

Judicial Review and Democratic Institutions in Pakistan: Navigating Extra-Constitutional Measures and Judicial Activism

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ABSTRACT

The judiciary in Pakistan has played a pivotal role in shaping the country's constitutional and democratic evolution. While the judiciary holds a significant position in promoting democratization, it has often been criticized for endorsing extra-constitutional measures, legitimizing military interventions, and reinforcing authoritarian regimes at the cost of democratic institutions, its own independence, and public trust. This paper analyzes key historical judgments, categorizing the judiciary's role into those that facilitated democratic progress and those that impeded it. It also explores the judiciary's stance towards various state institutions and political parties, emphasizing instances where it favored one institution or political group over another, often to the detriment of democratic balance. The paper provides evidence explaining the persistent necessity of judicial intervention, particularly in response to emerging forms of corruption that spread rapidly and compel the judiciary to act to prevent state failure and maintain national viability. It further examines how judicial activism and the frequent use of *suo motu* powers by superior courts are diminishing the operational space of the executive, a development that runs counter to the functionalist interpretation of the separation of powers and the system of checks and balances. The final section discusses how the dual-edged role of the judiciary can be regulated to ensure the effective functioning of other branches of the state while remaining within its core mandate of reviewing governmental actions for constitutional compliance.

Keywords: Judicial activism, Democratic institutions, Extra-constitutional measures, Government

INTRODUCTION

Since its inception, Pakistan's judiciary has played a pivotal role in the country's constitutional and democratic evolution. Broadly, the judiciary holds a significant position in promoting democratization. However, in the context of Pakistan, the judiciary has often been criticized for endorsing extra-constitutional measures, legitimizing military interventions, and reinforcing authoritarian regimes—frequently at the cost of democratic institutions, its own independence, and public trust. This paper analyzes key historical judgments, categorizing the judiciary's role into two segments: those that facilitated democratic progress and those that impeded it. Additionally, the paper explores the judiciary's stance towards various state institutions and political parties, emphasizing instances where it favored one institution or political group over another, often to the detriment of democratic balance.

This paper provides evidence explaining the persistent necessity of judicial intervention, particularly in response to emerging forms of corruption that spread rapidly and compel the judiciary to act in order to prevent state failure and maintain national viability. It further examines how judicial activism and the frequent use of *suo motu* powers by superior courts are diminishing the operational space of the executive, a development that runs counter to the functionalist interpretation of the separation of powers and the system of checks and balances. The final section of this paper discusses how the dual-edged role of the judiciary can be regulated to ensure the effective functioning of other branches of the state, while remaining within its core mandate of reviewing governmental actions for constitutional compliance.

EVOLUTION OF DEMOCRACY IN PAKISTAN: A JUDICIAL CASE REVIEW

In Pakistan, the judiciary has played a key role in shaping and supporting democracy and the Constitution. However, it has struggled to uphold the rule of law and democratic principles due to weak constitutional commitment, reliance on other state institutions for its development and enforcement of decisions, and limited judicial independence. Historically, the judiciary's autonomy appears to have resulted more from shifts in democratic transitions than from its own efforts.

Judicial Cases Validating Extra-Constitutional Steps

The case of *Federation of Pakistan v. Moulvi Tameez-ud-Din* arose when the Governor-General of Pakistan, Ghulam Muhammad, dissolved the Constituent Assembly, which was responsible for drafting Pakistan's first constitution. The dissolution was challenged by *Moulvi Tameez-ud-Din*, the Speaker of the Assembly, in the Sindh Chief Court, which initially ruled in his favor. However, the Federal Court, led by Justice *Munir*, reversed the decision, validating the dissolution on the grounds of necessity and the prerogative of the Governor-General. The court relied on the doctrine of necessity, allowing actions otherwise unlawful to be justified for the sake of preserving state order. The Court also held that the Governor-General had the constitutional authority to dissolve the Assembly, citing his powers under the Independence Act of 1947. The ruling invalidated multiple legislative actions by the Constituent Assembly, which had passed several laws without the Governor-

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General's assent. This judgment led to a constitutional crisis, which was further complicated by the Emergency Power Ordinance of 1955, later invalidated by the Federal Court. The case marked a turning point in Pakistan's constitutional development, emphasizing executive power over parliamentary sovereignty.

In *Usif Patel and Others v. The Crown*, the appellants were convicted under the Goondas Act by the District Court of Larkana and subsequently detained under the Emergency Powers Ordinance (IX of 1955) issued by the Governor General. Challenging the legality of their detention, the appellants filed a petition under Section 491 of the Criminal Procedure Code in the Sindh Chief Court, which upheld the ordinance's validity. On further appeal, the Federal Court declared the ordinance *ultra vires*, holding that the Governor General lacked the constitutional authority to issue ordinances on constitutional matters and could not substitute or dissolve the Constituent Assembly. The Court found the detentions unlawful and emphasized that constitutional legislative authority rested exclusively with the Constituent Assembly. It further held that the Indian Independence Act, 1947, which had been used to justify the Governor General's extended powers, had never been legally validated in Pakistan. Although the Court later accepted the doctrine of necessity to permit temporary extra-constitutional authority, it reaffirmed that such authority could not extend to constitutional lawmaking. This judgment had a significant impact on Pakistan's constitutional development, highlighting the limits of executive power and the role of the judiciary in legitimizing extra-constitutional measures.

In *State v. Dosso and Others*, the respondents were convicted of murder under Section 11 of the Frontier Crimes Regulations (FCR), 1901, by the Deputy Commissioner and referred to a Special Jirga (Council of Elders), which found them guilty. Their representatives filed writ petitions in the High Court, arguing that the FCR violated fundamental rights guaranteed by the 1956 Constitution—specifically, Article 5 (equality before law), Article 7 (right to legal representation), and Article 4 (right to be dealt with in accordance with law). The High Court accepted the argument and set aside the convictions. However, before the matter reached the Supreme Court, a military coup occurred on October 7, 1958, when President Iskander Mirza imposed Martial Law, abrogated the Constitution, dissolved the legislatures, and appointed General Ayub Khan as Chief Martial Law Administrator. Through the Law Continuance in Force Order, 1958, all laws except the Constitution were declared valid. When the case came before the Supreme Court, it held that the old constitutional provisions, including Article 5, had no legal force under the new legal order. Applying the doctrine of necessity, the Court declared that a successful revolution legally replaces the existing constitutional order if the new regime gains effective control. Thus, the FCR and convictions under it were upheld as valid under the new legal system. The Court's decision legitimized military rule and subordinated judicial authority to the new regime, initiating a pattern where the judiciary validated extra-constitutional actions. This case marked a pivotal moment in Pakistan's constitutional history, laying the foundation for centralized authoritarianism and weakening democratic and judicial resistance to military takeovers.

