**SPCRD GLOBAL
PUBLISHING**
Sustainable Solutions

RAMSS Review of Applied Management
and Social Sciences

Journal homepage: <http://ramss.spcrd.org>

ISSN (Print): 2708-2024

ISSN (Online): 2708-3640

Judicial Activism and its Implications for Good Governance: A Case for Judicial Reforms in Pakistan

^a Nauman Reayat, ^b Neelam Farid, ^c Muhammad Kamran Khan, ^d Anwarul Mujahid Shah

^a Department of Political Science, Abdul Wali Khan University, Mardan, Pakistan.

Email: nauman381a@gmail.com

^b Department of Sociology, International Islamic University, Islamabad, Pakistan.

Email: neelam.farid@iiu.edu.pk

^c Department of Management Sciences & Commerce, Bacha Khan University, Charsadda, Pakistan.

Email: drkamrankhan@bkuc.edu.pk

^d Department of Sociology, Political Science and Education, Bacha Khan University, Charsadda, Pakistan.

Email: anwar_ids@yahoo.com

ARTICLE DETAILS	ABSTRACT
History: Accepted 22 Feb 2021 Available Online March 2021	<p><i>Judicial activism plays an important role in shaping various countries' political contexts with different political systems and regime types. Academic literature and debates are divided among various groups in favour and against judicial activism. This work reviews range of available data to probe case of judicial activism in Pakistan from 2005 to 2013. Judicial activism in Pakistan seemed to be short-lived and selective in nature. The Supreme Court of Pakistan (SCP) exercised activism without limits in cases against representative parliamentarians who were already constrained in many matters by other unconstitutional powers. No doubt, it reviewed various malpractices of the executive in the domain of public policy and governance, which enhanced its legitimacy and popularity. A vibrant media further contributed to the Court's popularity. But the transgression of institutional boundaries by the apex court for 'pious' objectives failed to introduce judicial reforms and eradication of corruption in the lower judiciary. Selectivity in the SCP activism was visible in its limitation to implement some of its verdicts against ex-military officers. This paper discusses these contradictions within the activism by the higher judiciary in Pakistan, and suggests various recommendations in the latter part of the paper.</i></p>
Keywords: Judicial Activism; Good Governance; Judicial Reforms; Supreme Court of Pakistan	
JEL Classification: G34, G39	
DOI: 10.47067/ramss.v4i1.94	

© 2021 The authors. Published by SPCRD Global Publishing. This is an open-access article under the Creative Commons Attribution-NonCommercial 4.0

Corresponding author's email address: drkamrankhan@bkuc.edu.pk

1. Introduction

Judicial activism seems to be a global phenomenon. Courts around the world are under

increased scrutiny for their intervention in different spheres of policymaking and governance sphere as these are the areas exclusively reserved for the executive branch of the state. The United States (US) ordered the government to desegregate schools in *Brown v. Board of Education* 1954. The US Supreme Court decriminalized abortion in *Roe v. Wade*. Later, in 2000, the same court decided *Bush v. Gore*-the case of elections between the candidates of two major political parties. The majority of the judges decided to stop recounting of votes in the state of Florida, and as a result, George W Bush was elected as President. In *Citizens United v. Federal Election Commission* 2010, the US Supreme Court declared that limitation on commercial, political expenditure and transparent activities by Congress as unconstitutional limitations on the free exercise of speech. In *Hollingsworth v. Perry* 2013, Judge Vaughan R Walker overturned constitutional amendment by the California legislature to stop same-sex marriage.

Like the US, the Supreme Court of Canada has declared some actions of the government unconstitutional after incorporating Charter of Rights. In *Chaoulli v. Quebec*, the Supreme Court declared the prohibition of private healthcare insurance unconstitutional and challenged the principle of Canadian universal health care. On July 4th, 2014, the Supreme Court declared the government's cut to health care for refugees as unconstitutional and termed it cruel and unusual treatment. In 2013 the Supreme Court of Canada invoked Charter of Rights and declared the prostitution laws on the ground that they put the security and lives of prostitutes at risk. In 2012, the Ontario Court of Appeal declared the mandatory minimum jail times in gun-related offences as 'cruel' and 'disproportionate'.

In Pakistan, the Supreme Court disqualified the Prime Minister of Pakistan from holding the office. Peshawar High Court in Pakistan declared drone attacks on terrorists illegal and violation of public international law. It directed the government of Pakistan and Pakistan Army to target them and even prescribed a military strategy on how to take them down. In Italy, the Superior Court had investigated the politicians on charges of corruption and disqualified them.

