lifetime immunity to military officers—is not being apolitical. She is making a deeply political choice in favour of power. There is no neutral ground when the constitution itself has been amended to produce injustice. The doctrine of apoliticism does not provide a refuge. It provides a rationalisation for complicity.

The answer is the basic structure doctrine—articulated by India's Supreme Court in Kesavananda Bharati (1973)—which holds that certain fundamental features of a constitution are beyond the amending power of parliament. Courts can and must review constitutional amendments that destroy the constitutional architecture itself: the separation of powers, the independence of the judiciary, the fundamental rights of citizens. A judge who applies this doctrine is not crossing into politics. She is performing the most fundamental judicial function: protecting the constitution from those who would use its formal procedures to destroy its substance. Apoliticism, properly understood, requires this. It does not permit otherwise.

Statutory Lawlessness: Reframing What the Compliant Bench Is Doing

Gustav Radbruch, writing from the ruins of a German legal system that had been hollowed out by the Nazi regime while maintaining the forms of law, gave us the vocabulary we need. His 1946 essay was titled Gesetzliches Unrecht und übergesetzliches Recht—in English, "Statutory Lawlessness and Supra-Statutory Law." The term gesetzliches Unrecht—statutory lawlessness—is the philosophical hinge. It names the condition in which an instrument has the formal appearance of statute but, by reason of its deliberate betrayal of equality and of basic justice, lacks the essential nature of law. Radbruch's formula, elaborated since by Robert Alexy, holds that the positive law takes precedence even when its content is unjust—unless the conflict between statute and justice reaches an intolerable degree, at which point the statute must yield to justice; and where equality, the core of justice, is deliberately betrayed in the making of law, the statute lacks even the

nature of law. The German Federal Constitutional Court and the Federal Court of Justice have applied this formula in case after case concerning Nazi-era and East German law. It is not a marginal theoretical position. It is the operative doctrine of a mature constitutional democracy that has twice had to reason its way out of the ruins of lawful evil.

The application to Pakistan is direct. A judge who sits on a bench constituted under the captured parliamentary selection procedure, who applies provisions that constitutionalise lifetime immunity for the military leadership while opposition politicians are denied bail, who administers the disciplinary regime under the amended Article 200 that makes non-consensual transfer enforceable by suspension, is not engaged in the neutral application of law. He is engaged in the administration of statutory lawlessness. The oath he took was not an oath to the procedural forms of the amended Constitution. It was an oath to the underlying constitutional order whose basic-structure integrity the amendments destroy. To administer the amendments in their captured form is to violate that oath, not to honour it. This reframing shifts the burden of justification. Under the regime's preferred framing, it is the resisting judge who must explain why he is departing from settled law, introducing political judgement into his work, refusing to follow the new constitutional text. Under the Radbruchian reframing, the burden moves. The compliant judge must explain why he is administering provisions that, measured against the constitutional order he swore to uphold, constitute statutory lawlessness. He is the one who has departed from law. He is the one who has introduced political judgement—the judgement of accommodation. He is the one who has violated his oath.

This is not rhetorical invention. It is the application to Pakistani circumstances of a philosophical analysis that the German courts have applied repeatedly to the judges who convicted dissidents under Nazi statute and to the border guards who shot East Germans attempting to cross to the West. Those judges also believed they were following law. The post-war and post-unification German jurisprudence did not soften its categorisation because of what they believed. The categorisation applied precisely because the belief itself was the content of their professional failure. Pakistani constitutional lawyers, scholars, and judges have available to them now a Radbruchian vocabulary that was not available at earlier Pakistani constitutional moments. The bar, the academy, and the dissenting bench should use it systematically. The compliant judge is not following law. He is administering statutory lawlessness. The resisting judge is not an activist. he is doing the ordinary work of a judge under conditions that have ceased to be ordinary.

Pakistan's Judiciary and the Paradox of Baum's Audience Theory

Lawrence Baum's audience theory holds that judges seek esteem from the audiences that matter to their professional identity. In a captured court, the dominant audience is the regime—which controls appointments, promotions, and professional standing. Change the audience—make the bar, civil society, and the international human rights community matter more than the executive's approval—and you change the incentive structure for judicial behaviour.

But Pakistan's judiciary presents a striking paradox that appears, at first glance, to refute Baum's theory entirely. Survey after survey shows that the Pakistani public has deep and enduring distrust of the judiciary—the courts are perceived as corrupt, partisan, and accessible only to the well-connected. And yet the judiciary continues to support power rather than the rule of law. If the audience of public approval matters to judges, why does a deeply distrusted judiciary still capitulate to executive pressure?