In *Begum Nusrat Bhutto v. Chief of the Army Staff and Federation of Pakistan*, the Supreme Court once again validated a military coup on the grounds of state necessity. Following General Zia-ul-Haq's proclamation of Martial Law on July 5, 1977, the

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elected government of Prime Minister Zulfikar Ali Bhutto was overthrown, the Constitution was suspended, assemblies were dissolved, and provincial governance was handed over to the Chief Justices of the respective High Courts, while the President remained a nominal figurehead. Zulfikar Ali Bhutto and ten other Pakistan People's Party (PPP) leaders were arrested and detained in different provinces. Begum Nusrat Bhutto filed a petition in the Supreme Court challenging their detention and the imposition of Martial Law, arguing that the arrests were politically motivated and aimed at preventing the PPP's participation in the scheduled October 1977 elections. She further claimed that the military intended to prosecute party leaders in Military Courts under the pretext of public accountability. The Supreme Court dismissed the petition on the ground of non-maintainability and held that the coup was justified due to the government's failure to maintain law and order, political instability, and constitutional breakdown. The Court upheld the suspension of fundamental rights and recognized the Chief of Army Staff's intervention as necessary to prevent national chaos. It also directed that arrangements be made for holding fair elections. The judgment effectively legitimized military rule for over a decade, enabling the army to entrench itself in the political system. The case illustrated how the judiciary, influenced by executive power and military dominance, repeatedly endorsed extra-constitutional interventions, undermining democratic governance and judicial independence in Pakistan.

In *Ahmad Tariq v. Federation of Pakistan*, the case arose after the President of Pakistan dissolved the National Assembly on August 6, 1990, invoking his powers under Article 58(2)(b) of the Constitution, citing that the government could no longer function in accordance with constitutional principles and that an appeal to the electorate was necessary. The petitioner challenged this decision in the Lahore High Court, arguing that no actual constitutional breakdown had occurred to justify such an extreme action. The High Court dismissed the petition, upholding the President's authority to form an opinion for dissolution. On appeal, the petitioner contended that the dissolution was unconstitutional because alternative remedies were available and the circumstances did not reflect a breakdown of constitutional machinery. The Supreme Court rejected these arguments, reasoning that while alternative powers existed, they required the Prime Minister's advice, and the President could not be compelled to use them. The Court further held that Article 58(2)(b) explicitly empowers the President to dissolve the Assembly, regardless of the fact that it is directly elected by the people. Addressing concerns about ongoing corruption, nepotism, and horse-trading even after the dissolution, the Court remarked that identifying systemic issues warrants corrective action, and the timing of resolution may vary. Finally, the Court clarified that although dissolution is a drastic step, it may be exercised in broader circumstances than just technical violations of constitutional provisions—particularly where governance deviates from constitutional norms and tends toward extra-constitutional practices. The case affirmed the President's discretion under Article 58(2)(b) and reinforced the judiciary's deference to executive authority in matters of assembly dissolution.

In *Sayed Zafar Ali Shah and Others v. General Pervez Musharraf*, the Supreme Court of Pakistan validated the military takeover of October 1999, the Provisional Constitutional Order (PCO), and the Oath of Office (Judges) Order following the

imposition of emergency by General *Pervez Musharraf*. The Court upheld the intervention on the basis of the doctrine of necessity, citing national crisis and governance failure as justifying factors, and referenced both religious principles and international jurists like *Hugo Grotius* and *De Smith* to support its reasoning. The Court accepted the federal government's material evidence in support of the coup and validated all essential executive actions taken for state functioning and public welfare. While affirming that the 1973 Constitution remained the supreme law of the land, the Court allowed parts of it to be held in abeyance temporarily. It ruled that the judiciary must continue functioning under the Constitution, and judges who refused to take the new oath were barred from reinstatement under the doctrine of past and closed transactions. The Court also declared that even superior court judges are accountable under Article 209 of the Constitution. Additionally, it invalidated any attempt to remove Musharraf without affording him the principles of natural justice. Importantly, the Court restricted the military regime's scope by directing that general elections must be held within three years and retained its authority to review the continuation of emergency at a later stage. This judgment significantly shaped Pakistan's constitutional jurisprudence by once again judicially endorsing a military regime while attempting to place time-bound limits on its authority.

Judicial Cases Reinforcing Democratic Institutions

In *Miss Asma Jilani v. The Government of the Punjab and another*, the petitioner challenged the arrest of her father, Malik Ghulam Jilani, who was detained in Karachi under the Defence of Pakistan Rules, 1971. When the Lahore High Court admitted the petition for hearing and issued notice to the government, a new detention order was suddenly issued by the Martial Law Administrator of Zone "C" under Martial Law Regulation No. 8, effectively replacing the original one. The government objected to the court's jurisdiction, citing the bar imposed by the Martial Law regime and relying on the precedent set in *State v. Dosso*. The High Court accepted this argument and dismissed the petition, holding that it lacked jurisdiction under the Jurisdiction of Courts Order, 1969. However, the Supreme Court overturned this decision, declaring the imposition of Martial Law by General *Yahya Khan* on March 25, 1969, to be unconstitutional and without legal authority. The Court rejected the *Dosso* precedent and firmly held that *Yahya Khan* was not a lawful authority, thus rendering all actions taken under his regime invalid. This landmark judgment restored the supremacy of the Constitution, reasserted the independence of the judiciary, and marked a significant departure from the earlier judicial practice of legitimizing military rule.

In *Federation of Pakistan v. Muhammad Saifullah Khan*, the Supreme Court examined the constitutional validity of President General *Zia-ul-Haq*'s dismissal of Prime Minister *Muhammad Khan Junejo*'s government and the dissolution of the National Assembly on May 29, 1988, under Article 58(2)(b) of the Constitution. *Zia* cited four reasons: failure of the Assembly to achieve its objectives, deteriorating law and order, threats to life and security, and declining public morality. The Court rejected all four grounds, stating they were vague, overly broad, and lacked constitutional merit. It emphasized that law and order concerns should have been addressed through emergency provisions under Part X of the Constitution, and that morality or political dissatisfaction could not justify such a drastic action. The Court

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held that the Constitution does not permit dissolution of assemblies at the President's discretion or political whim and ruled the dissolution order invalid. However, considering the approaching general elections scheduled for November 1988 and the larger public interest, the Court chose not to reinstate Junejo and allowed the electoral process to proceed. The Court also highlighted the constitutional necessity of the Prime Minister's office, warning that its absence could distort Pakistan's parliamentary system into a presidential one. This case set a significant precedent by clarifying that the dissolution of assemblies must meet strict constitutional criteria, primarily actual breakdown of state machinery, and not serve as a tool for executive overreach.

