



EXPLORING THE IMPACT OF JUDICIAL HYPER-ACTIVISM ON SOCIETY AND MEDIA IN PAKISTAN: A QUALITATIVE STUDY

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Abstract

Judicial Hyper-activism in Pakistan has been on the rise since 2020 due to the political anarchy and the prevailing law and order situation where the Legislative and Executives have failed to administer and maintain peace and balance in the country. Since these organizations have not contributed to the country's welfare, there has been a certain loss to the country's image created by the media, its economic stability, and peace both on the national and international levels. The present study aims to discuss the impact of Judicial Hyper-activism in Pakistan and how it builds its image on the national level. The study has been carried out by the qualitative analysis technique using the previous case studies obtained from the official SC sites and statistical shreds of evidence generated by the Supreme Court of Pakistan. The study can further pave the way regarding the solutions needed to control the hyper activism of the judiciary and maintain peace throughout the situations.

INTRODUCTION

According to the legal doctrine of 'judicial activism,' judges should also take into account how their decisions may affect society as a whole. On occasion, it is employed in opposition to judicial constraint. In the past year or two, legislating from the bench in Pakistan has increased significantly, with the Supreme Court getting involved in numerous cases that appear to be the purview of the Executive. The Court has heard disputes including emergency care, drinkable water, water abuse, the construction of water reservoirs and dams, black money, bribery, eminent domain, housing developments, public transportation, and telecommunications. The general public has appreciated the involvement, but it has faced criticism from several sources who claim that it infringes on the Executive's authority and interferes with the formulation of public policy. However, it is rarely stated how these court intervention techniques are affecting the formulation of policies and managerial choices made by the Executive, nor is it discussed how the high court's actions affect the entire legislature branch and the laws' subjects. Some of these issues are the subject of arguments and debates that take up prime time on television programmes as well as written articles.

The judiciary's predisposition for authoritarianism and willingness to yield to public inclinations in Pakistan confirm these claims. Justice Jawwad S. Khwaja, a former chief justice of Pakistan, once referred to Supreme Court justices as "the bearers of the public will" (Kureshi, 2019)¹. Such concepts are dangerous because they raise the possibility that the judiciary will rule primarily in favour of majorities and undermine the political power of legislators, who are the real voice of the people. This is amply demonstrated by the Islamabad High Court's decision in the Allah Wasaya case (PLD 2019 ISB 62) about the assertion of religious identity by followers of the Ahmedi faith.

The insufficient empirical research findings on the thoughts and experiences of representatives of civil society and media practitioners concerning the effect of judiciary's ultra on their roles in increasing transparency, personal responsibility, and representative government constitutes a gap in research for an investigation into the effect of judicial hyper-activism on civil society as well as the media in Pakistan. The viewpoints of civil society and press actors who are directly impacted by judicial rulings have not been studied in studies, which have concentrated on the political and constitutional ramifications of these decisions. The interactions between the judiciary, society organizations, and media in advancing representative government could be better understood by



qualitative research of the experiences and perspectives of civil society and media actors concerning judicial hyper-activism in Pakistan.¹

Keywords: Judicial activism, Pakistan, Supreme Court, Judicial Hyper-activism, law and order

Research Questions

1. How has the public's image of the legal system and the judiciary been affected by media coverage of Pakistan's judicial hyper-activism?
2. What are the social, economic, and political repercussions of Pakistan's judicial hyper-activism, and how have they affected different societal groups?
3. ²How has judicial hyper-activism impacted Pakistan's constitutional order, democratic representation, and adherence to the rule of law, and what does this mean for the future of the nation?

LITERATURE REVIEW

The phrase 'judicial activism' also known as the 'judicial phenomenon' refers to the prevalence of rulings by judges around the world in matters that seem to have a bearing on politics and policy. Without uncertainty, many believe they are the 'élite monopoly of elected politicians' 2 (McLachlin, 2000).

The phrase 'legal activism' has acquired such an associated notion that courts are perceived to meddle in topics that are in the realm of the Executive and Legislative. Advocates of constitutional interpretation say the practice is essential to maintaining a balance of power between the two pillars of the state to uphold the liberties of the ordinary citizen. Opponents believe that such power promotes meddling in government choices that are not a component of their realm. Over the past two decades, this debate has gained a lot of attention in Pakistan, particularly in the wake of the reinstatement of former Chief Justice Iftikhar Muhammad Chaudhry and the "restoration of the courts". The time frame for this study's assessment of the impact is from the year 2000 to the end of 2014 (Waseem & Aslam, 2022).