The paradox dissolves on closer examination, and actually confirms Baum's theory at a deeper level. The Pakistani judiciary's real audience has never been the general public. It has been the establishment: the executive, the military, the elite networks that control judicial appointments, housing allocations, post-retirement positions, and the thousand daily perquisites that make judicial life comfortable. The public's distrust is known and irrelevant, because the public is not the audience that matters. This is the most important lesson of Baum's framework: changing which audience the judiciary cares about is a structural task, not an individual one. You cannot appeal to a captured judiciary to value the public's trust when the public has no mechanisms to reward or punish judicial behaviour. You must build those mechanisms: transparent judicial appointments that the public can scrutinise, performance assessments that civil society can participate in, and international accountability structures that make a judge's record visible beyond the domestic establishment's circle of approval.

IX. THE BROADER CAPITULATION: WHEN PROFESSIONS AND INSTITUTIONS SURRENDER

Bar Associations and the Currency of Co-optation

In Pakistan, bar associations that were the backbone of the lawyers' movement of 2007 have been significantly co-opted. The mechanism is straightforward: bar leaders are offered membership on judicial appointment committees; housing plots in new residential schemes developed on state

land; positions on government-controlled legal bodies; and the quiet understanding that co-operation produces professional rewards while resistance produces professional difficulties. Many who accept these offers convince themselves that operating within the system gives them more influence than standing outside it. The collective result is the same: the professional body that should be the most committed institutional defender of judicial independence becomes a party to the arrangement that is dismantling it.

Business, Bureaucracy, and the Logic of Compliance

Business requires predictability, contracts, licences, and access to state resources. In an authoritarian system, all of these flow through the patronage network. The business community—rationally from a private perspective, disastrously from a public one—calculates that compliance is less costly than principled opposition. The bureaucracy faces the most immediate personal pressure: civil servants who apply rules rather than the regime's preferences face transfer, blocked promotion, and in more repressive systems, criminal prosecution on fabricated charges.

Civil Society Silenced, Media Captured, Opposition Absorbed

In Pakistan, journalists who report critically on the military establishment disappear, surface days later with evidence of physical abuse, and subsequently self-censor—not because they have been told to, but because the message has been received. Bloggers are abducted. Lawyers who represent political prisoners receive death threats. The major television channels operate under a system of informal regulation in which cable distribution can be disrupted at a moment's notice and advertising from state-owned enterprises withheld from channels that displease the establishment. The result is a media landscape that maintains the form of a free press while systematically avoiding the subjects—enforced disappearances, the torture of detainees, the military's political role—that a genuinely free press would place at the centre of public discourse.

The political opposition, in many cases, has become part of the arrangement. In Pakistan, political parties that once described themselves as defenders of constitutional democracy have entered into understandings with the military establishment that make them managers of the managed democracy rather than opponents of it. Democracy at its lowest ebb requires a principled opposition willing to pay the price of principled opposition. When that opposition has made its accommodation, the space for democratic challenge closes entirely.

The cumulative effect of all these capitulations—judicial, legal, business, bureaucratic, civil society, media, political—is what I call the architecture of managed consent. No single institution's

surrender is decisive. Their collective surrender is. The patronage network that drives this—the organised elitism of connection over merit—does not merely corrupt individual institutions. It colonises the entire social order, making resistance structurally costly at every level simultaneously.

X. THE DIGITAL FRONT: AUTHORITARIANISM AND RESISTANCE IN THE AGE OF AI

The architecture of capture I have been describing—the captured court, the co-opted bar, the silenced press, the absorbed opposition, the military-economic complex beyond accountability—was built for a pre-digital world and is now being refitted at speed for a digital one. The twenty-first century autocrat has tools that Ayub, Zia, and even Musharraf did not have. So, equally, does the resistance. This section addresses both sides of that new front, because any roadmap for accountability that does not understand the digital dimension will be out of date before it is delivered.

How Autocrats Use the Digital Space

I have already described the anatomy of digital authoritarianism—AI-powered surveillance, bot armies, algorithmic disinformation, the colonisation of the information commons. I want now to be more specific about the threat, because understanding it precisely is the precondition of resisting it.

In 2025 and 2026, agentic AI systems have shifted the offence-defence balance in the digital space. Coordinated inauthentic behaviour—automated accounts flooding social media with fabricated consensus—is now deployable at a scale and speed that overwhelms the capacity of platforms and fact-checkers to respond. Deepfake technology makes it possible to fabricate video evidence of political opponents committing crimes, confessing to treason, or making statements they never made. AI-generated disinformation campaigns can be customised to individual psychological profiles, targeting the specific anxieties and grievances that make each voter susceptible to a particular narrative. And the surveillance architecture—AI systems that monitor communications, track movements, map social networks, and identify potential dissidents before they organise—has made the cost of resistance visible and personal in ways that previous autocratic surveillance could not achieve.

The implications for accountability are profound. When the evidentiary record—the photographs, the videos, the communications that document abuse—can be fabricated or discredited by the

state, the capacity of international human rights documentation to hold governments accountable is severely diminished. When dissent can be identified and preempted before it reaches the streets, the traditional model of mobilisation against autocracy is disrupted. This is not a future threat. It is the present reality in China, Russia, and increasingly in the hybrid regimes of Turkey, Pakistan, and Hungary.