It is thus clear that the judicial arm of the branch has either been voluntarily intervening in the public policy and governance matters or such issues have been thrust on the shoulders of the judges for adjudication. In addressing these issues, the courts around the globe have moved from one extreme to another. There seems to be a pertinent need to strike a balance between *judicial activism* and *judicial restraint*. The research explores the possibility of striking such a balance by advocating *selective intervention* by courts but emphasizes that nature, form, and tools of such intervention are based on the country's specific political, social, and economic environment. For the purpose of discussion, the research analyses the Supreme Court of Pakistan (SCP) as a case study. The rest of the paper is divided into four parts. The first part discusses the methodology used for this paper. The second part reviews the extant literature. The third part explains the historical trajectory of judicial activism in Pakistan. The fourth part presents critical analysis and discussion of judicial activism and judicial restraint. The last part makes concluding remarks.

2. Literature Review

Donald P. Kommers and Miller (2012) giving his comparative analysis of judicial review and its role in constitutional governance, has found the roots of institutional tool-judicial review of apex most court in Roman and medieval political philosophy. Related only to American constitutionalism in the nineteenth century, judicial oversight of the executive suggests courts' duty to decline to implement any enactment that abuses the Constitution. The authority of courts in the United States

to announce laws illegal was basically a legal creation which Americans viewed as a sensible outcome of the separation of powers principles. What's happening about legal survey today isn't only the expansive scope on which it has been embraced, however, the cognizant choice of the framers of the Constitution around the world to put the guardianship of constitutional laws in the hands of judges. By reviewing various doctrinal and analytical books, he attempted to enquire about the operation of constitutional courts and the effect of judicial review in countries other than the United States.

Barlatsky(2011) has unearthed the new dynamics chaining judicial activism and public opinion together. He found that it is the favourable public opinion that encourages higher courts to intervene in various matters and governance issues. Relationship between public opinion and judicial activism has been observed, and an attempt has been made to find if judicial activism is an issue in other countries or not.

The Ministry of Justice, Great Britain, has found that the appropriate working of courts is basic to society's legitimate working to any steady majority rules system. Along these lines, problems that can possibly modify the domains between the state's different arms must be given the most watchful thought.

Lindquist and Cross(2006) have thoroughly analyzed the concept of judicial activism and the debate on various standpoints over judicial activism and its impacts on governance. They have found the institutional role various justices of American Supreme Court as an activist when they push their own policy in the realm of governance through their verdicts on cases brought against the government. Links and connections have been drawn between ideological orientations of justices and impact of various cases to measure the extent of judicial activism.

Vanberg (2001) contended that courts with the ability to practice judicial oversight as protected courts or in a decentralized arrangement of legal revision constitute focal organizations of administration in most Western-style popular governments. He displayed a basic game-theoretic model that gave a bound together record of the multi-faceted collaborations between such courts and the governing bodies they are, at any rate to a limited extent, proposed to limit. The model tended to the administrative expectation of legal survey, authoritative responses to legal decisions, and researches the suggestions for legal conduct. It demonstrates that the political environment in which a court must act is crucially important to the manner in which it will use its powers.

Caldeira (1986), Murphy and Tanenhaus (1990) and Weingast (1997) have underscored the significance of open backing for established "rules of the game" when all is said in done and for high courts specifically. In Pakistan, this public support and favourable public opinion are very important in the context of governance, especially when the funnelling tool through which general perception is evolved is media.

Carrubba (2000) argues that assuming a contradiction between law and the Constitution, it will, for the most part, be fundamental for the lawmaking body to address the lack by redrafting the culpable areas. He has highlighted the impact of coordination between two institutions: Supreme/Constitutional courts and legislature on the governance. He believes that courts should intervene in determining the accordance of the laws to the Constitution to the extent that other institutions can implement it by not construing it as a transgression of the institutional domain. Only then meaningful governance can be felt by society at large. But his account is helpful in knitting the

theoretical web for the process of institutionalization and its link with superior judiciary and Constitution of the USA only. Process of institutionalization in Pakistan is empirically different from the USA as different critical junctures can be observed in the path of institutionalization from 1947 to 2013 and so are the different paths adopted by SCP after that critical junctures.

