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Judicial Activism vs. Judicial Restraint in Pakistan: A Constitutional Analysis of Post-18th Amendment Jurisprudence

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ABSTRACT

The present paper discusses the constitutional issue between judicial activism and judicial restraint in Pakistan during the post-Eighteenth Constitutional Amendment (2010) era. It claims that the period of the post-amendment has made the judicial system more active in the state of governance and constitutional interpretation due to the fact that the Amendment itself reconstructed the institutional power by strengthening the parliament and providing more freedom to provinces and revised the judicial appointments and, at the same time, enforced the normative strength of the rights and democratic commitments. The paper examines superior court jurisprudence of the post-2010 period, in terms of its negotiation of the public interest litigation, suo moto jurisdiction, accountability-oriented adjudication, election-related matters, federalism issues, as well as the question of the reviewability of constitutional amendments. The main argument is that the post-18th Amendment jurisprudence of Pakistan exhibits a patterned oscillation: in times of perceived institutional failure, political crisis or a rights abuse the courts swing to the left of the spectrum; in times where judicial legitimacy, institutional balance or the continuity of democracies is perceived to be endangered by judicial overreach the courts swing to the right of the spectrum. As it is analyzed, both activism and restraint are not automatically virtuous since it is the constitutional problem to formulate principled limitations of judicial intervention that avoids democratic erosion and power division without jeopardizing constitutional preeminence and fundamental rights. The paper has concluded that a steady balance involves clarity of dogma, procedural changes and the enhancement of political and administrative accountability structure in order that the courts are not turned into the singular contesting setting of everyday governance arguments.

Keywords: Judicial Activism; Judicial Restraint; Pakistan; Eighteenth Amendment; Constitutional Jurisprudence; Separation Of Powers; Federalism; Judicial Review

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Introduction

Courts and democratic government are among the most disputed aspects of constitutional law, and this issue is particularly controversial in the states when the distribution of the political institutions is not even, accountability frameworks are not very strong, and the situation of the constitutional crisis is repeated. Judicial activism and judicial restraint are often used to outline judicial decisions concerning the amount, force and effect of constitutional adjudication. The term judicial activism as applied to the constitutional language in Pakistan tends to refer to a more activist judicial approach wherein the courts promote broad interpretations of constitutional rights, and aggressively review executive activity, and in some cases influence the formulation of policy by administration via mandate, review, or structural orders. Judicial restraint on the other hand refers to subordination to elected arms, sparing interpretation and a desire to have the judiciary intervene least in terms of policy and politics as much as it can strike down unconstitutional conduct where appropriate. Both methods are mutually irreconcilable in a constitutional system which is based on the separation of powers: activism may safeguard constitutional supremacy, but at the cost of displacing the democratic choice, whereas restraint may respect electoral legitimacy but may condone impunity and failure of administration. The post-18th Amendment era in Pakistan is an especially instructive place to assess this tension since the amendment was not a typical constitutional realignment but a significant redistribution of power and identity in the federation, which aimed at helping restore parliamentary democracy, enhance provincial autonomy, and remedy the distortions of authoritarian interruption.[1]

The Eighteenth Amendment changed the constitutional landscape in which courts are working. It reinforced parliament and the system of prime minister by limiting powers of dissolution by the president, devolved policy areas to provinces by abolishing the Concurrent List, established new areas of commitment linked to rights constitutionally, and changed the structure of judicial appointments. Meanwhile, 2007 restoration of the post-2007 judiciary following a mass political movement, had already generated an aggressive image of the judiciary in the public eye, and years after 2010 have seen high levels of political conflict, electoral competition, accountability controversy, and claims of a politically-captured or failed institution. In this regard, courts were a place where the controversy of governance was re-directed as a constitutional issue. It has yielded a jurisprudence that is at once rights-expansive, institutionally self-protective and in many cases highly interventionary into political administration. This paper shows that post-18th Amendment jurisprudence has exhibited a judicial trend which is based on two competing imperatives that include, on the one hand, the imperative to enforce constitutional restraints and protect rights and, on the other, the imperative to uphold democratic legitimacy by not replacing judicial governance with representative governance. To gain any insight into the post-2010 constitutional experience of Pakistan, it will be necessary to consider not merely the consequences of judgments but also the logic of doctrinal and

[1] Ahmed, S. (2015). Supremely fallible? A debate on judicial restraint and activism in Pakistan. *Vienna J. on Int'l Const. L.*, *9*, 213.

