

# Judicial Independence, Religion, and Politics: Theory and Evidence

*Researchers: Sultan Mehmood, Université Paris-Dauphine and Aix Marseille School of Economics, Avner Seror, Aix Marseille School of Economics*

---

## Executive Summary

The Judiciary, through providing protection of property rights, constraining government abuse, and enforcing contracts, plays a key role in institutional, political, and economic development. Religion, too, has largely influenced institutions, politics, and economic development. Yet not much is understood on whether and how religion impacts formal justice, especially in the developing world where religion plays a pervasive role in society. In this policy brief, we detail three key policy implications based on our research on the Judiciary, religion, and politics in Pakistan (Mehmood and Seror (2019)). The first advocates for a better awareness of policymakers and aid agencies of prevailing cultural norms, and how they interact with the functioning of the political institutions, and the Judiciary more specifically. In the case of Pakistan, our research highlights that seemingly democratic reforms implemented under military regimes aim at entrenching the ruling elites, and bring religious leaders to power instead of increasing democratic accountability. Second, our analysis supports policies aiming at increasing the degree of separation of power between religion, and politics. Finally, we advocate for supporting – or designing – selection procedures for judges that detach them from political influence.

## Context

Pakistan gained its independence from British Colonial rule in August 1947. It houses about 3% of the world population and is the 5th most populous country in the world (UN (2019)). Pakistan is home to largest number of ancient Sufi shrines (Aziz (2001)), constructed around the 12th and the 13th centuries as tombs of Sufi saints. These shrines have continued to be places of worship and great reverence (Suvorova (2004)). Religious leaders associated to the shrines are believed to be direct descendants of the Prophet Muhammad of Islam. They still enjoy great legitimacy among the local population, who seeks shrine custodians attention for divine intercession to resolve their problems.

## Under Military Rules, Religion Decreases Judicial Independence

With data covering thousands of judicial cases, we demonstrate that in Pakistan, under military rule, in districts that had a higher historical shrine density, the fraction of judicial cases won by local governments is substantially larger. The effect of religion on judicial independence is substantial. On average, a one standard

deviation increase in the number of shrines in a given district leads to a decrease in judicial independence of about 5 percentage points. The effects seem to be persistent, as shown in Figure 1.

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

### Decentralization Reforms Make Religious Elites Become Politicians:

We provide evidence that a political channel explains our empirical result. In particular, we demonstrate that under military rules, shire leaders become local politicians. Indeed, once in power, the militaries systematically decentralize political institutions, as they expect religious leaders to win local-level elections, and to assist them in consolidating their ruling.