The idea that judges create positive law was contested by several academics before the 20th century, and Blackstone favored enactments of law as the most well-established example of customary law. Concerning the role of the legislative branch, Bentham saw this as an abuse of the administrative function as well as a lie or hopeless fallacy. In the first half of the 20th century, the benefits of legislative enactments were a heated topic, and eminent researchers took sides on both sides of the argument. Religious legal enactment examination was frequently serious during the Lochner era. The Supreme Court ruled in *Lochner v. New York* (1905) that a New York legislation limiting the duration of employment for caterers was unlawful. According to the court, the Constitution prohibits states from interfering with the majority of contracts. (Siddique, 2020).³ Judges' abilities in the content and spirit of continuous mode to the economy, as well as those of lawyers practicing in this area of expertise, should be further developed and improved throughout time. Because of the incapacity to comprehend the intricate nature of the guiding principles of the transaction, many poor decisions are provided. The entry requirements and general standards for legal training must be raised to those of other professions like medicine, engineering, and accounting. Independent experts like *Amicus-Curae* should be called on more frequently to help the courts by elucidating concepts. The handling of caseloads in our courts, especially at the lowest levels, is rife with discretion, fraud, holdups, and

¹ Najeeb, M. (2023, March 20). The sad reality of companies closing down in Pakistan. *Paradigm Shift*. <https://www.paradigmshift.com.pk/companies-shutdown-pakistan/>

² McLachlin, B. (2000) 'Judicial Power and Democracy'. *Singapore Academy of Law Journal* 12. URL: <https://www.sal.org.sg/Newsroom/Speeches/Speech-Details/id/488>

³ Siddique, N. (2020). *Prevailing Practice of Judicial Activism in Pakistan: A Legal Analysis in the Light of International Standards*. pdf. <https://SSRN-id3877964.pdf>

The midnight opening of courts. (2022, June 19). *Pakistan Today* | Latest News from Pakistan. <https://www.pakistantoday.com.pk/2022/06/19/the-midnight-opening-of-courts/>



inefficiency. An effort has been made over the past ten years to manage the load using a transparent system. Profit-making and private industry are not derogatory terms.⁴ They serve as the foundation for the business industry, expansion, and the reduction of poverty. The court has the right to intervene if there is rent-seeking through conspiracy between commercial participants, favours offered by the Executive branch, deviations from existing regulations and processes, quasi-tendering, or unilateral adjudication. In other words, the court always has the right to punish the offenders if any attempt is made to undermine or dilute the powers of struggle. But, just opposing privatization on emotional, philosophical, or personal grounds that public assets would be sold to commercial profiteers without considering the greater economic consequences does more harm than good (Hussain, 2014).

In fact, the emergence of a new phenomenon known as "judicial activism" in recent years has neutralized its purpose. The popularly accepted understanding of the term, as stated by George W. Bush, depicts it as judges' propensity to "enact from the bench," notwithstanding the legal profession's continued disagreement over its precise definition (Kmiec, 2004). Therefore, judicial intervention might be defined as the judiciary taking on parliamentary and executive duties in order to increase the scope of its authority. (Katchela, 2022).⁵

Judicial activism is widespread over the world, from New Zealand to Singapore, from the United States to China, and in many more nations (Billias, 2009)⁶. Think tanks have occasionally criticized the increase in court activity across the globe. Judicial activism now has so many varied connotations that it is difficult to understand what it means. Reforming procedural norms, political and social reforms, and human rights are three examples of judicial activism that an Australian judge, Justice David of New South Wales, described. Several types of judicial activism raise complex and crucial judicial ethical issues that need to be resolved. Reforming procedural norms, political and social reforms, and human rights are three examples of judicial activism that have occurred in the common law world in recent years, according to Justice David Ipp (SC of New South Wales, 2009).⁷ Several types of judicial activism raise challenging and significant ethical issues (Sowell, 2014).