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institutional of judicial decision-making.[2]

Literature Review

The relationship of the courts to power, constitutional breakdown and tension between legality and political necessity have long been the subject of scholarship on the judiciary in Pakistan. Past literature is a critique of the historical role played by the judiciary in authorizing extra-constitutional regimes by legitimizing their legitimacy by a set of doctrines which emphasized continuity, order, at the expense of constitutional supremacy, to create a story of judicial accommodation and institutional weakness. Subsequent literature, particularly since the Lawyers' Movement, underlines the shift of the judiciary into a more independent and publicly empowered agent, the role of the public interest litigation and broadened jurisdiction in allowing courts to respond to infringements of rights and administrative malfeasance. A good deal of literature presents the post-restoration judicial system as a form of redress in relation to executive authority and administrative malfunctioning and, as a matter of fact, activism evolved to take the place of the feeble accountability procedures. Meanwhile, there is also a large body of critical literature about the danger of continued judicial intervention, which is creating courts that are politicized, undermine representative institutions and creates inconsistent governance when courts make case-by-case rulings. This scholarship highlights that judicial legitimacy is not only based on independence but also judicial restraint, predictability and institutional limits.[3]

In the particular discussion about the post 18th Amendment era, researchers have examined the way constitutional redesign transformed judicial self-understanding. One of them is the battle of judicial appointments and the degree to which the judicial system can impact or dictate on the appointment of judges without compromising on the democratic check on the judiciary. The other theme is that of artificial review of constitutional amendments: should the Pakistani courts take a similar approach to the so-called basic-structure doctrine which limits the power of the parliament to amend the constitution, or is such a strategy inconsistent with the sovereignty of the parliament? The scholars has also discussed the judicialization of politics whereby electoral conflicts, accountability cases, and legislative scandals are settled in courts instead of in the political arena.[4] Others justify this as a necessary constitutional protection in a polity of high conflict, others justify that it puts incentives on political actors to shortcut democratic processes and use litigation to arm themselves. An analogous branch of study focuses on the jurisprudence of Article 184(3) and sua motu authority, where procedural discretion allows courts to choose the matters of concern, remedy fashioning, and in some circumstances to perhaps act like an oversight body. In these discussions, the literature is united by the fact that the

[2] Khalid, H. (2024). Judicial Activism in Pakistan: A Comparative Study of CJP Saqib Nisar and Umar Ata Bandial. *The Critical Review of Social Sciences Studies*, *2*(2), 322-337.
[3] Bakhsh, F., Abbasi, S., Abbasi, W. A., & Hashmi, M. A. I. (2025). Judicial Activism vs. Judicial Restraint in Developing Democracies: A Comparative Study. *Social Science Review Archives*, *3*(3), 2319-2329.
[4] Munir, K., & Khalid, P. D. I. (2020). Judicial activism in Pakistan: A case study of Supreme Court Judgments 2008-13. *South Asian Studies*, *33*(2).

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judiciary of Pakistan is functioning in a place of institutional weakness and political polarization that not only is welcome but also increases the dangers of overreach. This paper stems out of the current body of scholarship because it approaches post-18th Amendment jurisprudence as a changing constitutional bargain over authority, legitimacy and institutional skill instead of a heroic tale of activism or a tale of necessary restraint.