In *Muhammad Nawaz Sharif v. the President of Pakistan*, the Supreme Court reviewed the legality of President Ghulam Ishaq Khan's decision to dissolve the National Assembly and dismiss Prime Minister Nawaz Sharif under Article 58(2)(b) of the Constitution. *Nawaz Sharif* challenged the dissolution through a writ petition under Article 184(3), arguing that the President's order was issued in bad faith, without lawful authority, and in violation of constitutional principles. He requested the Court to declare the dissolution and the functioning of the caretaker government unconstitutional and to prevent the President from interfering in the democratic process. The Supreme Court ruled that the President's action did not fall within the legitimate scope of his discretionary powers under Article 58(2)(b), and that the dissolution order and other related executive measures lacked legal validity. Unlike previous cases, where the Court stopped short of reinstating dismissed governments, here it took the decisive step of restoring the National Assembly, the Cabinet, and Prime Minister *Nawaz Sharif* to their positions, affirming the supremacy of constitutional process and the limits of presidential authority. This case marked a significant assertion of judicial independence in defense of parliamentary democracy.

In *Sindh High Court Bar Association v. Federation of Pakistan*, the Supreme Court declared the emergency imposed by General Pervez Musharraf on November 3, 2007, along with Provisional Constitutional Order (PCO) No. 1 of 2007 and the Oath Order, 2007, as unconstitutional, illegal, and void ab initio. The Court rejected the "doctrine of necessity" historically used to legitimize military takeovers, stating that Musharraf's actions were not supported by the Constitution. The emergency was allegedly based on a letter from Prime Minister *Shaukat Aziz* highlighting national security threats and judicial interference in executive matters, but the Court ruled that this letter was addressed to the President—not the Army Chief—and did not amount to constitutional advice under Article 48. The Court emphasized that only under clearly defined constitutional provisions can emergency be imposed, and neither the President nor the Army Chief had unilateral authority to suspend the Constitution or issue an Oath Order. Drawing parallels to the illegal assumption of power by *Yahya Khan* in 1969, the Court found Musharraf's actions similarly to be a usurpation of constitutional authority. It also struck down the reappointment of judges who had taken oath under the PCO, acknowledging past judicial errors in validating military regimes and affirming a firm commitment to constitutional supremacy and judicial accountability.

In the aforementioned cases, the Supreme Court of Pakistan not only clearly struck down the extraconstitutional measures taken by authoritarian regimes but also

progressively limited the influence of dictatorial forces. The Court found the grounds cited for the imposition of emergency to be overly broad, ambiguous, and irrelevant. It laid down specific conditions under which an emergency could be lawfully declared—namely, when the state apparatus has entirely collapsed and the government is unable to function in accordance with the Constitution. Initially, the Court restricted itself to invalidating the dissolution orders without reinstating the ousted governments. However, over time, it expanded its role by not only nullifying such orders but also reinstating the removed governments.

Judicial Activism, Selectivism, and the Executive's Domain: A Critical Analysis

Judicial activism signifies the judiciary's active engagement in the exercise of its powers. It extends beyond the conventional role of adjudicating disputes strictly in accordance with the Constitution or statutory law. It describes situations in which the judiciary assumes a more assertive role, engaging in functions that are traditionally seen as the exclusive domain of the executive or legislative branches. In general terms, judicial activism may be understood as the process by which courts invalidate properly enacted legislation through judicial intervention (Jones, 2001). It also involves the judiciary's disapproval of government policies that are not expressly forbidden by the Constitution (Kmieć, 2004). Moreover, judicial activism is often described as a modern form of judicial review, referring to the superior courts' authority to examine the constitutionality of both legislative enactments and administrative decisions (Shabbir, 2013).

In Pakistan, the notion of judicial activism gained momentum following the so-called mini-revolution that led to the restoration of the *de jure* judiciary in 2009.¹ After this restoration, the judiciary began to operate with increased effectiveness, which sparked extensive debates within the legal community. These debates surrounding judicial activism generally fall into two primary perspectives: those who oppose it and those who support it. Critics contend that judicial activism results in judicial encroachment upon the executive domain, thereby disrupting democratic processes, and they have often censured the superior judiciary for exceeding its proper role. Conversely, supporters maintain that judicial activism is essential to uphold the separation of powers, strengthen democracy, reinforce democratic institutions, and protect constitutional principles. This discussion also assesses whether judicial activism is a necessary evil — questioning if it hinders the performance of civilian governments and restricts the executive's scope of action, or whether it serves as a safeguard to keep democracy progressing and to deter other organs of the state from interfering in the democratic framework. Additionally, this section explores how the judiciary has faced criticism for delivering inconsistent judgments in similar matters, a practice sometimes labeled as selective justice, favoritism, or judicial selectivism.

¹ With the declaration of emergency on November 3, 2007, General Pervez Musharraf rendered the superior court judges, including the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, non-functional and appointed a new judiciary under the Provisional Constitutional Order (PCO) of 2007. Following the restoration of democratic governance in 2009—catalyzed by the lawyers' movement and widespread public protests—the Chief Justice and other members of the superior judiciary were reinstated to their original positions and resumed their official duties.

Under Article 184(3) of the Constitution, the Supreme Court exercises its original and *suo motu* jurisdiction based on two primary conditions: when a matter of collective or national concern arises, and when the issue pertains to the enforcement of fundamental rights (Constitution of the Islamic Republic of Pakistan, 1973, Articles 8–28) safeguarded by the Constitution (Constitution of the Islamic Republic of Pakistan, 1973, Article 184(3)). The term ‘public importance’ is broadly used in this context, but it lacks a precise and authoritative definition. Neither the Constitution nor the Supreme Court Rules of 1980 offer a specific or exhaustive explanation of this term. Nonetheless, the judiciary has, through various judgments, interpreted the meaning of public importance based on the facts and context of each individual case. In *Pakistan Muslim League v. Federation of Pakistan*, Justice Javed Iqbal has described public importance as relating to issues that concern the state, the general public, or an entire community. The reliance on this ambiguous standard has triggered debate within the legal community about the legitimate extent of the Court’s original and *suo motu* jurisdiction. Critics of judicial activism argue that the Supreme Court has expanded the application of Article 184(3) to such a degree that it now obstructs the executive’s ability to perform its constitutional functions effectively.