Iftikhar Chaudhry, the then-Chairman of the Supreme Court of Pakistan (CJP), had been dismissed by General Musharaff's dictatorship for refusing to recognise the Constitution's subsidence. The Lawyer's Movement of 2007 sought to have Chaudhry reinstated. As a result, when attorneys first entered the shadowy realm of governance, it was celebrated as a show of opposition to an egregiously autocratic system. However, things took a turn for the worst when CJP Iftikhar Chaudhry, after being reinstated, removed more than 110 judges in a single motion who had refused to retire after he was removed as CJP. This action showed Pakistan that bench-level legislation wasn't only about erecting (Katchela, 2022).⁸

The Magnificent Suo Motu Forces

According to Maryam S. Khan's article, Pakistan's political process was revived in the late 1980s, which allowed the court to transform from an advocate of authoritarian control to the keeper of a new,

⁴ Khan, M. S. (2015). Genesis and Evolution of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic Theory of Judicialization. *Journal of International and Comparative Law*, 28(2), 284-358. URL: <https://ideaspak.org/images/Publications/Social-Exclusion-andMarginalization/Public-Interest-Litigation-in-the-Supreme-Court.pdf>

⁵ Katchela, A. Y. (2022, December 8). Is judicial activism undermining the justice system in Pakistan? Paradigm Shift. <https://www.paradigmshift.com.pk/judicial-activism-pakistan/>

⁶ Billias, G. A. (2009) "American Constitutionalism Heard Round the World, 1776-1989: A Global Perspective". New York, New York: New York University Press, 304-375. URL: https://www.amazon.com/American-Constitutionalism-Heard-Round-1776-1989-ebook-dpB010THG79G/dp/B010THG79G/ref=mt_kindle?encoding=UTF8&me=&qid=

⁷ Ipp, D. (1995) 'Judicial Intervention in the Trial Process,' *Australian Law Journal* 69, page 47. URL: http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/Pre2015%20Speeches/Assorted%20-%20A%20to%20K/ipp_speeches.pdf

⁸ Katchela, A. Y. (2022, December 8). Is judicial activism undermining the justice system in Pakistan? Paradigm Shift. <https://www.paradigmshift.com.pk/judicial-activism-pakistan/>



representative democratic order. The Supreme Court upheld the conventional understanding of locus standi by ruling that the first inquiry the Court must make in a writ petition is whether or not the complainant has locus standi to assert the Court's exceptional authority. An individual petitioner 'could not move the Court pro bono public', according to Judge Muhammad Munir. The Supreme Court of Pakistan's examination of PIL in *Benazir Bhutto v. Federation of Pakistan* in 1988 coincided with the start of the PIL campaign in Pakistan (Khan, 2015).⁹

Despite the claims of those who promote the judiciary's activism that its members only aim to defend the country's legal framework, recent precedent-setting incidents in Pakistan demonstrate that these legal debates are merely an excuse for the judiciary's efforts to increase the breadth of its authority, boost public affection for it, and bolster its partisan supporters while settling personal resentment with those who have "treated unfairly" it in the past. However, the judiciary can still maintain its impartiality by using its suo-motu powers to refer politically difficult matters to those that pose socio-legal issues. First, it is essential to understand how the judiciary's prerogative has changed recently.¹⁰

Methodology

This study is being carried out using a qualitative methodology. It provides solutions for the gaps and inadequacies in Pakistan's current judicial hyper-activism practice and conducts a comparative analysis of judicial hyper-activism in the regard to national legal standards.

¹¹Analysis and discussion

The study uses a qualitative approach to analyze and discuss the selected topic in light of the recent activities of judicial hyper-activism in Pakistan through the cases that have been solved by the Supreme Court of Pakistan. When it comes to the South Asian region, South Asian region is exceptional in that nearly every nation was a British colony before independence and used the same governmental system. The majority of states use the parliamentary form of government, and each institution has its distinct area of authority within the system. The judiciary and armed services have not meddled in political issues in Pakistan or Bangladesh. The exercise of authority and area of influence among organizations has given rise to conflicts over time. The state and societal institutions must function well for a democracy to flourish. It appears that Pakistani politics is currently being judicial. There are concerns regarding the judiciary's expanding influence and how much legislation from the bench is permissible without violating the law. The present chief justice of Pakistan's Supreme Court has made more of an effort to be seen as an elected representative keen to publicly remark on the function of the parliament than as someone who is representing his organization impartially.