Digital Tools of Resistance

But the same digital revolution that empowers autocrats also empowers resisters—and this is where the roadmap for accountability in the digital age must be built. Secure, encrypted AI platforms—Maple AI, OpenClaw, and offline speech-to-text tools like Voxtral Transcribe—allow human rights defenders under surveillance to analyse sensitive documents, transcribe witness testimony, and draft communications privately, without exposing their work to state interception. These tools allow activists with no coding experience to build censorship-circumvention tools and secure communications applications in hours. Decentralised finance enables AI agents to make instant payments for services without identity verification or bank accounts—a critical capability for operating in environments where traditional payment infrastructure is censored or monitored.

Strategic litigation hubs represent another dimension of digital resistance. Digital rights organisations are developing platforms that aggregate documentation of human rights violations across jurisdictions, using AI to identify patterns, flag anomalies, and build the evidentiary records that international mechanisms require. Climate litigation—perhaps the most active frontier of executive accountability litigation in 2026—is using AI to process the scientific documentation that connects specific government decisions to specific human harms, making cases that would previously have taken decades to build. The case of Lighthiser v. Trump, challenging the executive's rescission of climate pollution regulations, is moving into substantive discovery—forcing the government to engage with evidence in ways that the political sphere cannot.

AI for Judicial Transparency and Accountability

I want to make a more speculative but important argument about AI's potential role in judicial accountability. A 2026 Northwestern–New York City Bar study found that 61.6 percent of federal judges in the United States have adopted AI tools in their judicial work, primarily for legal research and document review. This adoption is early and largely unregulated—only 9 percent of judicial organisations have issued formal guidelines. But it opens a significant possibility.

AI systems can be deployed to monitor patterns in judicial decision-making over time—identifying statistical anomalies that might indicate external influence, flagging cases where outcomes correlate with the political identity of the appointing government rather than with the legal merits, and making these patterns visible to civil society, academics, and international bodies. An AI system that analyses twenty years of a constitutional court's decisions and identifies a sharp shift in outcomes after a judicial appointment process was captured is producing a form of evidence that previously required expensive and time-consuming manual analysis. Making this kind of transparency automated, scalable, and publicly accessible changes the accountability dynamics for captured judiciaries.

AI also democratises access to legal tools. Quality legal representation has historically been the preserve of the well-resourced—which means that in captured legal systems, those who can least afford to challenge state power have least access to the tools that might help them do so. AI-powered legal assistance—drafting petitions, identifying relevant precedents, translating court documents across languages—makes the practice of legal resistance available to a much wider population. The caveat is essential: AI cannot replace judicial conscience. The Gujarat High Court in India has explicitly stated that human judgment, guided by conscience, reason, and constitutional values, must remain inviolate in judicial decision-making. AI is a tool of transparency and access. It cannot be a substitute for the moral formation that produces a judge willing to resist.

XI. ACCOUNTABILITY: THE LOAD-BEARING CONCEPT

I want to pause here and name the concept that underlies everything I have described—because it is the load-bearing pillar of the entire architecture of democracy, and because it is precisely the concept that autocracy is designed to destroy.

Accountability is the obligation of power to explain and justify itself to those over whom it is exercised. It operates at three levels. Vertical accountability is the electoral mechanism: citizens hold governments accountable through the ballot, removing those who fail and empowering those who serve. Horizontal accountability is the institutional mechanism: courts hold legislatures accountable, legislatures hold executives accountable, auditors and ombudsmen hold both accountable, each branch constraining the others. Diagonal accountability is the civil society mechanism: free media, independent researchers, international bodies, and organised civic groups

hold state power accountable even without formal authority—through exposure, documentation, and the mobilisation of public and international pressure.

Autocracy systematically destroys all three forms of accountability simultaneously. Elections are rigged or rendered meaningless through structural manipulation—vertical accountability is eliminated. Courts and legislatures are captured—horizontal accountability is eliminated. Civil society is suppressed, media is captured, international engagement is managed—diagonal accountability is eliminated. The result is a system that generates power without obligation: authority that need never explain itself, never justify itself, never submit to review. A system that is not accountable cannot survive—not in the long run, and not in any form consistent with human dignity. Accountability is not a feature of good governance. It is the definition of governance. Power without accountability is not governance. It is domination.

This is why digitalization, properly deployed, is not merely a tactical tool of resistance but a structural contribution to accountability. Open data systems make government decisions transparent in ways that previously required investigative journalism to uncover. AI-powered monitoring makes patterns of institutional capture visible that were previously obscured by the complexity of the record. Encrypted communication platforms protect the diagonal accountability of civil society from the suppression that authoritarian states deploy against it. Digitalization does not solve the accountability problem. But it expands the toolkit available to those who are trying to hold power answerable—and it raises the cost, for autocrats, of the impunity they depend on.