Md. Awal Hossain Mollah (2008) while analysing the role of Bangladeshi Supreme Court in good governance has mentioned four ways through which apex court gears up the state machinery for a prompt response to people's aspirations and expectations. He clarified such ways under isolated headings of central rights and equivalent equity for all, legal review and investigation of laws, legal activism and the assurance of open premium, security of standards of normal equity and native rights, remedial legal provisions, judicial oversight, the activity of admonitory province. Despite the fact that obviously the legal's part in standardization is extremely viable and pressing, it should likewise be noticed that for exercising its jurisdiction legitimately, the courts should be adequately self-governing and the administration needs to regard the choices of the courts satisfactorily. Mollah has mainly focused on good governance, and from the perspective of governance, they touched upon the function of institutions of the state of Bangladesh. His angle of good governance also contains many other angles such as transparency, corruption, participation etc. This research will touch upon the issues of governance, but the only focus will be on the SCP and the process of institutionalization in Pakistan.

Bollen (1993); Munck and Verkuilen (2002); Knack (2006); Sampford et al. (2006) have made democracy and eradication of corruption as a focal point of good governance. Eradication of corruption and democratic principles can't run without an effective and meaningful role of the judiciary. Democracy can't sail smoothly without favourable weather conditions, and such favourable conditions can only be provided if all the institutions of state work within the ambit of the Constitution. This precondition can be ensured by apex courts being the guardian of the Constitution.

Andrews and Montinola (2004); (Barro 1997, 2000); Joireman (2001, 2004); Rigobon and Rodrick (2005) have turned to the rule of law data sets to facilitate their studies about institutionalization for which vibrant, active and independent judiciary is quintessential.

The above studies explained different aspects of judicial politics in general and judicial activism in particular. However, these studies did not explain how judicial activism influences different areas of governance in the context of an authoritarian and hybrid regime such as those between 2005 and 2013 in Pakistan. The next section explains judicial activism in the context of Pakistan and how it went through different changes over a time.

3. Judicial Activism in Pakistan

The judiciary in Pakistan was always active as it was involved in political issues since independence. Ghulam Muhammad dissolved the first constituent assembly in 1954. The matter ultimately reached the Federal Court of Pakistan, and the Court endorsed the dissolution of the assembly. General Ayub Khan abrogated the Constitution of Pakistan 1956 in October 1958. The matter ultimately reached the Supreme Court of Pakistan, and the Court endorsed the abrogation of the Constitution (*The State Vs Dosso and Others 1958*). General Yahya Khan abrogated the Constitution of Pakistan 1962 in 1969. The matter ultimately reached the Supreme Court of Pakistan. The Court declared General Yahya's abrogation illegal but by the time the Court dismissed General

Yahya's abrogation General Yahya was no more in power (Miss Asma Jilani Vs the Government of the Punjab, 1970). General Zia ul Haq didn't abrogate the Constitution of Pakistan 1973, but he suspended the Constitution (*Nusrat Bhutto Vs Chief of Army Staff and Others*, 1977). The matter again ultimately reached the Supreme Court of Pakistan, and the Court endorsed the suspension of the Constitution. General Musharraf suspended the Constitution of Pakistan 1973 in October 1999. The matter ultimately reached the Supreme Court of Pakistan and the Court this time not only endorsed Musharraf's suspension of the Constitution but also allowed General Musharraf to make amendments (*Zafar Ali Shah v the Chief Executive of Pakistan General Pervez Musharraf* 2000). The whole history of the higher judiciary since 1947 showed that the judiciary in Pakistan was active in relation to important political affairs of Pakistan.

However, judicial activism refers to the increasing exercise of judicial review against the interests of the executive, Parliament, and the military. At the end of the Musharaf era, a significant shift occurred in Pakistan's political discourse that redefined the rules of the game and the political discourse in the country. The shift has been the product of both design and coincidence. The shift seemed to be by design as it involved key national institutions, i.e. the SCP, Pakistan Army, the legislature, the executive whose deliberate actions triggered the change. It had the element of coincidence when these players' actions consequently produced circumstances beyond their control and shaped the country's national political landscape.

In the twilight days of the Musharaf era, the country's political parties inked 'Charter of Democracy' document agreeing to set aside their differences and pledged to form a united front against military intervention in country's politics. Apart from the political consensus between the political parties, there was a break down in the nexus between the Pakistan Army and the SCP.

This breaks down culminated in the Chief Justice Chaudhry's termination by the then Chief Executive General Musharaf. However, the Lawyer's movement joined hands with the country's political leadership and resulted in the restoration of the Chief Justice Chaudhry by the elected Prime Minister. The restoration of the Chief Justice Chaudhry changed the rules of the game between the military, the Parliament, and the SCP. Chief Justice Chaudhry further redefined these rules after his restoration. This change in rules was visible in the Court's bold decisions in politically important cases.

