Comparison of Constitutional Aspects - India and Pakistan

What is the issue?

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- With new Prime-Ministership of Imran Khan, a noteworthy transformation is expected in the nation State of Pakistan.
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- In this backdrop, a comparison between India and Pakistan in key government and law aspects is attempted here.
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What are the key Constitution-related differences?

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- **Preamble** - The preamble of the Islamic Republic of Pakistan begins with an invocation of “Almighty Allah”.
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- It mentions the “Founder of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah”.
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- It promises “adequate provision” to “safeguard the legitimate interests of minorities and backward and depressed classes”.
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- It also promises to protect “the independence of the judiciary”.
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- The Constituent Assembly of India had rejected any reference to God or to the Father of the Nation, Mahatma Gandhi.
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- The preamble to the Indian Constitution is more compact.
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- It encapsulates, but doesn’t explicitly mention, the rights of minorities and independence of the judiciary.
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- **Rights** - Pakistan’s constitution recognises the right to privacy.
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- This was recently declared a fundamental right by the Supreme Court in India.

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- Pakistan constitution also recognises the right to education for children from ages 5 to 16.
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- In India, the Right of Children to Free and Compulsory Education Act, 2009 guarantees education to children between ages 6 and 14.
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- Pakistan’s constitution guarantees the right to information and declares human dignity as inviolable.
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- India passed The Right to Information Act in 2005, in this regard.
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- **Freedom** - Unlike the Indian constitution, Pakistan's specifically mentions the freedom of the press.
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- But this freedom is subject to the “glory of Islam”.
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- Pakistan has a regressive and widely abused blasphemy law that carries mandatory death penalty.
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- Also, its freedom of religion is conditional, and unlike in India, available only to citizens.
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How is the Judiciary handled?

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- **Appointments** - Pakistan’s government has no role in the appointment of the country’s Chief Justice.
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- The President appoints the senior most Judge of the Supreme Court as the Chief Justice of Pakistan.
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- India’s Supreme Court in 2015 struck down the National Judicial Appointments Commission.
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- It was intended to decide appointments and transfers of judges of the higher judiciary.
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- But Pakistan has had its own version of the commission since 2010.
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- There are six judges, a senior advocate, and two government nominees on it.

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- Its recommendations go to an eight-member committee of Parliament which confirms nominations by majority vote.
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- **Misconduct** - Pakistan's constitution provides for a supreme judicial council to deal with alleged judicial misconduct.
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- It consists of the Chief Justice, two seniormost judges of the Supreme Court, and two seniormost Chief Justices of High Courts.
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- If council concludes that a judge is "incapable of performing duties" or is guilty of "misconduct", impeachment by the President follows.
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- Contrastingly, in India, the key role in impeachment is that of the Parliament.
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- Also, the grounds for action are more stringent i.e. "proved misbehaviour or incapacity".
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How are elections and government formation different?

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- **PM** - In Pakistan the Prime Minister resigns ahead of the elections.
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- The Leader of Opposition and the PM together select a caretaker PM.
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- If they cannot agree, each will send two names to the Speaker.
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- Speaker will then refer it to a parliamentary committee.
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- The Committee has equal representation from the ruling and opposition parties.
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- **Government** - The PM and provincial Chief Ministers are elected by the newly constituted House in India.
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- Hence, the Pakistani constitution has no provision for a confidence vote (after elections).
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- Also, if two candidates are tied, voting continues until one secures a majority.
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- So unlike in India, the President or Governors have no role even if no party has a clear majority.
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- **No-confidence** - A motion of no-confidence can be moved by 20% of members.
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- It will succeed if passed by a majority of the total membership of the House.
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- In India, it must be passed by a simple majority of those present and voting.
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- **Candidates** - Muslim candidates in Pakistan's elections have to be of good character, wise, righteous, honest, and non-profligate.
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- They should have adequate knowledge of Islam, and should not have committed any major sin.
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- In India, the eligibility conditions and qualifications are more of a legal nature and not related to religion.
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- **EC** - In India, Election Commissioners are chosen by the government and are generally IAS officers.
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- The process is more complex in Pakistan.
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- The Chief Election Commissioner has to be a sitting or retired judge of the Supreme Court or a High Court.
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- If not, he/she should be qualified to be appointed as an SC judge.
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- The PM in consultation with the Leader of Opposition forwards three names to a 12-member parliamentary committee.
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- The committee has equal representation from the government and the opposition.
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- The Election Commission has four other members.
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- Each will be a judge from one of the four provincial High Courts of Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa.
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- The Election Commission of Pakistan has the financial autonomy over issues relate with it.
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- India's Election Commission does not have such autonomy as appeals can be

made in the Court.
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- **Reservations** - Of the 342 seats in the National Assembly in Pakistan, 272 are filled by direct elections.
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- Among the rest, sixty seats are reserved for women.
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- 10 seats are reserved for religious minorities.
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- These are filled by proportional representation among parties that get more than 5% of the popular vote.
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- The four provincial assemblies have their own quantums of reservations for both women and minorities.
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- Parties must give 5% of tickets to women candidates in the general seats.
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- If less than 10% women voters cast their votes in any constituency, the result there is nullified.
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Source: Indian Express

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