The table below presents the performance of Special Courts and administration in Pakistan. The statistics and data have been obtained from the official site of the Law and Justice Commission of Pakistan in 2023.¹²

⁹ Khan, M. S. (2015). Genesis and Evolution of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic Theory of Judicialization. *Journal of International and Comparative Law*, 28(2), 284-358. URL: <https://ideaspak.org/images/Publications/Social-Exclusion-andMarginalization/Public-Interest-Litigation-in-the-Supreme-Court.pdf>

¹⁰ Jamal, U. (2018, May 1). Democracy and judicial activism in Pakistan. *The Diplomat* – The Diplomat is a current-affairs magazine for the Asia-Pacific, with news and analysis on politics, security, business, technology, and life across the region. <https://thediplomat.com/2018/05/democracy-and-judicial-activism-in-pakistan/>

¹¹ Welcome to Pakistan research repository: Judicial activism and policy-making process in Pakistan, 2001-2014. (n.d.). Welcome to Pakistan Research Repository. <https://pr.hec.gov.pk/jspui/handle/123456789/16288>

¹² DECLINE IN PENDENCY OF CASES IN THE SUPREME COURT OF PAKISTAN. (2023). <https://www.supremecourt.gov.pk/declinesupreme-court-of-pakistan-2/>

**Table 1: Performance of Special Courts and Administrative Tribunals**

S #	Title of Tribunals/ Special Courts	Number of Courts	Pendency	Total offer	Disposal	Balance
			on 1/1/2012	Institution and Transfer	during the year	on 31-12- 2022
1.	Accountability Courts	22	451	566	180	386
2.	Anti-Dumping Appellate Tribune	1	2	9	7	2
3.	Appellate Tribunal Inland Revenue	4	6755	17307	7860	9447
4.	Custom Appellate Tribunals	8	2700	4265	1553	2712
5.	Drug Courts	9	2333	4983	2510	2473
6.	Environmental Protection Tribunals	4	1131	377	98	279
7.	Foreign Exchange Regulation Appellate Boards	2	52	54	15	39
8.	Special Courts (Central)	8	5877	11693	5647	6046
9.	Special Courts (CNS)	6	1335	2622	1613	1009
10.	Special Courts (Customs, Taxation, and Anti- Smuggling)	4	553	827	151	676
11.	Special Courts (Offences in Banks)	3	964	1354	139	1215
12.	Insurance Appellate Tribunal	1	42	57	4	53
13.	Banking Courts	29	45021	68973	23694	45279
14.	Commercial Courts	2	23	25	2	23

15.	Federal Service Tribunals	3	1912	6648	3092	3556
16.	Provincial Services Tribunals	4	6452	14711	6066	8125
17.	Anti-Corruption Courts (Provincial)	17	4883	7771	2374	5408
18.	Anti-Terrorism Courts	49	2238	5048	2743	2237
19.	Consumer Courts	11	2017	6926	4430	2566
20.	Labour Courts	26	14988	29172	17540	11771
21.	Labour Appellate Tribunals	7	5902	10246	2815	7294
	Grand Total	220	105631	193634	82533	110596

As per the data obtained from the official website of SCP in 2023 where it has been shown that several pending cases by SCP need to be solved. Though the statistics show that between February 2 and February 25, 2023, a total of 24,303 cases were resolved, while 22,018 new cases were instituted during that time. As a result, the number of cases that are pending or backlogged at the Supreme Court of Pakistan has decreased by 2,285 cases, from 54,735 to 52,450.

Since 2018, when 16,961 cases were ultimately resolved, the number of cases decided during the annual period ending in February 2023 is at its highest level. The Supreme Court's honorable judges put in extraordinary effort, a case management system was implemented, and benches were formed following the demands of the workload, all of which contributed to the favorable outcome.

In Pakistan, the scope of the Parliament's unrestricted and unqualified power is known as state democracy or sovereignty. That is clear in the British parliament, which is constrained to carry out its legislative duties while not being guaranteed by a written constitution. The executive, legislature, and judiciary are all components of Pakistan's federal government, which is a parliamentary democracy. The 1973 Constitution divides up authority and defines each organ's boundaries. The Prime Minister is the actual head of state, while the President acts as the nominal head. The four high courts of each province follow the Supreme Court as the Supreme Court. The Pakistani parliamentary system, which adopted the British tradition, insists on supremacy in the legislative process.