After his restoration, Justice Chaudhry and the Supreme Court, in an enthusiasm to meet public desires and in an attempt to change the historical trajectory of the Supreme Court, actively exercised the powers given to the Supreme Court by the Constitution under Article 184(3). He increased the initiation of suo moto proceedings on various issues under Article 184(3). Most of that issues fell in the administrative and policymaking areas-the areas that are beyond the jurisdiction of the Supreme Court. The Court looked into an agreement between Capital Development Authority (CDA) and Multi-Professional Cooperating Housing Society on the development of land in sector E-11 of Islamabad. The Court declared certain provisions of the agreement illegal and directed CDA authorities to complete the project. The issue was directly related to governance. It was the executive's job to ensure consistency between agreements and the law of the land and to complete the project in time. Since the executive couldn't do what it was supposed to do, the Court found space for intervention. It successfully occupied that space and asserted itself in areas pertaining to governance.

The Supreme Court of Pakistan took suo motu notices of corruption in annual hajj (pilgrimage) at Saudi Arabia (*Suo Motu case No 24 of 2010* (2011) PLD SC 963.). The governmental officials were involved in malpractices during the arrangement of hajj(pilgrimage). The Court directed to arrest the Minister for Religious Affairs Hamid Saeed Kazmi for his involvement in malpractices while sending pilgrims to Saudi Arabia and to make arrangements for their accommodation at Saudi Arabia.

The Supreme Court took notice of massive corruption in Pakistan Steel Mills (PSM). PSM faced a massive loss of 26 billion rupees during the year 2008-09 alone. The Court directed the Federal Investigation Agency to hand record to Chairman National Accountability Bureau (NAB) (*Suo Motu Case No 15 of 2009* (2012) PLD SC 610). It directed Chairman NAB to investigate the issue and book those who were responsible for the huge loss occurred to PSM. The issue was related to accountability and bad governance. It was beyond the scope of the court's jurisdiction to initiate investigative proceedings.

He excessively used the Contempt of Court Act against political elites and made disqualification of Prime Minister of Pakistan Yusuf Raza Gilani possible. The disqualification of the elected Prime Minister by unelected/appointed Chief Justice created a political crisis in the country. Similarly, he presided over numerous cases involving military generals, politicians, and media tycoons.

On the other hand, politicians also opted the judicial solution for the resolution of political issues like 'Memo scandal' and sought the Supreme Court's directions to the government of the time to conduct a full investigation into the matter. In the same vein, the Pakistan Army was accused of illegally arresting thousands of people (their own citizens) and keeping them in confinement in the war against terrorism. This led to the filing of mercy petitions before the SCP is famously known as 'The Missing Persons' Case'.

The Supreme Court, headed by Justice Chaudhry, exploited this opportunity and decided to adjudicate on the issue of 'The Missing Persons' Case' as it involved the Generals from Pakistan Army. Apparently, the decision to adjudicate on this issue was motivated more by Justice Chaudhry's personal grievance against the Pakistan Army. It enabled Justice Chaudhry to force the serving and retired army generals to appear in Court. Ideally speaking these issues of missing persons should have been resolved outside the Court by the institutions created for that purpose or should have been resolved by the Court of District and Sessions Judge or High Courts at the provincial level but were taken to the Supreme Court. The intervention of the Supreme Court in the circumstances seems appropriate, but it also underlines the deep cracks in the governance system and speaks volumes about the country's dysfunctional institutional framework for conflict resolution and management to resolve such contentious governance issues.

Similarly, the Supreme Court came under severe criticism for adopting judicial activism to address the country's systemic governance problems. It also came under intense scrutiny for not addressing the visible deep-rooted systemic problems of rampant corruption, delay in the disposal of cases; in the administration of justice (civil & criminal) at the level of judicial hierarchy. The historical role of the Supreme Court since the creation of Pakistan is also questionable. Its decision from Moulvi Tamizuddin Case to its decision in Zafar Ali Shah's case validated/legitimized the country's military takeover.

Most of these cases (presided over by Chief Justice Chaudhry) asserted a new but dominant role of Pakistan's Supreme Court in national politics. Yet the Art 681 of the Constitution of Pakistan 1973 prohibits the discussion on the conduct of the judges of Supreme Court and High Court in connection with the discharge of judicial duties. Similarly under Art 692 of the Constitution of Pakistan 1973 keeps the proceedings of the Parliament from the Court's jurisdiction and yet the SCP recently overlooked and ignored the rulings of the Speaker National Assembly on the disqualification of the elected Prime Minister for committing Contempt of Court. The Supreme Court subsequently convicted the Prime Minister for contempt of court and disqualified the elected Prime Minister. The disqualification of the Prime Minister divided the political class and the public into two schools of thought.