In *Miss Benazir Bhutto v. Federation of Pakistan*, the petitioner challenged the legality of the Freedom of Association Order, 1978, and the constitutional validity of Article 270-A as reinforced by the Eighth Amendment. She claimed that these provisions were designed to curtail the judiciary’s authority in reviewing matters related to the enforcement of fundamental rights, including political participation. She also argued that amendments to the Political Parties Act, 1962 violated constitutional guarantees under Articles 17 and 25. The Supreme Court interpreted the jurisdiction granted under Article 184(3) broadly and reaffirmed its power of judicial review. It declared that it would not limit itself to formalistic interpretations but would adjudicate matters in line with the underlying objectives of the Constitution, namely democracy, equality, and Islamic justice. The decision is considered a landmark as it opened the doors to public interest litigation in Pakistan, strengthening the judiciary’s role in protecting constitutional rights and democratic principles (Menski, Alam, & Raza, 2000).

In *Darshan Masih v. The State*, the Supreme Court took *suo motu* notice based on a letter regarding bonded labour, recognizing it as a matter of public importance that violated constitutional provisions (Constitution of the Islamic Republic of Pakistan, 1973, Articles 9, 11, 14, 15, 18, & 25). The Court emphasized that public interest litigation must go beyond theoretical definitions and should be responsive to the specific facts of each case. It called for legislative action to define and address forced labour, which led to the enactment of the Bonded Labour System (Abolition) Act in 1992. In later decisions, the Court continued to expand its jurisdiction under Article 184(3) to address violations of fundamental rights. Notably, in a gang-rape case, *Human Rights Case No. 1*, the Court exercised its authority under Article 184(3) read with Article 199 to issue orders necessary for the protection and enforcement of those rights, reinforcing the judiciary’s active role in safeguarding constitutional guarantees. In *Ms. Shehla Zia and others v. WAPDA*, the Supreme Court addressed a public interest petition challenging the construction of a grid-station on a green belt near a residential area due to potential health hazards. Exercising its jurisdiction under

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Article 184(3), the Court held that the right to a clean and healthy environment is an essential component of the constitutional rights to life and dignity under Articles 9 and 14. It ruled that life includes all aspects necessary for living with dignity and in safety. The Court allowed the construction but mandated that WAPDA implement appropriate mitigating measures to safeguard public health. The judgment marked a turning point in Pakistani jurisprudence by linking environmental protection to fundamental rights and setting a precedent for the superior judiciary's proactive role in environmental matters.

In the missing persons' case, *H.R.C. No. 965*, the Supreme Court declared that the enforced disappearances carried out by intelligence agencies violated fundamental constitutional rights. Following the Court's intervention, many of the missing individuals were successfully recovered. The case also highlights that before 2007; the Supreme Court typically refrained from taking *suo motu* notice and dealt with such matters only when formally petitioned under Article 184(3) of the Constitution (Shabbir, 2013).

After the 2009 mini revolution that restored the judiciary and reinstated Chief Justice *Iftikhar Muhammad Chaudhry*, the Supreme Court shifted towards strong judicial activism. The judiciary began actively addressing fundamental rights and public interest issues. Under the Chief Justice's direct supervision, a Human Rights Cell was set up in the Supreme Court. Within one year, it received over 54,000 human rights violation cases and successfully disposed of more than 53,000 of them.

Judicial activism in Pakistan led the judiciary to free itself from both military and governmental influence, especially in legitimizing extra-constitutional actions. Through an expansive use of Article 184(3), the judiciary curtailed the scope of executive authority. In *Dr. Mobashir Hassan v. Federation of Pakistan*, the Supreme Court invalidated the National Reconciliation Ordinance (2007), labeling it as unconstitutional, *void ab initio*, and a "black law". The ordinance was deemed a political compromise between *General Musharraf* and the PPP for mutual political benefit.

The Eighteenth Amendment, approved on April 19, 2010, amended Article 6 of the Constitution to prevent future military coups and prohibited the judiciary from validating such extra-constitutional actions. This reform was pivotal in 2011 when a military coup was anticipated but did not occur. Around the same time, Prime Minister *Yousaf Raza Gilani* defied the Supreme Court's directive to ask Swiss authorities to reopen corruption cases against President *Asif Ali Zardari* (*Suo Motu Case No. 4, 2012*). In *Dr. Mobashir Hassan v. Federation of Pakistan*, the Court prosecuted Gilani for contempt, marking a strong assertion of judicial authority in enforcing constitutional supremacy.

Opponents of judicial activism, including civil society members, have criticized the judiciary for its confrontational posture towards representative governments and for exhibiting selective justice, where different legal standards were applied while adjudicating dissolution orders. The Court validated the dissolution of both Benazir Bhutto's governments. Nevertheless, it invalidated dissolution orders concerning other governments (*Ahmad Tariq Rahim v. Federation of Pakistan*). In *Federation of Pakistan v. Saifullah Khan*, the Court refused to restore the ousted government, while in *Nawaz Sharif v. President of Pakistan*, it reinstated Nawaz Sharif's government. In

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contrast, in the case of the PPP government, the Court upheld the dissolution orders, effectively legitimizing extraconstitutional actions at the expense of an elected government. The judiciary's failure to apply consistent standards in these cases drew strong criticism for its selective and biased approach.

In *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig & others*, a petition was filed under Article 184(3) following a letter addressed to the Chief Justice concerning the conduct of the 1990 general elections, which led to the formation of the Nawaz Sharif-led government. The letter alleged that the then Chief of Army Staff, *Mirza Aslam Baig*, in collaboration with ISI Director General *Asad Durrani*, had illicitly withdrawn Rs. 160 million from Mehran Bank prior to the elections for distribution among individuals to secure PML(N)'s victory. The case remained pending until 2012, when the Chief Justice initiated proceedings and held that neither the President nor the Armed Forces are constitutionally permitted to establish an Election Cell to support or oppose any political party. The Court emphasized that such involvement compromises the citizens' ability to elect their representatives fairly, honestly, and transparently. It ultimately concluded that the 1990 elections had been rigged.

In *Arsalan Iftikhar's case*, the Chief Justice initiated *suo motu* proceedings on June 6, 2012, in response to allegations that his son, Dr. Arsalan Iftikhar, had accepted bribes from business tycoon *Malik Riaz* to influence judicial proceedings pending against the latter. The Supreme Court, invoking its inquisitorial powers under Article 184(3), clarified that such jurisdiction was exercised for a specific objective aimed at safeguarding the integrity of the judicial process. The Court emphasized that the case directly impacted the autonomy and credibility of the judiciary. It further held that any attempt, even if unsuccessful, to influence the administration of justice is unlawful and punishable under relevant legal provisions. The Court concluded that the parties involved would be held criminally liable if found guilty by a court of competent jurisdiction.