Since its establishment, Pakistan has struggled with institutional jurisdiction due to military takeovers, an overly active judiciary, and an unbalanced distribution of power. The boundaries and spheres of operation of each department and organization are clearly defined by the Constitution of Pakistan from 1973, however, this has faced widespread impasses among the public bodies. Three separate political party members served as prime ministers from 1956 and 1958: Hussain Shaheed Suharwardy, I.Chundrigar, and Feroz Khan Noon. The structural rivalry between the president and the prime minister was reflected in it. The 1962 Constitution gave one person certain rights. Up until 1969, General Ayub Khan stayed in charge. The transfer of authority to Yahya Khan was ruled to be illegal and unconstitutional in the *Miss Asma Jilani v. the Government of the Punjab* case, which reopened doors for democracy. After Ayub Khan The failure of his military activities against India in 1965 led to a phase of liberalization that was primarily the product of his power slumber. Later, in



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The judiciary's response to the 18th constitutional amendment, which was adopted on April 19, 2010, is another indication of the institutional imbalance that pervades Pakistani politics. In response, a petition was filed under Article 184 (3) and it was ruled that the Parliamentary committee lacked the authority to judge the nominees' eligibility or take part in negotiations with the Judicial Commission. The Judicial Commission of Pakistan Regulations 2010, which gave the Chief Justice exclusive authority to start the nomination process, preserved the pre-18th Amendment arrangement. 98 articles were altered by the 18th Amendment (Sattar, *Devolution of Labor Ministry and the 18th Constitutional Amendment*, 2011). The court had gotten involved in the amending power of the parliament. A constitutional modification can only be passed by the parliament with a two-thirds majority, although the judiciary has questioned this authority. It made certain revisions to the legislation that the Parliament approved to avoid a dispute with the Supreme Court. Parliamentary authority is superseded by the judiciary.

In 2009, the court also intervened to stop the rise in sugar prices. It assessed the marketing strategy and set the price of sugar at RS 40 per kg in 2009 (Shaheen). It instructed the government to carry out its directives and guarantee that the sugar was sold for this amount. The courts have absolutely no authority to determine the prices of the commodities. The Lahore court's decision to set the price at \$40 per kilogram was contested by the national and provincial governments, but the Supreme Court upheld the ruling and sent notice to the government to establish standard rates throughout all regions. In the *Privatization of Pakistan Steel Mill Case* in 2005, the union representing steel mill workers launched a lawsuit against the corruptness-fighting administration, contesting the legality of the privatization decision. The petition's main points were that the privatization process was opaque, the price share was small, certain parts of the privatization legislation 2000 were unlawful because they violated Articles 153 and 154 of the Constitution and therefore had no legal standing, and the government's privatization process was unlawful.

The Supreme Court and other High Courts in Pakistan have the authority to punish anyone who disobeys court orders, obstructs the legal system, or embarrasses the court or a member of the court, in accordance with Article 204 of Pakistani legislation, titled *Contempt of Court*. Because Yousaf Gilani disobeyed an injunction, the Supreme Court forced him from his position as prime minister in 2012. The Court ordered the imprisonment of a senator from the ruling party last week after his comments 'scandalized' the organization. A minister was summoned before the Supreme Court a few days ago after the Chief Justice of the Supreme Court took suo motu notice of his anti-judiciary statements. Nawaz Sharif, the former prime minister, and his politically controversial actions have been the subject of several Article 204 petitions.

Prime Minister Raja Pervez Ashraf also received arrest orders from the court in 2013 as a result of bribery. In the matter of the Rental Power Plant, he was charged with corruption. The Supreme Court offered its very own independent report, concluding that the RPP results in increased production costs and recommending that existing power generation and distribution networks be corrected to achieve lower costs. The announcement of a separate economic strategy is a blatant violation of the generally recognized standards of the legal system.



The ruling of the Islamabad High Court (IHC) in the Allah Wasaya case (PLD 2019 ISB 62), which concerned the assertion of religious identity by adherents of the Ahmedi faith, provides a clear illustration of this.