A school of thought contended that the Supreme Court's decision took judicial activism to an extreme and is using its constitutional powers to grab more power for itself over the Parliament and the executive. The second school of thought viewed the decision just and fair on the grounds that the legislature and executive branches have failed to deliver/perform its functions effectively to promote good governance in terms of upholding the Constitution and delivering public service. Consequently, the Supreme Court is dragged in for the resolution of political, governance, and social issues.

The underlying message that the Supreme Court decision intended to give to Pakistan's public was that of *constitutionalism*, *the rule of law*, and *equality before the law*. Unfortunately, the Supreme Court and the Provincial High Courts have been inconsistent and selective in the application of the same principles to itself as an institution and on to the conduct of individual judges.

The Constitution of Pakistan establishes the Supreme Judicial Council for the accountability/impeachment of superior court judges, but so far the ratio of impeachment proceedings done by the Council is insignificant. The appointment, membership, and composition of the Council that comprises of judges prevent the Council from impeaching their brother judges. Hence, the current structure in place for the accountability of the Supreme Court and provincial high court judges has practically become ineffective.

The dispassionate analysis of the above facts can explain the importance of individual judges' empowerment and accountability in the SCP and the Provincial High Courts. Their role as guardian of the Constitution is prerequisite for promoting democracy, the rule of law, constitutionalism, and good governance in a fragile country like Pakistan, yet their contribution is negligible. It is therefore

1 Art 68--" **Restriction on discussion in Majlis-e-Shoora (Parliament).**- No discussion shall take place in Majlis-e-Shoora (Parliament) with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of **his duties**".

2 Art 69--" **Courts not to inquire into proceedings of Majlis-e-Shoora (Parliament).**- (1) The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure.
(2) No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(3) In this Article, Majlis-e-Shoora (Parliament) has the same meaning **as in Article 66.**

essential to critically analyze their decisions in the public interest and constitutional litigation.

These proactive interventions of the supreme judiciary in public policy and issues of governance have raised some fundamental/important questions that merit detailed and in-depth objective analysis on the role of the Supreme Court, its composition; its functioning in the specific political, social, and economic settings of Pakistan. The research in hand is, therefore, a critical analysis of the functioning of the SCP; the recent trends of judicial activism in public interest litigation; its accountability, and its role in promoting good governance in politically polarised, socially structured, administratively dysfunctional failing/fragile states like Pakistan.

4. Methodology

The previous section provided a comparative analysis of judicial activism in developed democracies. This paper focuses on the composition, structure, and functions of the SCP in the context of judicial activism by critically analysing cases decided by the Supreme Court of Pakistan. The analysis will also study the country's social, political, and economic conditions in which the Courts decided those cases. Such a comparative study helps determine the common features/principles prompting the courts to deliver such judgements that discard the legislation by the legislature or the executive's policy as unconstitutional.

The research studies the evolution of constitutional conventions developed in the constitutional history of different countries and their importance in the observance of the Constitution, the rule of law, and institutional strength through the usage of textual analysis as a research tool.

Such an investigation will limit the social, economic and political dissimilarities and similarities between nations that affected the working of the legal arm of the state. The in-depth account of legal activism in both established democracies and developing democracies will, at that point, recognize the standard procedures practised by legally active superior courts. This will offer lessons on best practices to the judiciary in Pakistan to exercise selective intervention where needed.

5. Analysis and Discussion

The research in the specific political, social, and economic settings of Pakistan investigates various research-oriented problems (Siddique 2015; H. Khan 2017; M. Khan 2015). There are defining elements of Judicial activism and Judicial Restraint. Selective intervention is the mechanism adopted by which the courts intervene in other specific institutions' matters and keep on exercising its activist approach in those matters only. For example, during judicial activism from 2009 to 2013 led by Chief Justice Chaudhry, cases in which parliamentary bodies or executive was the party, were brought to a conclusive end at the cost of disqualification of democratically elected Prime Minister Yousaf Raza Gillani (*Criminal Original Petition No. 6 of 2012 in Suo Motu Case No. 4 of 2010* (PLD 2012 SC 553);) but the same SCP avoided this same approach in Asghar Khan Case where it refrained from taking notice of non-implementation of the final verdict. This suggests that there were certain limits to Justice Chaudhry-led judicial activism in Pakistan. The standard for such selective intervention was the trust level and legitimacy of the institutions. The apex court exercised judicial activism against the institutions with low legitimacy and trust level. Politicians were viewed as corrupt and untrustworthy on the larger scale, whereas Pakistan military had high trust and legitimacy level, at least to the extent of public perception. Exercising judicial activism against retired generals-previous senior officers of incumbent ones- could have triggered a severe backlash from both Pakistan Army as an institution and public and hence that could have made a serious dent

into the popularity of SCP.