Although the *suo motu* action was not intended to determine the guilt or innocence of the parties involved, its primary objective was to address issues of public importance—specifically, concerns related to the autonomy and integrity of the superior judiciary. The proceedings served to clarify public doubts, particularly following a statement made by *Malik Riaz* in open court. *Riaz* acknowledged in writing that, despite his efforts, the judiciary had not responded to any attempts at securing undue favors. Notably, even a financially powerful individual such as *Malik Riaz* failed to undermine judicial independence, despite the alleged payment of Rs. 340 million. The Court referred the matter to relevant investigative agencies and the trial court, directing that it be resolved on the basis of admissible evidence. Nonetheless, the case also sparked public debate regarding the impartiality of the apex Court.

Through the exercise of judicial activism, the courts have prohibited military interventions and the validation of extraconstitutional actions. A judiciary that was once susceptible to military influence has now adopted a more assertive role to restore public confidence in the judicial institution. Historically, the military's direct rule and its continued influence over civilian governments have severely weakened both judicial and representative state institutions. In response, the judiciary has

increasingly taken cognizance of matters of public importance, particularly those concerning the enforcement of fundamental rights. This broadened interpretation of Article 184(3) has, however, resulted in a contraction of the executive's functional domain. As a result, the superior judiciary faces criticism for engaging in excessive judicial activism by encroaching upon functions traditionally reserved for the executive branch.

Proponents of judicial activism contend that, in light of the executive's failure to fulfill its constitutional responsibilities, the judiciary is compelled to intervene as a response to persistent inefficiency and poor governance (Waseem, 2012). Conversely, critics argue that the judiciary must not exceed its constitutionally defined jurisdiction by undertaking functions that are strictly within the executive domain. They assert that executive shortcomings should instead be addressed through mechanisms such as media scrutiny and public discourse. Rather than encroaching upon executive authority, the judiciary, they argue, should support the fragile civilian government, which has historically remained under the influence of military power throughout Pakistan's constitutional evolution.

JUDICIAL REVIEW: A TWO-EDGED WEAPON

This segment underscores the dual trajectory of the judiciary in Pakistan—its evolving institutional role and its changing interaction with the executive, particularly in the post-Musharraf democratic context. The emergency imposed on November 3, 2007, rendered the Chief Justice and other judges dysfunctional, casting them as symbolic martyrs in the struggle for judicial independence. Their subsequent restoration on March 17, 2009, following sustained efforts by the lawyers' movement, civil society, media, and committed political leadership, elevated them to the status of national heroes (Waseem, 2012). This marked a turning point in Pakistan's legal and democratic history, as the judiciary began to operate with genuine autonomy for the first time. The re-empowered judiciary not only pursued independence from military influence but also asserted its separation from the control of other branches of the state. In its effort to preserve and strengthen this autonomy, the judiciary has repeatedly invalidated actions taken by the executive and legislature.

In the sphere of accountability, the judiciary assumed a populist role, often at the expense of other state organs. The superior judiciary significantly expanded its original and *suo motu* jurisdiction under Article 184(3), a development that curtailed the functional space of the executive branch. This judicial expansion gave rise to two competing perspectives on the growing trend of activism in Pakistan. On one hand, political opposition, influential members of the business and professional sectors, bureaucrats, technocrats, and their supporters in the media and civil society endorsed and advocated for this judicial role. On the other hand, the ruling government viewed such activism as a mechanism used to undermine the democratic system (Waseem, 2012).

Despite initial support, proponents of judicial activism began to feel disillusioned within two years of the judiciary's restoration, citing several concerns. First, the judiciary's increasing oversight of executive functions—particularly in matters related to the appointment, transfer, and promotion of bureaucrats and judges—raised questions about institutional boundaries. Second, the constitutional validity of certain

laws came under scrutiny, intensifying public debate and skepticism surrounding the judiciary's expanding role. Given the historical pattern of representative institutions being undermined by autocratic regimes with judicial backing for extraconstitutional actions, the recent inter-institutional tensions between the judiciary and the executive have posed a significant challenge to Pakistan's democratic transition.

Constitutionalism and Test of Judicial Review

Within the framework of the trichotomy of powers, judicial oversight of the executive is exercised through the mechanism of judicial review. For the preservation of both constitutionalism and effective governance, it is not for the government to determine the permissible extent of judicial scrutiny. Rather, it is incumbent upon the judiciary to define and enforce the limits of permissible executive conduct by determining the extent of authority misuse it will tolerate (Khan, 1986). In Pakistan, the practice of judicial review reflects the broader political context, extending beyond the classical doctrine of separation of powers. This approach aligns more closely with institutional patterns typically found in presidential systems, rather than in parliamentary democracies (Domingo, 2000).

The judiciary in Pakistan has increasingly extended its influence into the affairs of representative governments, exercising oversight that goes beyond constitutional matters to encompass the full range of executive functions. This judicial control has subjected other branches of the state to accountability for both acts of commission and omission. Such interventions have, at times, resulted in the creation of legal frameworks that bypass the formal legislative process, effectively amounting to judicial legislation. In doing so, the judiciary has assumed a quasi-governance role by substituting its authority for that of the executive and directing the reversal of administrative decisions (Waseem, 2012).

An important dimension of the judiciary's role in upholding constitutionalism is its willingness to invalidate laws without deference to political leadership. In *Mahmood Khan Achakzai v. Federation of Pakistan*, the petitioner challenged the constitutional amendment incorporating Article 58(2)(b), which empowered the President to dissolve assemblies at his discretion—a power exercised four times within a decade. The Court upheld the amendment, declaring it constitutionally valid and thereby placing the onus on Parliament to repeal it if deemed inappropriate. Conversely, in *Sindh High Court Bar Association v. Federation of Pakistan*, the Court directed the government to enact the National Reconciliation Ordinance (NRO) through Parliament, and upon its failure to do so, the Court invalidated the NRO. The judicial validation of provisions like Article 58(2)(b) has been viewed as more detrimental to democratic progress than even the imposition of martial law (Siddique, 2005).

The 18th Constitutional Amendment of April 2010 prompted significant backlash from the legal community, as it was perceived to conflict with the salient features of the Constitution. Central to the controversy were concerns over the composition and authority of the Judicial Commission, which was empowered to make final decisions on judicial appointments, and the broader question of whether the Supreme Court had jurisdiction to review constitutional amendments. During the proceedings, the

Supreme Court referenced Indian case laws i.e, *Golaknath v. State of Punjab*² and *Kesavananda Bharati v. State of Kerala*³ relating to the basic structure doctrine. Legal opinion on the matter became divided: one school of thought supported the Indian model, arguing that Pakistan's superior courts have adopted a comparable framework, emphasizing the protection of Islamic provisions, federalism, parliamentary governance, and judicial independence as core constitutional features (*Mahmood Khan Achakzai v. Federation of Pakistan*, PLD 1997 SC 426; *Zafar Ali Shah v. General Pervez Musharraf*).