Having said so, it should be emphasized that courts follow the law's structure and procedures. Judges must maintain their composure and avoid engaging in political controversies. Witnesses must demonstrate a detached attitude when observing an occurrence to avoid being swayed by what they see; otherwise, as witnesses to the conduct of an offense, they will be ineligible to hear the case. To retain equilibrium, serenity, and balance and come to the right conclusion, detachment is important. The Code of Conduct states that judges must refrain from participating in any fierce debate, especially one that centers on a political issue, even if it includes a legal issue. The Supreme Court and Islamabad High Court offices were inaugurated around midnight against this backdrop. This was a sign for political adventurers to pause and reconsider, along with the declaration of a high-security alert in Islamabad's capital city and the arrival of jail vans at Parliament. It was time to heed wise political counsel to defuse the situation and steer clear of the new area that would have terrible repercussions. The Speaker then realized his error. He returned to his seat just before midnight and tendered his resignation. In the absence of the Speaker, the Deputy Speaker takes over; nevertheless, he disregarded the Deputy Speaker and called Ayaz Sadiq of the PML (N) to take over. He may have been confused by the events of the day or scared by the sight of jail vans, depending on the situation. One of the examples of such cases has been published by The Express Tribune on April 14, 2023, where the sources verified that the PTI leader called Pervaiz Elahi, the leader of the PML-Q, to discuss how to get the judiciary to step in. Sources cited Elahi as saying, 'After God, the supreme judiciary was best placed to protect from the fascist actions of the government.' He reassured Imran that he was certain of the judiciary's function in delivering justice. He continued, 'The lawyers have been urged to file court cases against government atrocities right away.' Imran Khan, meanwhile, spoke to the Supreme Court judges in a televised address from his Zaman Park mansion in Lahore, emphasizing that they had been charged with preserving the rule of law. This shows the clear involvement of the judiciary in politics while it is not what these organizations should be doing (Adnan, 2023).¹³

Judges themselves will play a role in the judiciary's response to these issues. Despite their opposition to Khan's unconstitutional acts in April, it is clear that many judges dislike established political parties and share his anti-corruption sentiments. Nonetheless, some judges are more concerned with preserving judicial independence than they are with contributing to the auto-privatization of the system. Experts can look at which judges are raised to positions of power, as well as the normative positions that go along with them, to forecast which direction the judiciary will go. The Supreme Court's current leadership would probably keep PML-N and PPP-led political institutions under pressure. But, Judge Isa, who has a different outlook, will succeed Asif in 2023 as Pakistan's top justice. The chief justice's position will be crucial in determining the judiciary's function during Pakistan's upcoming elections. Despite this shift, some judges worry about how deeply involved judges are in politics and legislation, but for the time being, it seems doubtful that the judiciary will abandon this position. The next chief justice of Pakistan will be Justice Isa in 2023, who has a distinct outlook. The chief justice's position will be crucial in determining the judiciary's function during Pakistan's upcoming elections. Despite this shift, some judges worry about how deeply involved courts are in politics and policymaking, but for the time being, it seems doubtful that the judiciary will abandon this position.

Factors Contributing to the Pervasiveness of Judicial Activism in Pakistan

The Supreme Court has 'unique jurisdiction' over 'a subject of public significance concerning the execution of any of the Fundamental Rights' listed in the legislature, according to Article 184(3) of the Pakistani constitution. When an affected party submits a petition, the Court may exert initial jurisdiction. If the Court determines that a matter of public importance in the area of constitutional

¹³ Adnan. (2023, January 25). Imran pins hopes in the judiciary for 'PTI's basic rights'. The Express Tribune. <https://tribune.com.pk/story/2397668/imran-pins-hopes-in-judiciary-for-ptis-basic-rights>



rights requires consideration, it may also exercise constitutional authority on its own accord. *Suo motu* sovereignty is the name given to this self-created inherent jurisdiction. Due to unexpected court action, the judiciary from recent history has become the topic of debate. Via PIL, jurisdiction has been progressively growing. The judiciary has accepted responsibility for upholding and enforcing the basic rights of the underprivileged and those who are weaker members of society. It has established the proper criteria for a procedure and made it simple for citizens to obtain justice.¹⁴ Since 1973, Islamization has affected some judges and some particular statutes that the judiciary must uphold, but the institutional antipathy for conservative legal theories is pretty obvious. The modern Pakistani superior judiciary, however, is motivated by the idea of using its power legally to win or keep the public's favor and use that support to put an end to bad actors. Although the appearance may resemble that which Solon approved of, the mechanics and attitude are more like those of Theseus. To punish the evil and bring shame onto themselves, legal jurisdiction can be used when it is applied liberally. The SCP has severely penalized national leaders who have disobeyed it in terms of both personal and political penalties. Political elites who have defied the SCP, including Musharraf, Asif Ali Zardari, Yusuf Raza Gilani, and Nawaz Sharif, have paid a heavy personal and political price. Directly disobeying the court has shown to be a surefire way to get caught, disqualified, banished, or held accountable. Though less well-known, the post-2005 SCP has also made hundreds of state workers responsible and even Pakistan's traditionally unaccountable security forces were required to testify in court and respond to tough questions.