Standard of selective intervention varies from country to country with different political systems and ideological foundations. Selective intervention in the domains of other organizations could be exercised by Supreme Courts and high courts of developed countries in line with their attitudinal inclinations and ideological orientations depending upon the judges' mechanism of appointments. In other cases such as that of the Middle East, the case could be different. In that case, selection of intervention is dependent upon the support provided by judicial support networks: a network of human rights organizations, civil society, political opposition parties, media, and legal bar associations. Therefore, it can be safely said that there is no universal standard of selective intervention.

Standards of judicial activism are not clear in a fragile country like Pakistan where corruption, nepotism, and bad governance is a norm at all judiciary levels. The legislature is not established and strengthened by strong political party culture. There is a great need for organized legal associations, vibrant responsible media, active civil society, and human rights organizations' independent functioning. Once these standards are established a conducive environment in the form of lively, animating practised culture can be formed where different stakeholders of a democratic setup can promote norms and conventions of adherence to constitutionalism, the rule of law, and institutional stability in Pakistan.

The Pakistani judiciary role as the formal dispute resolution institution presents a contradictory picture to activism by the higher judiciary. Backlogging of cases, the culture of adjournments, non-implementation of judicial policies, corruption in lower courts and no uniform control over fee structure of lawyers clearly indicating expensive justice show clearly that dividends of judicial activism are unable to seep into the structure of society in order to reach its bedrock where common people are seeking cheap and speedy justice.

Judicial activism is appropriate in a fragile country like Pakistan that requires restructuring of judicial institutions from below on a priority basis. It will increase the legitimacy of and public trust in the judiciary. A major problem with judicial activism in Pakistan is that it does not involve the society from below. Major political figures and organizations act as major players against the judiciary in the game of judicial activism. Unless judicial activism from enables the SCP to ensure cheap and speedy justice and provide public living at the lowest echelon of the society with access to justice, appropriateness and genuineness of judicial activism will remain questionable. In the absence of such a shift, the balance between judicial activism and judicial restraint is more desirable for an introduction and judicial reforms. Exclusive and unlimited judicial activism will accrue unlimited powers in the jurisdiction of judiciary, making it more vulnerable to corruption, whereas, extraordinary restraint by the judiciary will disturb the balance between the functions and performances of other institutions.

Despite the fact that the nation has inherited the common law framework during the colonial time from the United Kingdom, the constitutional system has huge similarities with the American Constitution. For example, the Constitution of the United States and the Constitution of Pakistan provides the federal system of the government. The two constitutions promote the principles of checks and balances and separation of powers. The current arrangement of separation of powers in the Constitution of Pakistan failed to achieve its very goal of keeping powers of different organs of the state separated as superior courts are currently not following any criteria and standard of

judicial review in cases concerning powers of other institutions. It is mainly because there are many parallel legal setups in Pakistan. First, there is an informal system of cultural traditions and customs which on the one side are highlighted as sources of law but on the other side functions oppositely to formal legal organizations. Secondly, the concept of power in Pakistan is rooted in multiple interconnected sources such as institutions, social statuses, affluence and charisma. Lawlessness in the society has challenged the monopoly over the use of legitimate violence, which has added the power of gun as another source of power. Hence, seeing judiciary from top to bottom in its hierarchy as an effective dispute resolution institution is a farsighted idea and expected less likely in the near future. A uniform and consistent standard of the exercise of judicial review can promote effective functioning in Pakistan's specific political, social, economic, and cultural settings.

Administrative reforms needed to make governance/public service delivery institutions more responsive to the needs of the public and good governance include a structural change in the institutions. Majority of the institutions in Pakistan are inherited from colonial history and hence contain colonial legacy. These institutions are unable to diversify the service-delivery and society-friendly mechanisms and require alteration in accordance with current requirements of the society. Structural change may require institutional autonomy on all levels of the government with stringent procedures of check and balances.