Methodology

The proposed research is qualitative utilizing a doctrinal approach that is based on constitutional interpretation and jurisprudence. The study is informed by inquiry of constitutional text as recalibrated by the Eighteenth Amendment and by discussion of several critical superior court cases of 2010 through developments up to 2025 that demonstrate the judiciary activity with separation of powers, federalism, fundamental rights, accountability, elections, and reviewability of constitutional amendments. It is more interpretive than quantitative: it deals with the patterns of reasoning, methods of interpretation, institutional claims and remedial decisions. When analyzing judicial behavior, two analytical lenses are employed in the research. To start with, the intensity of intervention lens identifies the decisions that invalidate actions, decisions that set specific instructions and oversight and decisions that effectively redefine institutional practice. Second, the lens of the logic of deference assesses the reasons provided by the courts to support the outcome due to deference to the political branches, necessity based on the rights, structural constitutional principles such as independence of judiciary, and democratic continuity, or pressed by the imperatives of the public interest. The purpose is to understand in what way courts locate themselves in the constitutional framework following the 18th Amendment and whether their jurisprudence is characterized by some uniform boundaries or varies according to the circumstances. The methodology also takes note of the fact that the constitutional adjudication in Pakistan is entrenched in the political reality and thus the judgments are examined concerning their institutional impacts such as the impacts on the executive autonomy, the parliamentary power, the provincial-federal relations, as well as the legitimacy of the judicial system itself.

Research Findings

The jurisprudence of the post 18th Amendment indicates that this superior judiciary in Pakistan has evolved an interventionist stance that is neither uniformly activist nor constantly restrained but is dependent on the field of issue, on political circumstances and perceived institutional interest. One major observation is that the courts have been most aggressive therefore where they see a direct relation to constitutional supremacy, continuity of democracy and fundamental rights and they seem able to do so where other institutions have either been unwilling or unable to do it. This activism manifests itself in the judicial system which is generous in its application of public interest jurisdiction to correct administrative failures, in its eagerness to review executive discretion in the appointment process, in procurement, and resource distribution, and in its eagerness to intervene during politically disruptive times like contentious dissolution, election scandals, or accountability crises. However there is also a parallel discovery where judicial restraint has been strategic in areas where

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doing so would directly disrupt constitutional continuity, create an institutional confrontation that the judiciary is incapable of addressing, or have policy-making decisions that must be handled by administrative expertise and a democratic trade-off. This creates a swerving jurisprudence that occasionally attempts to apply the Constitution by hard remedies and occasionally, to focus on institutional limits.[5]

One eminent strand that has been developed after the 18th Amendment regards the judicial independence and the judicial appointments system. The lawsuits about judicial appointment processes show an institutional self-defensive aspect of activism: courts read appointment processes so as to maintain the robust judicial influence in the appointment process, often by highlighting that independence of the judiciary is one of the basic constitutional requirements that cannot be overridden by political favor. Such a trend shows that judicial activism does not merely manifest itself as the enforcement of rights; it is also manifested as institutional boundary-making where the courts establish the boundaries of the power exerted by the executive and legislative branches of government over the courts. These rulings affirmed the independence of the judiciary but also intensified arguments over the design of shared appointment power in the post-18th Amendment that the judicial branch was being redesigned judicially to become dominated by the judiciary, always questioning the democratic legitimacy and responsibility of the judiciary.[6]

The other significant observation is that of judicial accountability and political leadership conflicts. The after 2010 era comprises high-profile constitutional adjudication on disqualification of elected officials, interpretations of clauses on eligibility and validity of standards touching on honesty, disclosure, and compliance with the law. One frequently used by courts in justifying intervention is the reference to constitutional morality and the necessity that an office in the government should qualify under the constitution. This has in substance seen the courts overrule political outcomes such as disqualifications leaving prime ministers or other political leaders out of power. Although such rulings are couched in the context of constitutional implementation, they have the impact of increasing the influence of judges in the factors that affect political leadership election outside of the electoral system. This improves accountability in the former way but also transfers the political contestation to courts, creating more risks of politicization and creating the accusations of selective enforcement based on the political context and benches composition.[7]