The intersection of accountability and the rule of law is worth stating precisely: the rule of law is not merely the existence of rules. It is the application of rules equally, regardless of the identity of the party subject to them. A state in which powerful persons are exempt from the same rules that bind ordinary citizens—whether by constitutional immunity, patronage-based enforcement, or judicial capture—does not have rule of law. It has rule by law: the use of legal forms to entrench rather than constrain power. Accountability is what distinguishes rule of law from rule by law. And judicial independence is what makes accountability operational: without courts willing to apply the law equally to the powerful and the powerless, accountability is an aspiration without an instrument.

XII. WHAT ARTISTS KNOW THAT LAWYERS DO NOT

Against the comprehensive landscape of institutional capitulation—judges who accommodate, lawyers who accept the land grant, business leaders who choose compliance, bureaucrats who

adapt, civil society workers who fall silent, political parties that join the arrangement—one constituency has historically maintained resistance with a consistency that demands examination. That constituency is artists, poets, and writers.

The judge, the lawyer, the bureaucrat, and the business executive all have careers embedded in institutional structures whose continued existence and reward systems are controlled, in the last analysis, by the state. When the state captures these institutions, it captures the professionals within them. The lawyer whose bar has been co-opted, the judge whose court has been packed—each faces a choice between professional self-destruction and institutional complicity. Most choose complicity, not because they are villains but because the institutional logic of their position leaves them very little else. The artist faces a structurally different relationship to power. Her audience is humanity—past, present, and future. Her currency is truth and beauty: categories that the state can suppress but cannot manufacture, redefine, or award on its own terms. The work of art that tells the truth about power has a relationship to truth that institutional capture cannot touch. A poem cannot be unmade by the imprisonment of its author. A song is not silenced by breaking the singer's hands. The manuscript memorised in secret cannot be seized by the police that burned the original.

I want to propose a frame for understanding this tradition: the Global Republic of Letters. Just as authoritarian governments coordinate their assaults—sharing the template of judicial capture from Budapest to Ankara to Islamabad, coordinating their delegations in Geneva, borrowing each other's disinformation playbooks—the voices of resistance form an equally coordinated, if uncoordinated, counter-tradition. From Faiz in Lahore's Montgomery Jail to Neruda underground in Chile, from Akhmatova memorising her poems in a Leningrad prison queue to Baldwin writing in Paris exile, from Brecht composing verse during his flight from Nazi Germany to Lorde speaking in New York about the cost of silence—these writers did not know each other, did not plan together, did not share a manifesto. And yet they constitute a single continuous argument: that the human spirit, confronted with organised power's demand for compliance, retains the capacity to say no, to witness, to speak, and to keep the moral imagination of a different order alive until the political moment changes.

The Pakistani Tradition

Faiz Ahmed Faiz wrote from Lahore's Montgomery Jail, and his collections were banned—and read by every Pakistani who cared about freedom. His Bol—Speak, for your lips are free—became the anthem of every democratic movement in Pakistan's history, including the lawyers' movement

of 2007. Habib Jalib's Dastoor—I cannot accept this dawn stained with darkness—was addressed directly to Ayub Khan's authoritarian constitution in 1962 and has been quoted at every protest since. Ahmad Faraz was imprisoned, went into exile, and continued to write. He gave language to principled departure—to the conviction that the journey of the pen will not go to waste. These are not merely beautiful poems. They are constitutional documents of the Pakistani people's refusal to accept managed democracy as their permanent condition.

Latin America: Testimony as Political Act

Pablo Neruda's Canto General was written partly underground, partly in exile, as Neruda fled the González Videla dictatorship. Victor Jara performed songs whose lyrical content was an act of constitutional testimony—naming the reality of the Pinochet regime's victims in language the regime could suppress only by killing the singer, which is what it did in the Estadio Chile in September 1973. His songs outlasted the regime. Eduardo Galeano's Open Veins of Latin America was banned simultaneously by the military dictatorships of Argentina, Uruguay, and Chile—which tells you everything about how seriously authoritarian governments take the written testimony of a careful, honest observer. Mario Benedetti, writing from exile, turned displacement into a literature of return: the conviction that the homeland of justice is always worth fighting for.

Europe: Witness, Exile, and the Refusal to Comply

Anna Akhmatova's Requiem was not merely a cycle of poems about the Stalinist terror. Its prose prologue is itself a constitutional act. She describes standing for seventeen months in the prison lines of Leningrad during the Yezhov terror, when a woman with bluish lips recognised her and whispered—because everyone spoke in whispers there—'Can you describe this?' Akhmatova answered: 'I can.' That exchange is the entire justification of the witnessing vocation compressed into two lines. It is also my justification for writing a resignation letter rather than slipping quietly away from a captured court. Can you describe this? I can. I must.