6. Conclusion

Judicial activism in Pakistan is telling case of disjoint between apparent superficial change and society. Major forces and actors are involved in this game of judicial activism. Selective nature of this activism can be observed from its different levels of activism against representative parliamentarians and its limitation in dealing with military officers. On the outset, judicial activism from 2009 onwards, showed that something judiciary achieved its independence and now judiciary has become available for justice to all and sundry. Such expectation from the judiciary will overlook the deep-rooted problem of the justice system of Pakistan. Judicial reforms are required for structural change in the justice system of Pakistan. Cheap and speedy justice is the need of the hour. Implementation of judicial policies formulated by the SCP can be recommended as the first step towards the introduction of meaningful reforms in the judiciary of Pakistan.

References

- Acemoglu, Daren and Robinson, James A(2012).Why Nations Fail: The Origins Of Power, Prosperity, and Poverty.New York: Crown Publishers.
- Baxter, Craig. (2004). Pakistan on the Brink Politics, Economics, and Society. Karachi: Oxford University.
- Basedau, Matthias. (2007). Do Party Systems Matter for Democracy? in: Basedau, Matthias et al. (ed.), Votes, Money and Violence. Political Parties and Elections in Africa, Uppsala: Nordic Africa Institute, pp. 105-143.
- Bendel, Petra / Grotz, Florian.(2001). Parteiensysteme und Demokratisierung. Junge Demokratien in Africa, Asian and Latin America im Vergleich, in: Nord-Süd aktuell, No. 1, Vol. 15, pp. 70-80.
- Barro, Robert. (1997). Determinants of economic growth: A cross country empirical study. Cambridge, MA: MIT Press.
- Barro, Robert. (2000). Rule of law, democracy, and economic performance. In 2000 index of Economic Freedom, ed.
- Bollen, Kenneth A. (1993). "Liberal democracy: Validity and method factors in cross national measures". American Journal of Political Science.

- Barlatsky, Noah. (2011). *Judicial Activism*. Michigan: Cengage Gale.
- Caldeira, Gregory. (1986). "Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court." *American Political Science Review* 80:1209-1226.
- Carrubba, Cliff. (2000). "The Politics of Supranational Legal Integration: National Governments, the European Court of Justice, and Development of EU Law." Annual meeting of the Midwest Political Science Association.
- Dix, Robert H. (1992). *Democratization and the Institutionalization of Latin American Political Parties*, in: *Comparative Political Studies*, No. 4, Vol. 24, pp. 488-511.
- Edgardo Buscaglia, William Ratliff and Robert Cooter Jai. Eds. *Law and Economics of Development* Eds Press Inc. Greenwich, Connecticut and London, England.
- Farwell, James. P and Joseff D. Duffey. *The Pakistan Cauldron: Conspiracy, Assassination and Instability*. Washington D.C.: Potomac Books Inc, 2011.
- Fair, C. Christine, Keith Crane, Christopher S. Chivis, Samir Puri, Michael. Spirtas. (, 2010). *Pakistan: Can The United States Secure An Insecure State*. Pittsburg: RAND Corporation.
- Gibson, James, Gregory Caldeira, and Vanessa Baird. (1998). "On the Legitimacy of National High Courts." *American Political Science Review* 92:343-358. <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/22-Nov-2009/Murder-embezzlement-balwa-amongst-the-pardoned-crimes/1>
- Harwood, Sterling. (1996). *Restraining Judicial Activism*. University of Michigan: Austin and Winfield.
- Huntington, S.P. (1968). *Political Order in Changing Society*. New Haven: Yale University Press.
- Janda, Kenneth. (1980). *Political Parties: A Cross-National Survey*. New York: Free Press.
- Joireman, Sandra F. (2001). "Inherited legal systems and effective rule of law: Africa and the colonial legacy". *Journal of Modern African Studies* 39:571-96.
- Joireman, Sandra F. (2004). *Colonization and the rule of law: Comparing the effectiveness of common law and civil law countries*. Constitutional Political Economy.
- Kommers, Donald. P and Russel A. Miller (2012). *The Constitutional Jurisprudence of the Federal Republic of Germany*. Duke University Press.
- Kuenzi, Michelle / Lambright, Gina. (2005). *Party Systems and Democratic Consolidation in Africa's Electoral Regimes*, Party Politics, No. 4, Vol. 11, pp. 423-446.
- Knack, Stephen. (2006). *Measuring corruption in Eastern Europe and Central Asia: A critique of the cross-country indicators*. World Bank Policy Research Working Paper.
- Khan, Hamid. (2009). *Constitutional and Political History of Pakistan*. London: Oxford University Press.
- Leuchtenburg, William. (1995). *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. Oxford: Oxford University Press.
- Levitsky, Steven. (1998). *Institutionalization and Peronism*, in: *Party Politics*, No. 1, Vol. 4, 77-92.
- Lindberg, Staffan. (2007). *Institutionalization of party systems? Stability and fluidity among legislative parties in Africa's democracies*, in: *Government and Opposition*, No. 2, Vol. 42, 215-241.
- Lindquist, Stefanie. A and Cross. Frank. B. (2009). *Measuring Judicial Activism*. Oxford University Press.
- Malik, Anas. (2011). *Political Survival in Pakistan Beyond Ideology*. New York: Routledge. 1-10.
- Mayhew, David. (1974). *Congress: The Electoral Connection*. New Haven: Yale University Press.
- Mainwaring, Scott (1998): *Party Systems in the Third Wave*, in: *Journal of Democracy*, No. 3, Vol. 9, pp. 57-81.
- Mainwaring, Scott / Scully, Timothy (ed.). (1995). *Building Democratic Institutions: Party Systems in Latin America*, Stanford: Stanford University Press, pp.