One of the factors highlighted by President Arif Alvi is that since the judicial era of Justice Muneer Sahib, there had been hyper-judicial activism and continuous amendment-making in the constitution of Pakistan. He further stressed the points that judicial hyper-activism is a major drawback in the progress and development of the country, referring to the rules and examples of the American-British war in the 90s while Lincoln was the President of the US and he organized elections even during the times of war just because he knew the importance of democracy and elections. He also declared that elections are necessary to be held at this time as it is a dire need of the country's future and shouldn't be held any longer and this is not the responsibility of the Supreme Court but rather the Executive and Legislative in Pakistan government (Alvi, 2023).

Role of Media in Judicial Hyper-activism and Its Impact on Public

Media has a great role in building the image of anything that it comes across. The judicial hyper-activism is one such example that has gotten hype and made public with the help of the media. It not only builds the image rather shapes the reality using all possible pros and cons. While the Supreme Court intervenes in situations that should be handled by the trial courts using its *suo motu* power. For example, the Court intervened to monitor the police investigation in a recent rape-murder case involving a seven-year-old child that shook the country. Notwithstanding the noble intentions, the Court disregarded the possibility that Pakistani police, who are notorious for framing innocent people to 'solve' complex crimes, would become even less reliable under intense pressure. The Court in the same incident also procured into interpretation a TV talk show in which a news anchor made ludicrous claims about the offender. The reporter was called before the court, as well as with several other media and news figures, to look into the allegations. The situation in the courtroom resembled a tribal Jirga as various media representatives gave the Justices on-the-spot recommendations for what was required.

By utilizing its *suo motu* authority, the Supreme Court damages trial courts' functionality and standing. In addition, the provincial high courts have the power to take action on their own, or *suo motu*, in certain circumstances. There won't be any harm if the Supreme Court relinquishes its

¹⁴ Dr. Ishrat Husain. (n.d.). GoDaddy Security - Access Denied. https://ishrathusain.iba.edu.pk/economic_consequences_of_judicial_actions.ht



responsibility for expeditious trials of cases brought in print and internet media and delegates the suo motu authority to state high courts with the necessary supervision and limitations.¹⁵

Since 2005, the Supreme Court of Pakistan has acted in an aggressive and populist manner, appealing to the desire of Pakistanis to see the government held accountable for its dishonesty, abuse, and incompetence. Compared to the previous phase of judicial history, when the court was in accordance with the executive opposed to the people, the legal system has been in opposition to the executive since 2005. Because of the media's focus on this issue, a form of illuminated judicial tyranny that aims to change the behavior of acting inappropriately members of the executive (and legal divisions) by public humiliation, piercing inquiry, and a broad interpretation of inherent power has gained support from the public and the capacity to affect the discussion on important issues.¹⁶

The impacts of Judicial Hyper activism on the economic, social, and political repercussions

A strong legal system can encourage investors and balance out these other drawbacks by providing a level playing field. An investor will only contribute his savings and give his knowledge and experience if he is confident the company will be profitable. Profitability would require controlling the state actors' arbitrary and discretionary actions.¹⁷ This can be accomplished by ensuring that the law is applied consistently and without bias, contracts are upheld, property rights are protected, and cases are resolved quickly. The Supreme Court and High Courts' recent judicial activism and suo-motu actions have greatly helped to create a new balance between the Executive, Parliament, and Judiciary. While this action is admirable, it shouldn't deflect attention from the more routine tasks of (i) guaranteeing widespread admittance to impartiality; (ii) updating antiquated rules and laws; (iii) using leading technologies in crisis intervention; (iv) encouraging ADR mechanisms; (v) monitoring and enforcing the National Legal Policy 2009; and (vi) ordering the Special Courts and Tribunals to adhere to the deadlines for case resolution. These actions will help remove some of the barriers to investments and fair economic expansion, as well as have a longer-lasting and more basic effect on the state's financial governance. Despite these judicial accomplishments, the business had to endure some prices.