The opposing viewpoint contends that the judiciary has demonstrated reluctance to strike down constitutional amendments, even while acknowledging the existence of certain basic features within the Constitution. Although the Court has recognized these fundamental principles in multiple cases, it later maintained that the responsibility for enforcing them does not lie with the judiciary.

Judicial Populism: Executive Response

A key dimension of judicial activism in Pakistan is its role in filling the vacuum left by an underperforming executive. When the government fails to meet public expectations, the judiciary often intervenes, prompting widespread approval from a disillusioned populace. The public's appreciation of the courts' *suo motu* actions on executive matters has enhanced judicial credibility, often at the expense of civilian authority. Critics argue that the superior judiciary has elevated itself to a position of governance by appealing to public sentiment, thereby weakening representative institutions. The Supreme Court has actively taken up matters of public interest, often initiated through simple applications, media coverage, or news reports, and has invoked its original and *suo motu* jurisdiction under Article 184(3) without strict adherence to procedural formalities.

The Constitution sets out two conditions for invoking the Supreme Court's jurisdiction under Article 184(3): the presence of a matter of public interest and the violation or enforcement of fundamental rights, as clarified by superior court judgments. To facilitate this, the Supreme Court established the Human Rights Cell, which receives thousands of applications annually and disposes of them accordingly. For many citizens, this mechanism offers a swift avenue for grievance redressal. However, the exercise of this power carries significant implications—it not only affects the dignity and functioning of other state institutions and officials but also poses challenges to the judiciary itself and the constitutional role of the superior courts.

Following their restoration, the judiciary actively employed *suo motu* jurisdiction to address a wide spectrum of issues, from high-level matters to routine grievances. This strategic use of judicial power targeted not only military rulers and their affiliates but also democratic institutions, enabling the judiciary to earn the reputation of a

² The Court held fundamental rights have constitutional protection and Parliament cannot abrogate them;

³ The Court laid down a doctrine for the protection of the salient features of the Indian Constitution. According to the new doctrine, Parliament could not alter the basic structure of the Constitution.

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‘people’s judiciary’ (Abbasi, 2009). The Supreme Court adjudicated numerous cases⁴ involving corruption across both public and private sectors. Notably, after invalidating the NRO, the Court directed the government to pursue corruption charges against the sitting President, Asif Ali Zardari (Waseem, 2012).

The Supreme Court, in contrast to the perceived corruption among politicians, projected itself as morally upright and a protector of the marginalized. In a society marked by systemic discrimination, injustice, and deprivation of basic needs, public interest litigation enhanced the judiciary’s populist image and became a prominent tool for asserting its role as the defender of public welfare. However, this narrative of judicial autonomy stands in stark contrast to the inefficiencies at the grassroots level. With a conviction rate of only 5% to 10%, the justice system remains largely inaccessible and disheartening (Waseem, 2012). The judiciary also faces significant internal challenges, including a shortage of judges, lack of professionalism and accountability, widespread corruption, procedural delays, and centralized authority masked by the frequent use of *suo motu* powers.

The surge in public interest litigation has hindered the constitutional functioning of the SC by shifting its focus toward matters that enhance its populist appeal, often at the expense of its core appellate, interpretive, and advisory roles. Unlike the conventional judicial process—where cases originate in lower courts and reach the SC as a final forum for resolution—public interest cases are frequently taken up by the SC at the first instance. The Court then exercises discretion to either adjudicate these matters directly or refer them to subordinate courts, thereby departing from established judicial norms.

The expansion of *suo motu* jurisdiction has significantly increased the workload of the superior judiciary and raised concerns about its institutional dignity, as the SC is neither designed to function as a trial court nor as a civil court of first instance. In numerous *suo motu* cases, the judiciary has assumed legislative and executive roles, despite not being constitutionally mandated to supervise investigations or perform executive functions. While reforms have been introduced within the judicial framework, these interventions have effectively reduced the operational space of the executive. The superior judiciary has often advanced its institutional position not through internal performance, but by capitalizing on executive shortcomings. In several instances, the Court issued binding directives to the government, leaving it with little discretion. Consequently, public interest litigation has frequently eroded the executive’s credibility. In response, the executive has resorted to delaying implementation through review petitions or by misinterpreting judicial decisions.

The government’s response to judicial activism revealed a strained relationship between the executive and judiciary, particularly regarding the interpretation and implementation of laws, which the superior courts sought to control. Simultaneously, the judiciary aimed to establish institutional safeguards to protect its autonomy while

⁴ Evacuee Trust Property Board Land Case; Bank of Punjab / Haris Steel Mills Fraud Case; Murree Gas Pipeline Project Alteration Case; Canal Road Lahore Extension Case; Federal Government Housing Foundation Land Allotment Case; Pakistan Cricket Board (PCB) Embezzlement Case; Electricity Theft in Chak Shahzad Case.

also addressing governance issues to respond to public grievances. However, this approach invited criticism. As the government faced increased judicial scrutiny over governance failures, the judiciary also experienced public disapproval. Public interest litigation, while addressing accountability, resulted in substantial financial costs to the state, eroded trust in elected representatives, risked non-compliance with international treaty obligations, and raised the potential for jurisdictional conflicts with international legal bodies.

The superior judiciary exercises unrestrained authority to act against public officeholders and challenge legal instruments, yet remains unaccountable to any specific institution, community, or group. Its self-claimed accountability to the general public is largely theoretical and abstract. Following the post-2009 democratic transition and rise in judicial activism, the government found its operations increasingly limited—not only by legal obligations to follow judicial directives but also by the necessity to respond to public opinion, which emerged as the ultimate benchmark of legitimacy (Waseem, 2012).

Judicial Interventions Undermining Democratic Institutions

Since its restoration in 2009, the Superior Judiciary has demonstrated heightened judicial activism, extending its authority into executive matters such as civil service promotions. In *Tariq Aziz-ud-Din and Others*, the Court annulled promotions from BS-21 to BS-22, citing violations of service laws, merit, and seniority. The petitioner claimed junior officers were promoted unjustifiably, prompting the Court to seek official responses and formally hear the matter.