Bertolt Brecht, writing during his exile from Nazi Germany, understood that dark times impose their own moral grammar. In his great poem to posterity, he wrote that those who tried to prepare the ground for kindness could not themselves be kind—that the struggle against injustice hardens those who wage it in ways they did not choose. He asked what times these were when a conversation about trees was almost a crime, because in having it we maintained our silence about so much wrongdoing. That question—what times are these?—is the question of this address. And its answer determines what silence costs.

Albert Camus, in The Rebel, defined the act of refusal with philosophical precision. The rebel is a person who says no—but whose refusal simultaneously affirms the value being defended. The moment of resistance is not merely negative. It draws a line, names a limit, and in naming it, constitutes a moral community with all others who have drawn that line. This is why principled resignation from a captured court is not abandonment. It is the drawing of a line that the autocrat's constitutional amendment cannot erase, because it is drawn not in law but in conscience. Camus's insight is that the act of saying no is also an act of solidarity—with all who have refused before, and with all who will refuse after.

Václav Havel wrote from prison that the regime's deepest ambition was not merely to control behaviour but to hollow out the inner life—to make people complicit in their own unfreedom. Charter 77 gathered writers, lawyers, workers, and philosophers into a moral community that maintained the idea of constitutional dignity through twenty years of normalisation. Solzhenitsyn's Gulag Archipelago, smuggled out of the Soviet Union, destroyed in the minds of millions of readers the last remnants of the illusion that the Soviet system was a humane alternative.

The American Voices: Illuminating the Darkness

James Baldwin wrote from exile in Paris and Istanbul as someone systematically denied the constitutional promises his country made to all its citizens—and who, from that position of exclusion, made the most powerful possible case for the fulfilment of those promises. The Fire Next Time is a moral reckoning that made the human cost of constitutional failure personally real to those who had never had to fight for it. But Baldwin's essay 'The Creative Process' (1962) offers the deeper jurisprudential insight. He argued that the artist's purpose is to illuminate the darkness that power tries to ignore—to disturb the peace of complacency, to expose the questions that comfortable answers conceal. This is the judicial vocation under autocracy too: not to administer the law as given, but to illuminate what the law, in its captured form, is concealing.

Audre Lorde, writing from a different position of exclusion, gave the accountability argument its most personal and most demanding formulation. In The Cancer Journals, she reflected on the cost of silence: her silences had not protected her. And from that recognition came the most clarifying sentence in the literature of resistance: 'Your silence will not protect you.' This is what I want every judge who chose to stay in a captured court, every bar leader who accepted the land grant, every journalist who chose self-censorship, to understand. The comfort of silence is illusory. The institution will not protect you from the consequences of the bargain you made with it.

Lorde's insight is that speaking—bearing witness, naming what is happening—is not merely morally necessary. It is the only form of protection that has ever actually worked.

And Emily Dickinson, writing in 19th-century Massachusetts, offers a caution that resonates with peculiar force in the age of digital disinformation. Her poem 'Tell all the truth but tell it slant' warns that truth must be approached gradually—that 'The Truth must dazzle gradually / Or every man be blind.' In an era when AI-generated disinformation floods the information commons at a speed and scale that overwhelms the capacity for discernment, Dickinson's insight about the blinding quality of too-sudden revelation takes on a new meaning. The autocrat governs blind, as I have argued—but the resisters must also be careful not to overwhelm with truth what audiences conditioned by years of managed information can absorb. Strategic communication matters. The form of truth-telling shapes whether the truth is received. This is not a counsel of deception. It is a counsel of craft—the same craft that made Faiz's political poetry more powerful than any pamphlet, and Akhmatova's compressed witness more durable than any legal brief.

What must the legal world learn from all of this? Three things. First: constitutional conviction must precede and animate legal technique. The lawyer who has never been moved by a poem will not be moved by a constitutional argument at two in the morning when staying silent is easier. Legal education that produces technical excellence without moral formation produces, at best, skilled servants of whoever holds power. Second: the artist's relationship to audience must be the model for the jurist's. The artist's audience is humanity—not the state, not the bar, not the regime. The constitutional jurist's audience should be the same: the people whose rights she was appointed to protect and the future court that will review what she did. Third: resistance is kept alive in the dark times not by institutions but by individuals and their work. Institutions can be captured. Constitutions can be amended. Courts can be packed. But the Global Republic of Letters cannot be captured. Its membership is open to anyone willing to say: I can describe this. And I will.

XIII. THE ROADMAP: RECLAIMING DEMOCRACY

Let me now turn to the constructive agenda—the spine of this address. Not with false optimism, but with the recognition that authoritarianism is fragile, that democratic resilience is possible, and that we know enough about what works to offer a real roadmap rather than a general aspiration.

Democracy Is the Answer—But We Must Build Its Protectors

The first question is whether democracy—given everything we have examined about its current failures—is still the right aspiration. The answer is yes, with Churchill's humility. Democracy's genius is not that it produces wise governance—it often does not. It is that it provides a mechanism for removing unwise governance without violence. The peaceful transfer of power is not a small thing. It is the civilisational achievement that every authoritarian system cannot replicate.