With the inclusion of Lawsuit Risk, Pakistan's existing extremely high national risk profile has been increased. Even after overcoming all the obstacles set up by the federal, provincial, and local governments, entrepreneurs and organizations are now confronted with a new obstacle that increases the volatility and instability of investing in and conducting business in Pakistan. There is risk that after all permissions have been obtained, the Supreme Court or High Courts may assume Suo-motu cognizance of the deal, impose a stay order, and require drawn-out, laborious proceedings to resolve the dispute. An alternative is to file a petition that is approved by the courts if a third party disagrees with the Executive decision's finding. Every year, a sizable number of fraudulent lawsuits are filed that have severe economic repercussions, although the penalties are negligible. Nonetheless, the economic penalty is significant. Few nations will prevent \$3 billion in prospective investment from the world's top mining firms from examining our country's mining possibilities in a challenging area. Although we must pay millions of dollars to defend our conduct in foreign tribunals, we do not have a bad reputation in the community of international investors. The mining operations have ceased in the interim, and the meager foreign cash we were receiving through exports is not accumulating at a time when we really need it.

Airlift is one of the major start-up businesses that are most likely to shut down and stop doing business in Pakistan. The company failed to survive despite receiving the highest finance of \$85 million in the history of the nation and revamping its business strategy. While the recent downturn in the stock markets and the worldwide crisis have harmed economic activity generally, they have had a terrible

¹⁵ Ransome, D. (2020, February 10). Judicial activism and the evolution of Pakistan's culture of power. The Round Table. <https://www.commonwealthroundtable.co.uk/commonwealth/eurasia/pakistan/judicial-activism-and-the-evolution-of-pakistans-culture-of-power/>

¹⁶ The midnight opening of courts. (2022, June 19). Pakistan Today | Latest News from Pakistan. <https://www.pakistantoday.com.pk/2022/06/19/the-midnight-opening-of-courts/>

¹⁷ Pakistan's hyperactive Supreme Court. (2018, February 9). JURIST - Legal News & Commentary. <https://www.jurist.org/commentary/2018/02/1-ali-khan-pakistan-supreme-court/>



effect on Airlift and made its closure inevitable, according to a statement from the company. Airlift's operations will end forever on July 12th. For individuals looking for affordable local transportation, the launch of SWVL, an Egyptian transportation firm, in Lahore in July 2019 and its expansion to Islamabad and Karachi has been nothing short of a miracle. Nishat Chunian Limited (NCL), a major textile company, recently declared that it would restrict its activities due to several issues, including mounting debt, insufficient foreign exchange reserves, and a lack of electricity. Also, the business released a statement that read, 'The Company's spinning division has a capacity factor of 219,528 spindles and 2,880 rotors. Due to the state of the market, the company has chosen to temporarily shut down 51,360 spindles after one month.

The situation has gotten worse when there have been industrial closures because of financial recessions and political turmoil. Due to this, the already high jobless rate has soared. In 2022, 765,000 people left Pakistan for other countries, more than doubling the 225,000 departures in 2021 and the 288,000 emigrants in 2020, as per data readily accessible to Express Tribune. The Ministry of Emigration reports that a significant portion of people traveled to countries like China, Iraq, Japan, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

Politicians in Pakistan are totally in denial. The nation needs an egalitarian and complete economic structure that is free from political ties, according to economic analysts. Next, Pakistan must make the most of its Technology sector, which has enormous potential to reduce increasing FDI and unemployment.

Conclusion

When official institutions refuse to pursue those responsible for torture, imposed abductions, and targeted killings, the suo motu authority is a priceless legal weapon to defend fundamental rights. In the same way, legal safeguards against willful defiance of court rulings and widespread defamation of judges guarantee an impartial judiciary dedicated to delivering justice as required by law. These constitutional tools work well when utilized sparingly and only in extreme circumstances. As a general rule, the nation's top court should exercise prudence rather than acting too aggressively. As long as the judicial system persists to challenge legislators who challenge the military's function and objectives, it will be safeguarded. The judiciary has evolved into an addition to the military's constitutional arm. A different course of action, meanwhile, could jeopardize the judiciary's alleged activism and rising, if controlled, organizational role against the legislature. The media and its role must also be highlighted in this regard as it not only causes national embarrassment but also creates anarchy among the masses. In conclusion, it's paradoxical that Pakistan's democratic forces are still engaged in a conflict to clear the way for authoritarian objectives and activities to flourish there. The highest court in the nation is eager to rule on these alleged constitutional transgressions that elected representatives may have made, but it has no interest in challenging the additional intervention strategies of the security leadership that have consistently undercut the legitimacy of elected representatives in Pakistan. If all of these organizations including the Legislature and Executive start working on policy making and policy implementation, the judicial hyper-activism might stop and the country will become peaceful.