Jurisprudence additionally demonstrates that courts were actively constructing federalism following the Eighteenth Amendment especially as they interpreted devolved powers and center-province coordination conflicts. The courts have occasionally taken a step to resolve a conflict in jurisdiction, to force adherence to constitutional allocation of power or to regulate or service delivery and natural resource disputes. These instances make apparent that federalism as introduced in the

[5] Nawaz, H., & Bexci, M. S. (2025). A Critical Analysis of Judicial Structure of Pakistan's Apex Court: Pre-and Post-26th Constitutional Amendment. *International Journal of Advanced Social Studies*, *5*(2), 30-43.

[6] Khan, S. H., & Zubair, M. (2023). Constitutionalism And Judicial Activism: Transforming Authority In Pakistan. *Russian Law Journal*, *11*(4), 659-677.

[7] Ahmed, S. (2015). Supremely fallible? A debate on judicial restraint and activism in Pakistan. *Vienna J. on Int'l Const. L.*, *9*, 213.

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post 18th Amendment is not self executing: judicial interpretation has become a prominent tool where the practical significance of the devolution is stabilized. Nevertheless, the federal cases have also been viewed with caution by the courts in their rulings not to be too intrusive to permit provincial autonomy but at the same time not to change the judiciary into an arbiter of normal administrative disputes which ought to be solved through intergovernmentalism and political compromise.[8]

Lastly, a key discovery concerns the changing form and inner organization of the judiciary, especially over contests concerning so motu authority, composition of the bench, and whether there is an original jurisdiction. The experience of the post-2010 period shows that intense procedural discretion in the office of the Chief Justice may increase both activism, allowing quick intervention and bench-building to suit, and institutional controversy and the sense of arbitrariness. By the early 2020s, these issues formed the basis of legislative and judicial arguments regarding the regulation of the internal operations of the Court, as part of a larger constitutional conflict on the question of whether judicial activism ought to be limited by internal reform, external law, or constitutional interpretation. This implies that the history of Pakistan has evolved out of the argument concerning activism and restraint in specific cases to a systemic inquiry regarding how judicial authority ought to be institutionally structured to maintain legitimacy and uniformity.

Discussions

The results indicate that judicial activism during the post 18 th Amendment period in Pakistan works both as a constitutional protection and a political entity, which is generating benefits of constitutional implementation but is also creating strains that can undermine democratic and institutional balance. One such interpretation is that activism is most appealing to courts when they believe a lack of accountability or constitutional adherence, especially at the time when political officials are more filled with partisan survival than constitutional conformity or administrative effectiveness. Under such circumstances, courts might consider intervention as not optional but something they are forced to do to avoid constitutional systemic erosion. However, there is a also a danger with this necessity-based activism, courts become a governance corrective, political actors have a temptation to shift more conflicts to courts instead of fixing them through parliamentary actions, administrative reform, or political compromise. This sets up a virtuous circle where intervention by the judiciary becomes the rule, and judicial restraint is being characterized as the failure. In the long run, the judiciary can be anticipated to produce results that it cannot administer, which results in uneven application, administrative imperialism, and reputational susceptibility in case of failure to implement.[9]

Conventionally in the constitutional approach, the major tension is the distinction between interpreting and applying the Constitution as a rule, and administering the state as a administrator. The best justification of judicial activism is the enforcement

[8] Bazmi, S. (2022). Politico-judicial activism in Pakistan: A historical overview. *Pakistan Journal of Social Research*, *4*(03), 97-104.

[9] Sultan, S., & Jabeen, T. (2020). Changing Facetsof Judicial Activism in Pakistan. *Review of Education, Administration & Law*, *3*(3), 523-534.