But formal endorsement of democracy is not enough. Every autocracy endorses democracy in its constitutional text. What is required is the construction of a culture that makes democracy's protectors—lawyers, judges, journalists, civil servants, citizens—unwilling to betray it. Law schools must become the incubators of this culture. They must stop producing technically excellent servants of power and start producing constitutionally grounded democratic citizens. That means political philosophy, constitutional history, the sociology of judicial capture—as core curriculum, not elective enrichment. It means immersing future lawyers and judges in the tradition of cultural resistance: the poetry, the music, the literature of those who refused. The lawyer who has never been moved by a poem will not be moved by a constitutional argument when staying silent is safer.

Civil society must also be built before the crisis, not mobilised in response to it. Why do people use seatbelts? Not because they plan to crash, but because the culture has internalised the value of protection. Constitutional culture must work the same way: the habit of accountability, the reflex of resistance to arbitrary power, must be practised in ordinary times to be available in crisis. A society that does not resist the small betrayals of constitutional norms will not resist the large ones. Our societies must develop—through education, through culture, through the example of those who refuse—an instinctive recoil from those who offend democratic values. The autocrat depends on popular acquiescence. Make acquiescence culturally costly.

The Centrepiece: Remaking Legal Education

Everything else in this roadmap depends on the people who will carry it out. Constitutional courts do not defend themselves. Amendments do not resist their own misuse. Sunset clauses and charters of democracy do not enforce themselves. They are activated—or they remain inert text—depending on whether the lawyers, judges, bar leaders, academics, and civil servants in whose hands they are placed understand what they are for and have the moral formation to act accordingly. The lawyer who refuses to take the co-optation brief, the judge who refuses to sign

the order, the law officer who resigns rather than defend the indefensible, the bar leader who refuses the land grant—each is a person who was formed somewhere. Most of them were formed in law school. That is why legal education reform is not one element of the roadmap among others. It is the centrepiece—the long investment on which every shorter investment eventually depends.

The current curriculum across South Asia, and increasingly across the Global North, has a predictable output: the technically excellent servant of power. Statutory interpretation, procedural rules, evidentiary standards, the mechanics of drafting—these are taught with rigour. Constitutional theory is taught as doctrine rather than as commitment. The history of constitutional failure—the coups validated under the Doctrine of Necessity, the amendments that dismantled judicial independence, the captured courts of Hungary and Turkey and Pakistan—is taught, if at all, as case-law to be memorised for examinations rather than as the living inheritance that must shape the lawyer's sense of what her profession is for. Political philosophy is relegated to the elective margin. The sociology of judicial capture—Hilbink, Baum, Scheppele, Jan—is almost entirely absent. The Radbruch formula, which gives the constitutional lawyer her most powerful vocabulary for naming statutory lawlessness, is known to a handful of academics and to almost no practitioners. The lawyer who has never heard of *gesetzliches Unrecht* cannot name it when she sees it.

What is required is a structural reform of the curriculum. Constitutional theory, political philosophy, and the sociology of judicial capture must become core, not elective. Comparative constitutional failure—the detailed study of how Hungary, Turkey, Poland, Pakistan, and the United States arrived where they did—must be taught as the central case material of public law, because it is the material that the next generation of constitutional lawyers will actually encounter in practice. The basic structure doctrine must be taught not as an Indian curiosity but as the jurisprudence of constitutional self-defence that South Asian courts pioneered and that the world now needs. The history of the Doctrine of Necessity—Munir's opinion in 1955, Dosso, Nusrat Bhutto, Zafar Ali Shah, and the 2024 Bangladeshi invocation—must be taught as the case study in how a single judicial innovation keeps a constitutional door open for seven decades.

The curriculum must also include what the poetry, music, and literature of resistance teach that doctrine alone cannot: that constitutional argument is not a technical exercise but a moral practice, and that the judge who signs and the judge who resigns are both shaped by what they are willing to feel as well as by what they are willing to reason. Faiz's *Bol*, Jalib's *Dastoor*, Akhmatova's *Requiem*, Havel's *Power of the Powerless*, Baldwin's essays, Brecht's *An die Nachgeborenen*—these belong in the constitutional law seminar, not outside it. The lawyer who has never been moved by a poem will

not be moved by a constitutional argument when staying silent is safer. The curriculum that produces the judge capable of refusal is a curriculum that forms the whole person, not merely the technician. This is the long horizon. The lawyer who will stand before a restored court in 2040 is in a first-year classroom in 2026. The judge who will write the opinion striking down the constitutional amendment of 2045 is currently writing her third-year essay. Reforming the classroom is the longest and most patient work in the roadmap. It is also the work without which every other element will find that the people required to carry it forward have not been made. The rest of this roadmap describes instruments. This subsection describes the hands that will hold them.