- Murphy, Walter, and Joseph Tannenhaus. (1990). "Publicity, Public Opinion, and the Court." Northwestern University Law Review 84:985-1023.
- Munck, Gerardo, and Jay Verkuilen. (2002). Conceptualizing and measuring democracy: Evaluating Alternative Indices. Comparative Political Studies.
- Mollah, Md. Awal Hossain. (2008). Judiciary and Good Governance in Bangladesh. South Asian Survey 15: 245. <http://sas.sagepub.com/content/15/2/245>.
- North, Douglas. (1993). Institutions and Credible Commitment, in: Journal of Institutional and Theoretical Economics, Vol No (149).11-23.
- Omar, Imtiaz. (2002). Emergency Powers And The Courts In India And Pakistan.The Hague: Kluwer Law International.
- Razaque, Jona. (2004).Public Interest Environmental Litigation in India, Pakistan and Bangladesh.London: Kluwer Law International.
- Roosevelt, Kermit. (2006).The Myth of Judicial Activism: Making Sense of Supreme Court Decisions.US Congress: Kermit Roosevelt.
- Rigobon, Roberto, and Dani Rodrick. (2005). Rule of law, democracy, openness, and income. Economics of Transitions.
- Sampford, Charles, Arthur Shacklock, Carmel Connors, and Fredrik Galtung. (2006). Measuring Corruption. Aldershot, UK: Ashgate.
- Vanberg, George. (2000). Establishing Judicial Independence in Germany: The Impact of Opinion Leadership and the Separation of Powers. Comparative Politics.32:333-353.
- Vanberg, George. (Apr. 2001). Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review. American Journal of Political Science.Vol. 45, No. 2 pp. 346-361.
- Weingast, Barry. (1997). "The Political Foundations of Democracy and the Rule of Law." American Political Science Review.91:245-263.
- Wolfe, Christofer. (2011). Judicial Activism Bulwark of Freedom or Precarious Society.Maryland: Rowman and Littlefield Publishers.

Verdicts of Supreme Court of Pakistan:

Using Patel and other VS Crown.

Miss Asma Jilani Vs the Government of the Punjab.

Nawaz Sharif Vs Federation of Pakistan.

Sindh High Court Bar Association v Federation of Pakistan. (2009) PLD SC 879.

Maulvi Tameezudeen Khan Case.

The State Vs Dosso and Others.

Nusrat Bhutto Vs Chief of Army Staff and Others

Federation of Pakistan Vs Hajji Muhammad Saif Ullah Khan.

Khawaja Tariq Rahim Vs Federation of Pakistan.

Benazir Bhutto Vs President of Pakistan.

Zafar Ali Shah v the Chief Executive of Pakistan General Pervez Musharaf 2000.

Pakistan Lawyers Forum case (2005).

Suo Motu case No 24 of 2010 (2011)PLD SC 963.

Suo Motu Case No 15 of 2009 (2012) PLD SC 610.

Suo Motu Case No 13 of 2009 (2011) PLD SC 619.

Re Tariq Azzizudin and Other (2010) SCMR 1301

Shahid Orakzai v Pakistan through Secretary Law (2011) PLD SC 365.

Suo Motu Case 10 of 2005 (2010) SCMR 361.

Suo Moto Case 18 of 2010 (2011) PLD SC 821.

Bank of Punjab v Haris Steel Industries (2010) PLD SC 1109.