Additional petitioners also challenged the government's promotion orders, alleging misuse of discretionary powers, lack of merit-based decisions, and gender discrimination. A particular concern was the promotion of a junior female officer without justification. The government, in response, questioned the Court's jurisdiction, arguing that under the constitutional principle of separation of powers, such promotions fall strictly within the executive domain as outlined in Article 240.

The Court emphasized that good governance relies on a merit-based, honest bureaucracy, and that civil service promotions must align with constitutional principles and legal standards, free from favoritism. It invalidated the impugned promotions, demoted the officers involved, and directed the government to reassess promotion cases in BS-21 accordingly. However, it is noted that instead of directly demoting officials, the Court should have referred the matter back to the executive for reconsideration.

In the Hajj Corruption Case, the Supreme Court took *suo motu* notice following a letter and a televised request from Senator *Khalid Mehmood Soomro*, highlighting alleged corruption by Pakistani officials in Hajj arrangements. The officials were accused of renting accommodation for pilgrims at inflated rates far from the *Haram*. In response, the Prime Minister formed a parliamentary committee to investigate the matter in Saudi Arabia, which confirmed corruption and malpractice by the Ministry of Religious Affairs in securing accommodations.

Given the public importance and impact on national prestige, the Court sought comments from the Secretaries of Religious and Foreign Affairs. Reports revealed that *Rao Shakeel Ahmed's* appointment as DG Hajj violated official rules, as he was

already facing criminal proceedings in the accountability court and a NAB investigation for possessing assets beyond known income. Notably, his name was on the Exit Control List (ECL) at the time his appointment was approved by the Prime Minister.

Acting on the Court's directions, the DG FIA, Mr. *Waseem Ahmed*, formed an investigation team led by Director *Hussain Asghar* to probe deeper into the Hajj corruption case. The preliminary report called for further inquiry, revealing that the DG Hajj exercised unchecked financial and administrative authority, beyond the Secretary's control. It also highlighted that the hiring process and *Rao Shakeel Ahmed's* repatriation violated government policy, reflecting serious mismanagement and administrative failure.

The FIA Director uncovered critical evidence implicating powerful individuals in the Hajj scam, but was abruptly transferred to Gilgit-Baltistan as Inspector General Police. The Court, dissatisfied with this move, sought an explanation from the new DG FIA, *Malik Muhammad Iqbal*, who supported the reposting of *Hussain Asghar* to complete the investigation. When no action followed, the Court ordered the Establishment Division Secretary to reassign *Asghar*, warning of contempt proceedings for non-compliance. Following this directive, Secretary *Sohail Ahmed* issued the transfer notification but was subsequently made OSD.

In this case, two key jurisdictional concerns were raised: the Court's involvement in executive matters of transfer/posting and its oversight of criminal investigations. Acknowledging these as executive functions, the Court nevertheless asserted that in exceptional circumstances it may intervene. It justified *Hussain Asghar's* reposting by emphasizing that investigation involves evidence collection and, in this instance, was being conducted impartially under the Court's supervision. The Court also noted the unjust consequence faced by the Establishment Secretary, who was penalized as OSD for complying with its order.

The Court emphasized that the exercise of discretionary powers by public authorities must be guided by principles of fairness, reasonableness, and judicial discipline, rather than being arbitrary. It directed the Federal Government to implement the notification concerning the reposting of FIA Director *Hussain Asghar*. Furthermore, the Court ruled that the notification declaring *Sohail Ahmed* as OSD was legally untenable and instructed the authorities to either reinstate him as Secretary Establishment or assign him a post appropriate with his rank and expertise.

In this case, the Court acknowledged that matters of transfer and posting fall under the executive's domain and not within the exclusive jurisdiction of the judiciary. However, it asserted authority to intervene in exceptional circumstances. The Court also recognized that such judicial involvement could potentially lead to serious issues, including institutional conflicts, administrative disruption, disregard for government policies, and erosion of public trust in high-ranking officials and representative institutions.

The fixation of prices for essential commodities is an executive function; however, the Lahore High Court intervened in a case involving the unauthorized role of the Oil Companies Advisories Committee (OCAC) in setting oil prices without parliamentary oversight. Although the Committee raised prices in line with international market trends, it failed to reduce them when global prices fell. The Court took notice of this

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discrepancy and directed the NAB to conduct an investigation into the matter (Ghias, 2010).

The Lahore High Court addressed the sugar price hike by directing NAB to investigate, which revealed the involvement of eight ministers and criticized the government's lenient policies. Assuming an executive role, the Court fixed the sugar price at Rs. 40/kg to control inflation and ensure public access. The Pakistan Sugar Mills Association and various governments appealed to the Supreme Court, warning of industry disruption and a need for heavy subsidies. However, the Supreme Court upheld the High Court's order, maintaining the fixed price until a new one was determined (*LHC verdict on sugar prices*, 2009).

The Supreme Court, citing illegalities and commissions, annulled the \$362 million bid for the privatization of Pakistan Steel Mills (PSM), marking a significant instance of judicial activism. Although it was claimed that this decision saved billions, the PSM subsequently incurred heavy losses, including Rs. 23 billion in one year, despite a government bailout of Rs. 14.6 billion. By late 2012, its debt had risen to Rs. 82 billion and exceeded Rs. 100 billion by December 2013, showing that losses far outweighed the supposed savings (Awan, 2013).

In the Rental Power Plants (RPPs) case, initiated under Article 184(3) by parliamentarians *Faisal Saleh Hayat* and *Khawaja Muhammad Asif*, the Supreme Court annulled contracts — including one with Barge Mounted Karkay — citing massive corruption. The Court found the tariff rates (Rs. 35–50 per unit) excessively high compared to IPPs and criticized the advance payment increase from 7% to 14% without fresh bidding, deeming it non-transparent and unfair. It held the contract violated Articles 9 and 24 of the Constitution and relevant regulatory laws (Awan, 2013).

The Supreme Court declared the *Karkey* contract void from the outset, finding regulatory officials and political figures, including Prime Minister *Raja Pervez Ashraf*, prima facie involved in corruption, and ordered NAB to arrest 27 implicated individuals. NAB's attempt to settle the matter with *Karkey* was blocked by the Court, leading *Karkey* to initiate arbitration at the International Centre for Settlement of Investment Disputes (ICSID). On August 22, 2017, ICSID awarded over one billion US dollars in damages against Pakistan for non-compliance with the contract (Awan, 2013).

Judicial activism in such matters has led to significant challenges, including financial losses to the national exchequer, tensions with the executive, conflicts of jurisdiction with international legal forums, reduced foreign investment, public distrust in civilian governments, and the Court's supervisory involvement in investigations and trials, which contradicts international norms.