Making Constitutional Courts More Resilient: The Six Dimensions

Making constitutional courts more resilient requires six interdependent dimensions. Doctrinal empowerment: courts must have the legal tools to refuse constitutional dismantlement, including the basic structure doctrine that prevents amendments from destroying the constitution's fundamental commitments. Structural empowerment: security of tenure, financial independence, random case allocation, appointment processes that no single political actor can control. Professional empowerment: bar associations that treat the defence of judicial independence as a core professional obligation, structurally prevented from accepting the land grants and committee positions that co-optation uses as its currency. Epistemic empowerment: legal education that forms judges and lawyers as constitutional guardians, not technical operators—and that includes immersion in the culture of resistance. Democratic empowerment: an activated citizenry that makes capturing courts politically costly. And the selection imperative: choosing constitutional court judges not only for technical competence but for demonstrated constitutional character—for the lawyer who took the difficult position, the academic who wrote the honest thing, the bar leader who refused the land grant.

Strategic Resistance Under Capture

Even with all six dimensions in place, there will be times when the court is captured and the people must keep going without institutional relief. File the cases anyway. Force the captured court to say no in writing, with reasons, on the public record. A captured court that must repeatedly justify its rulings for the executive is doing something different from one that faces no challenges at all. The refusals accumulate into a historical record—the brief for the court that will one day examine what happened. Strategic litigation under autocracy is not primarily about winning cases. It is about

maintaining the practice of resistance, keeping the institutional claim alive, and building the documentation that international mechanisms and future restoration processes will require.

Closing the Door on Necessity

There is one more door that any serious restoration must close, and its history in Pakistan is so long and so consequential that closing it requires the same deliberate structural work as dismantling the Federal Constitutional Court itself. The Doctrine of Necessity is the judicially-supplied rationale that has legitimised every extra-constitutional rupture in Pakistani history. It entered our law through Chief Justice Muhammad Munir's 1955 opinions in Federation of Pakistan v Maulvi Tamizuddin Khan and the Governor-General's Reference, which invoked Bracton's maxim—that which is otherwise not lawful is made lawful by necessity—to validate the dissolution of the Constituent Assembly. It was deployed to validate Ayub Khan's 1958 martial law in Dosso. It was deployed again to validate Zia's 1977 martial law in Nusrat Bhutto. And it was deployed to validate Musharraf's 1999 takeover in Zafar Ali Shah. Each invocation produced a new layer of judicially-legitimised extra-constitutional rule. Each invocation degraded the Constitution further. Ammar Ali Jan's diagnosis of Pakistan as a profane state—where constitutions are suspended whenever exceptional circumstances demand, and the only operative rule is that might is right—names exactly this tradition.

The Supreme Court of Pakistan formally repudiated the doctrine in Sindh High Court Bar Association v Federation of Pakistan (2009), declaring the November 2007 proclamation of emergency and its consequent constitutional modifications unconstitutional. The repudiation was significant, but it was not structural. The doctrine had been buried before—in Asma Jilani in 1972—and it had returned each time the establishment required it. The judicial repudiation did not change the underlying incentive structure that makes the doctrine attractive at moments of crisis. And the proof that the door remains open is no longer only a Pakistani matter. In August 2024, the Appellate Division of the Supreme Court of Bangladesh invoked the Doctrine of Necessity to legitimise the extra-constitutional interim government that took office after the fall of Sheikh Hasina, tracing its reasoning explicitly back to the Pakistani Maulvi Tamizuddin precedent. The Bangladeshi case is sympathetic—a popular uprising, a genuine constitutional vacuum, a Nobel laureate as interim leader. But the structural concern is unchanged. Once the doctrine is invoked, there is no principled stopping point. The door that was opened for a Chief Adviser in Dhaka is the same door that has been opened four times in Islamabad for generals with ambitions of their own.

The Pakistani restoration must close that door structurally. A New Charter of Democracy—of the kind that has preceded every previous Pakistani democratic restart—should include the explicit repudiation of the Doctrine of Necessity as a source of constitutional authority. The repudiation requires three elements. A textual amendment to the 1973 Constitution declaring that no extra-constitutional exercise of executive, legislative, or judicial authority shall be validated under the Doctrine of Necessity, under any analogous doctrine of state necessity, or under any judicial reasoning purporting to identify circumstances in which the Constitution may be set aside. An entrenchment of that provision against amendment by ordinary supermajority, because the 2009 judicial repudiation proved insufficient precisely for its being merely judicial. And a reform of the judicial oath that treats any future judicial validation of extra-constitutional action under necessity reasoning as misconduct cognisable under Article 209. The establishment's primary resource in moments of civilian crisis has always been the Doctrine of Necessity supplied by a compliant bench. Removing that resource—structurally, not merely rhetorically—changes the constitutional calculus of every future crisis. A Pakistani restoration is not merely an effort to reverse the Twenty-Sixth and Twenty-Seventh Amendments. It is the deeper project of closing the set of constitutional back doors through which extra-constitutional power has entered Pakistani politics for seven decades. The repudiation of necessity closes the judicial door the compliant bench has kept ajar since 1955. This is the beginning of a Constitution that does not, by its own silences, invite its own suspension.