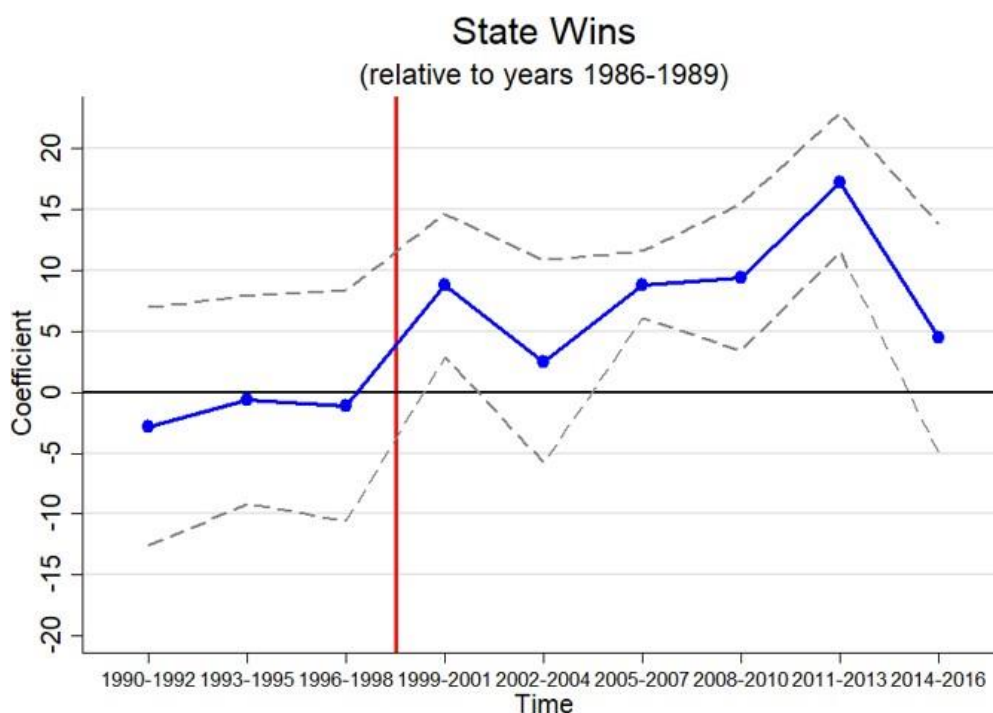


Figure 1: Time varying impact of military coup (90% CI)

Note: The Figure presents coefficients and the corresponding 90% confidence intervals in the regressions of State Wins on 2-year interval dummies interacted with shrine density in the district together with case, judge and district controls as well as district and year fixed effects. Cross-sections between 1986 to 1989 are held as the comparison group. The vertical line marks that timing of the military coup that occurred in 1999.

### Policy Implications

Using both our empirical evidence, and a political economy theory, we make three key policy recommendations.

#### 1. Avoiding the Trap of Always Supporting, or Designing, Seemingly Democratic Reforms when Religious Beliefs are Rampant

Our research highlights, first, the importance of carefully understanding the cultural context when evaluating, or designing, political reforms in the developing world. Seemingly democratic reforms may,

indeed, have significant adverse consequences on the functioning of institutions. In the case of Pakistan, under military rules, major institutional reforms that instituted local elections primarily aimed at entrenching the rulers rather than democratizing. Political decentralization favored the emergence of a new local political elite made of religious leaders. The religious leaders, in turn, took advantage of their divine legitimacy in the eyes of local populations to influence judges in politically salient judicial cases.

## **2. Promoting More Separation Between Religion and Politics**

Our research shows that the Judiciary may be vulnerable to elite capture not just by the military, but also by religious elites when they become local politicians. Reforms and legislations that may constrain the powers of religious-politico leaders from holding office may reduce the potential abuse of power by religious leaders.

## **3. Supporting, or Designing Selection Procedures for Judges that detach them from Political Influences**

Developing countries, especially when religious beliefs are rampant, require stronger safe- guards to protect judges from bribes and threats from politicians. For instance, in Pakistan, legislations preventing executive orders such as "Prime Minister's Assistance Package" for judges that rewards judges with houses may be deemed illegal. More broadly, the selection procedures of judges by executive office holders may also contribute to the entrenchment of political elites in the judicial structure. For instance, the move away from Presidential appointment of judges to appointment by judge peers improved level of judicial independence in Pakistan (Mehmood (2019)). Such reforms that insulate the judiciary from both religious and political elites may also contribute to improving institutional development.

## **Concluding Remarks**

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

## **References**

Aziz, K. K. 2001. *Religion, land and politics in Pakistan: a study of Piri-Muridi*. Vanguard. Mehmood, Sultan. 2019. "Judicial Independence and Development: Evidence from Pakistan." *Unpublished Manuscript*

Mehmood, Sultan and Avner Seror. 2019. "Judicial Independence, Religion, and Politics: Theory and Evidence." *Unpublished Manuscript*.

Suvorova, A. A. 2004. *Muslim saints of South Asia: the eleventh to fifteenth centuries*. London New York: Routledge.

UN, World Population Meter.: 2019. "Pakistan Population." <https://www.worldometers.info/world-population/pakistan-population/>.

## About EDI

Institutions matter for growth and inclusive development, but there is little evidence on how positive institutional change can be achieved. The Economic Development and Institutions (EDI) research programme addresses this knowledge gap by working with some of the finest economic thinkers and social scientists across the globe to inform new pathways to inclusive, sustainable economic growth.

Policy engagement is a critical focus for EDI research. We engage with policymakers and influencers throughout the design and development of our research programmes. EDI Research Insights and Policy Briefs are published at various stages of research to distil evidence and synthesise key findings for general and policy-focused audiences.

For more information, please visit: [www.edi.opml.co.uk](http://www.edi.opml.co.uk)

*EDI publications represent the views of the authors, and are not necessarily held or endorsed by the programme or its partner organizations.*