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of rights, prevention of unlawful powers and redress of constitutional breaches that cannot be addressed by the normal political processes. It is more problematic constitutionally when the courts are seen to go further than adjudicating and engaging in managerial tasks like overseeing projects, dictating detailed policy standards or regularly replacing their preferences with executive discretion in complex areas of policy.[10] The post-18th Amendment jurisprudence of Pakistan abounds with examples that threaten to cross this boundary, particularly as a result of broad application of public interest jurisdiction, which allows the Court to assume responsibilities of issues of public interest without normal procedural limitations. When such situations arise, the wish of the judiciary to achieve substantive justice can be in opposition with the constitutional principle that the policy making process is the mandate of the elected structures that are accountable to the electorate. The scale of this dilemma is increased in Pakistan since the reality and persistence of governance failures poses the moral pressure upon the courts to act, and institutional limitations on expertise and the capacity of courts to act and act are still substantial.[11]

The other important aspect of conversation is with regard to democratic legitimacy. In the parliamentary systems, legitimacy is mainly based on elections and representation in parliament whilst courts, based on constitutional power, rationality and fairness. By wading deeply into the political leadership struggle by using the disqualification jurisprudence or election related orders, the courts may become seen as political players and not as impartial adjudicators, despite the conduct being within the text of the constitution. The perception may interfere with the judicial powers and polarize around the judicial system. The post 2010 experience in Pakistan shows that judicial activism may both lead to a rise in the trust of the population in certain groups, and an increase in the mistrust in other groups, depending on the political outcomes of the decisions. The ensuing politicization may be self-reinforcing: political participants will present findings as judicial partisanship, the population will be polarized, and the judiciary will feel pressure to continue being activists or fall back into its cist of inactivity, both of which are costly.[12]

The fact that post-18th Amendment jurisprudence is complex is represented by the aspect of federalism as well. Devolution brought about numerous centers of power, which needs to be coordinated and negotiated. Courts may also be useful in stabilizing constitutional meaning by resolving competence clashes but overuse of judicial intervention in intergovernmental conflicts should diminish incentives of political bargaining and institutional consultation. On the same lines, in cases where the court accentuates the independence of the judicial system in appointment and process, they enhance the isolation of the judiciary and political power, but also cast doubt on the issue of validation of democracy under judiciary governance. This is tough, to maintain independence and at the same time transparency, internal accountability and

[10] Waseh, J., & Mubarak, M. (2025). The Amendment Process of the Constitution of Pakistan: Political Dynamics & Legal Implications. *ASSAJ*, *3*(02), 965-973.
[11] Jatoi, G. F., & Shah, I. H. (2023). The Impact of Constitutional Amendments on Judicial independence in Pakistan. *Journal of Education, Law and Social Sciences*, *1*(1), 63-77.
[12] Ali, R. N. (2021). Independence of Judiciary in Pakistan: An analysis of 18th & 19th Constitutional Amendments. *Journal of Social Sciences Review*, *1*(2), 1-12.

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procedural fairness, especially since citizen trust is not just based on results but also the image that courts are administering justice in a principled, predictable mode.[13]

One more point of discussion is the shift to procedural reforms and restrictions. The post 18th Amendment era is increasingly demonstrating the fact that the question of activism cannot be discussed outside the context of judicial structure. In case the judicial power is extremely centralized and discretionary, activism will strongly rely on the personal leadership and the bench politics, leading to unpredictability and controversy. When the judicial systems are institutionalized by setting clear rules according to which the cases should be selected, the bench composed, and the cases reviewed, activism may become more principled and less personality-oriented. The experience of Pakistan reveals that procedural and internal court reform is not an administrative problem; it is a constitutional one that should be supported by reform so that the judiciary can be in a position to exercise its authority as the guarantor of the constitutional supremacy and thus to be able to perform its constitutional function.