CLOSING:

I come from the Global South. I have described the failures of the Global North. What this means is that we cannot afford, anywhere, the luxury of pointing elsewhere. The crisis of democracy is not the crisis of someone else's democracy. It is the crisis of democracy itself—of the idea that power can be held accountable, that rights can be protected against majorities, that the weakest citizen is entitled to the same constitutional protection as the most powerful.

Eleanor Roosevelt asked, on the occasion of the Universal Declaration's adoption, where human rights begin. Her answer: *In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person.*

That is where democratic resilience begins too: in the accumulation of small refusals—the lawyer who will not take the brief, the judge who will not sign the order, the journalist who will not self-

censor, the civil servant who will not look away, the law student who will not forget what she was taught, the poet who will not stop writing.

Nations that prosper are those that place the rule of law at the heart of their governance and preserve judicial independence as a sacred trust. Where justice is shackled, nations do not merely falter. They lose their moral compass. History bears witness: when courts fall silent, societies descend into darkness.

On the last page of my resignation letter, I found the only language adequate to that moment—the words of Ahmad Faraz:

> *"My pen is a trust held for my people. My pen is the court of my conscience. I swear by a lifetime of hardships: the journey of my pen will not go to waste."*

Neither will yours.

Thank you.

Key Sources & Authorities

*Barak, The Judge in a Democracy (Princeton, 2006) · Bickel, The Least Dangerous Branch (1962) · Dworkin, Law's Empire (Harvard, 1986) · Arendt, Eichmann in Jerusalem (Viking, 1963) · Fuller, The Morality of Law (Yale, 1964) · Radbruch, 'Statutory Lawlessness and Supra-Statutory Law' (1946) · Hilbink, Judges Beyond Politics in Democracy and Dictatorship (Cambridge, 2007) · Baum, Judges and Their Audiences (Princeton, 2006) · Huq **&** Ginsburg, 'How to Lose a Constitutional Democracy' 65 UCLA L Rev 78 (2018) · Scheppele, 'Autocratic Legalism' 85 U Chicago L Rev 545 (2018) · Levitsky **&** Ziblatt, How Democracies Die (Crown, 2018) · Applebaum, Twilight of Democracy (Doubleday, 2020) · Jan, Rule by Fear: Eight Theses on Authoritarianism in Pakistan (Folio Books, 2021) · Hussain, The Jurisprudence of Emergency: Colonialism and the Rule of Law (Michigan, 2003) · Munir, Precedent in Pakistani Law (Oxford University Press, 2014) · Kureshi, Seeking Supremacy: The Pursuit of Judicial Power in Pakistan (Cambridge, 2022) · Camus, The Rebel (1951) · Havel, The Power of the Powerless (1978) · Akhmatova, Requiem: Prologue (1935–1940) · Brecht, 'To Those Who Come After' [An die Nachgeborenen] (1939) · Baldwin, The Fire Next Time (1963); 'The Creative Process' (1962) · Lorde, The Cancer Journals (1980); 'The Transformation of Silence into Language and Action' (1977) · Dickinson, 'Tell all the truth but tell it slant' (c.1872) · Solzhenitsyn, The Gulag Archipelago (1973) · Neruda, Canto General (1950) · Galeano, Open Veins of Latin America (1971) · Benedetti, El Olvido está lleno de memoria (1995) ·*

V-Dem Democracy Report (2026) · Freedom House, Freedom in the World (2025); Freedom on the Net (2025) · Northwestern–NYC Bar Association, Federal Judges and AI Study (April 2026) · Kesavananda Bharati v State of Kerala AIR 1973 SC 1461 · Asma Jilani v Government of Punjab PLD 1972 SC 139 · Al-Jihad Trust v Federation of Pakistan PLD 1996 SC 324 · Sunni Ittehad Council v Federation of Pakistan (2024) · Shahbaz Masih v Additional Sessions Judge, Lahore (F.C.P.L.A. 536/2025, FCC, 3 February 2026) · C.P.L.A. 962–964/2023 (FCC, 2 December 2025) · Trump v. United States 603 US 593 (2024) · West Virginia v. EPA 597 US 697 (2022) · Dobbs v. Jackson Women's Health Organization 597 US 215 (2022) · Movement for Quality Government v. Knesset (Israeli Supreme Court, 2024) · ICJ, South Africa v. Israel, Provisional Measures (Jan & Mar 2024); Advisory Opinion on Palestinian Occupation (July 2024) · ICCPR Art. 14; UN Basic Principles on the Independence of the Judiciary (1985) · Shah, Resignation Letter from the Office of Judge, Supreme Court of Pakistan (13 November 2025) · Faiz Ahmed Faiz, Bol · Habib Jalib, Dastoor · Ahmad Faraz, Muhasara / Mera Qalam