The Supreme Court, disregarding the contract's clause designating ICSID as the dispute resolution forum, invalidated the agreement and barred NAB from amicably settling the matter with *Karkey*, resulting in a massive penalty against Pakistan. Such decisions risk jurisdictional conflicts with international legal forums, and non-compliance with the ICSID Award could invite non-cooperation from the World Bank and deter foreign investment due to perceived judicial disregard for international obligations.

The Asian Human Rights Commission expressed concern on the judiciary's

supervisory role in investigations (Awan, 2013). Such involvement is seen as violating Article 9 of the Constitution in light of the fair trial and due process guarantees under Article 10-A. Such contradictory decisions also erode public trust in civilian governments, potentially leading to inter-state tensions and long-term threats for Pakistan that outweigh short-term benefits.

In the Reko Diq Gold and Copper Mines Project case, the Court, exercising appellate and original jurisdiction, addressed allegations of corruption, bribes, and irregularities in awarding the contract to foreign companies. Allegations included the Governor of Baluchistan approving a 30-year lease to Tethyan Copper Company without cabinet approval, overlooking the expiry of its exploration license, relaxing mining rules, transferring the provincial government's share, violating the Baluchistan Mineral Rules, 2002, and concealing discovered resources (Awan, 2013).

In the project, Tethyan Copper Company (TCC) held 75% shares while Balochistan had 25% with a 2% royalty on extracted minerals. A deadlock arose over TCC's demand that Balochistan bear 25% financial liability, which it refused, and over the alleged involvement of a Chinese company. TCC claimed to have invested over \$500 million in exploration over five years, with total investment projected at \$5 billion (Bhutta, 2017).

The Court declared the contract *void ab initio* for violating statutory provisions i.e., Mineral Development Act, 1948, the Mining Concession Rules, 1970, the Contract Act, 1872, the Transfer of Property Act, 1882. In 2012, TCC filed arbitration claims at ICSID seeking \$9.1 billion in damages plus \$2.3 billion in pre-award interest. ICSID rejected Pakistan's corruption allegations and held that Pakistan unlawfully denied the mining lease, with experts estimating a possible \$11.5 billion penalty (Bhutta, 2017).

The Supreme Court's populist *suo motu* approach has influenced High Courts, notably the Lahore High Court, to take up public interest and fundamental rights cases. Such activism, often triggered by media reports, has disregarded the dignity of other state organs, financial implications, and international obligations, created risks of institutional confrontation and undermined judicial dignity.

The Supreme Court emphasized that judges are bound by their oath to follow the law and the Constitution, and cannot act arbitrarily. It cautioned the judiciary against interfering in matters outside its exclusive jurisdiction and barred High Courts from intruding into the affairs of the Election Commission of Pakistan. It further clarified that the extraordinary writ jurisdiction can only be exercised when no adequate alternative remedy is available. (Awan, 2013)

Through *suo motu* actions, the judiciary directed the executive to provide certain facilities, commodities, or control prices, which worsened the situation and tarnished the superior judiciary's image. Instead of focusing on its constitutional role and pending cases, the superior courts took up petty matters, summoned senior officials, and intervened in executive functions, priorities, and decision-making. They also instructed the legislature to amend or enact laws to ensure specific public facilities.

Critics argue that excessive judicial activism risks creating a judiciary-led government, turning the post-military democratic transition into a gray zone of civilian rule dominated by judges. Opponents fear this overreach could prove even more damaging than past military regimes, which directly controlled the state and

disrupted democracy for much of its history.

CRITIQUE

Since Pakistan's inception, the judiciary lacked full independence and often validated military takeovers. Over time, it gained autonomy, reinforced civilian governments, and limited military authority, even while endorsing certain regimes. After its restoration in March 2009, the judiciary took a firm stance against military intervention, protected civilian rule, supported constitutional amendments⁵ to prevent future takeovers, curtailed presidential powers to dissolve the Assembly, and barred itself from legitimizing extraconstitutional actions.

The newly independent judiciary sought autonomy from both military rulers and civilian governments, expanding its *suo motu* jurisdiction under Article 184(3) to address public grievances. By taking up cases highlighted by the media or individuals, ranging from major corruption scandals to minor issues, the judiciary gained a strong populist image.

Motivated by public pressure from media, technocrats, civil society, and political opposition, the judiciary intervened in matters of an executive nature. This activism, however, led to challenges such as weakening civilian governments, eroding trust in representative institutions, risking conflicts with international obligations, burdening the public exchequer, damaging its own credibility, and failing to delegate authority or reform the justice system.

Despite conflicts with other government branches, the judiciary must operate with mutual cooperation and coordination to promote public welfare, respecting the sovereignty of all state organs. It should not act as a cure-all for every issue nor oversee or direct the executive's affairs and policymaking.

The judiciary must maintain impartiality, avoid selective justice, and refrain from undermining representative institutions. Excessive judicial activism risks creating a regime resembling military rule, where the judiciary assumes executive powers and the civilian government becomes ineffective. The judiciary should prioritize reforms in the traditional adjudication system to protect its dignity and restore public trust in both judicial and democratic institutions.

CONCLUSION

In conclusion, the judiciary has played a pivotal role in shaping the constitutional history of Pakistan. During democratic transitions, however, the military has persisted as an unavoidable stakeholder due to Pakistan's strategic significance and the internal and external challenges it has faced. Although the judiciary historically legitimized authoritarian regimes and extraconstitutional measures, it began asserting remarkable independence in the post-Musharraf period, establishing autonomy from both military and civilian governments. This wave of judicial activism has received both

⁵ On April 8th, 2010, the Parliament enacted the 18th Constitutional Amendment, which amended Article 6 to prohibit the President from unilaterally dissolving Parliament, deter military interventions, and prevent judicial validation of such extraconstitutional actions in the future.

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appreciation and criticism from scholars, as explored in this article. For example, in striking down the NRO, the judiciary not only questioned the authority of the democratic government but also challenged the powers of the Prime Minister and the President. The government, viewing this as an infringement on its sovereignty, attempted to impose constraints on the judiciary through mechanisms such as judicial appointments and financial incentives. However, the judiciary resisted these measures, upholding its claim to autonomy.

These institutional struggles have created the risk of renewed confrontation between the judiciary and the government, with potential outcomes including the judiciary assuming a role similar to that of past military rulers or the government forming an alliance with the military to enable indirect military rule. Either scenario could regress Pakistan to the pre-2009 landscape, undermining democratic consolidation and constitutionalism. To avoid such setbacks, both the judiciary and the government must collaborate to eliminate extraconstitutional interventions, refrain from absolutist tendencies, and uphold the principles of separation of powers and checks and balances.

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