Recommendations

The principled balance between judicial activism and restraint in Pakistan is to introduce reforms that would help in defining the boundaries of the doctrines, enhance institutional capacity and enhance accountability of other armies to ensure that the courts are not forced to become an alternative to governance. The first suggestion is that the Supreme Court public interest jurisdiction and suo motu jurisdiction should be informed by common principles that will determine the nature of what constitutes a public interest and how the rights nexus can be measured. These standards are supposed to point out that extraordinary jurisdiction is the right thing to do when conventional legal remedies fail, and when there are systemic rights abuses, or constitutional crises, and not as a default process of administrative redress. Such standards would be embraced and regularly used to eliminate uncertainty, deter strategic litigation by political forces, and make the Court more institutionally legit by demonstrating that its interventions are not arbitrary.

The second suggestion is the improvement of the procedural protection of extraordinary jurisdiction exercise. This involves making sure that key constitutional cases are heard by benches that are constituted by transparent means, that there is very little in the way of impression of cherry picking with regard to bench formation and that there is a wide scope of meaning review or appeal of a major decision, particularly one that has political and institutional implications. Transparency during procedures contributes towards restraint by making the intervention more difficult to tailor and simplifying its justification using institutional logic. It also allows activism where appropriate by bolstering the validity of intervention by collective judicial responsibility. Simultaneously, the judiciary needs to enhance internal accountability and uniformity by publishing regular practice directions, reasoned decisions which clarify the boundaries of judicial competence and a principled culture of deference even in areas of policy where breaches of the constitution are not obvious.

The third recommendation is related to the legislature and executive: the increase in

[13] Shah, A. A., Khan, M. S., & Farid, N. (2020). The Role of the Supreme Court of Pakistan and Constitutional Parameters of Judicial Activism. *Global Political Review*, *5*(3), 208-217.

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accountability mechanisms will play a significant role in decreasing the need of judicial intervention. Parliamentary committees need to be strengthened to exercise strict oversight, administrative accountability commissions need to be independent and should operate in a credible manner and systems of delivering of the public services must be enhanced in order to ensure that the citizens will not look to the courts as the initial avenue of lodging complaints of basic governance. Judicial restraint can be more easily achieved without compromising the rights protection in case institutional governance is improved. Lastly, there should be strengthening of intergovernmental systems of federal coordination to minimize center-province conflict to the court, particularly in policy designing post devolution. Strong political negotiation systems could make sure that courts only interfere with the situation in case of real constitutional conflicts and not coordination failures.

Conclusion

The jurisprudence of post-18 th Amendment Pakistan can be seen as a constitutional quandary of a democracy that tries to establish the supremacy of the civilians, further federalism, and strengthening the rights operating under the circumstances of polarization and imbalanced institutional strength. The judiciary of this period can never be characterized under one term, it is better explained as a process of constant bargaining between activism and restraint that is influenced by the crises, the institutional failure and conflicting constitutional demands. Judicial activism has been commonly a constitutional enforcement device that defends democratic continuum in times of crisis and offer accountability where other accountability mechanisms seemed ineffectual. However, activism also threatens to turn courts into actors of governance, politicize the legitimacy of the judiciary, and undermine representative institutions in favor of the political struggle by taking it to court. Judicial restraint can be good when it is applied as principled deference, and bad when it is applied as excessive passivity and can bring about constitutional breaches and further undermine trust in governance by the populace. The constitutional challenge is, consequently, not to pick either activism or restraint as absolute ideals, but to formulate principled constraints and institutional reforms which enable the judiciary to step in decisively in cases where constitutionalism dictates and to step aside where democratic government is capable and should resolve conflict. This balance will be relying on the clarity of the doctrines, openness of judicial process, the enhancement of parliamentary control, plausible administrative responsibility, and better coordination between the government. Within this framework, the judiciary will be able to be a protector of constitutional preeminence and an ally, but not a replacement, to democratic and federal institutions in Pakistan.

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