

## Article 184 (3) Of Constitution Of Pakistan: Remedy Or Judicial Activism?

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### Abstract

*This paper explores the role of Article 184(3) in Pakistan's Constitution, examining its dual function as a constitutional remedy and a potential tool for judicial activism. Through historical analysis, case studies, and comparative perspectives, the study assesses how Article 184(3) has been used to uphold constitutional rights and address systemic inequities. It discusses the debates around judicial activism, constitutional interpretation, and the balance of power between the judiciary and other branches of government. The paper also identifies challenges associated with Article 184(3), including concerns about judicial overreach and accountability. By analyzing key cases and academic discourse, the study contributes to ongoing discussions about constitutional governance, the separation of powers, and the judiciary's evolving role in Pakistan's legal landscape, offering insights and recommendations for future policy and legal reforms.*

**Keywords:** Constitution, Judicial Activism, Judiciary, Governance, Judicial Review.

### Introduction

In order to maintain the constitutional framework and prevent judicial activism, judicial review is based on constitutional adjudication and acts as a check on government authority when it is frequently used to remedy injustices and encourage change in response to urgent social situations.

Many academics have consistently opposed Pakistan's growing judicial activism because they believe that rather than advancing justice, this overreach of the judiciary is causing societal unrest and injustice (Akbar & Malik, 2019). The courts' ability to resolve conflicts within states and ultimately elevate them to the position they have had since the phase of Chaudhry Court era mostly stems from their review of executive actions as well writ jurisdiction (Cheema, 2018a). Judicial activism, which refers to the superior courts' power to verify whether laws and administrative actions are constitutional, is also thought of as a neologism for judicial review (Shabbir, 2013). This judicial activity has frequently been viewed by the political elite as a clear threat to representational politics and democracy (Amin, 2023). Governance involves establishing a suitable framework and system for overseeing and managing state or public sector institutions or organizations, with the aim of ensuring their effective and efficient working and the delivery of high-quality services to all stakeholders (Malik M Hafeez, 2020).

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In general, governance is seen as the ongoing process of managing a nation's affairs at all levels to enhance the quality of life for its citizens via the exercise of economic, political, and administrative power in both the public and private domains. Article 7 of constitution of Pakistan, defines State, Legislature and Executive and not Judiciary because ultimately in the result of social contract within state and People of the State there is a neutral party came in to being to decide violation of contract and it is Judiciary. In Pakistan Supreme Court of Pakistan is given power of Original Jurisdiction under which Court is given power to take action in violation of fundamental rights and governance inefficiency. If Judiciary becomes proactive and it takes actions excessively it is called judicial activism, question concerned is whether excessive use of sue moto power is a remedy or judicial activism? Judiciary came into action when exploitation of resources and violation of fundamental rights happened. There is close connectedness between judiciary and Governance because rule of law, transparency and human rights are basic indicators of good governance and can only be achieved in result of efficient and active judiciary.

### **Practice of Judicial Activism**

Courts around the world have faced criticism for their interference in different policymaking and governance issues as well intrusion of judiciary in the power sphere of publicly elected institutions. US mandated the government to assimilate schools in *Brown v. Education Board* 1954. The US Supreme Court decided to allow abortion in *Roe v Wade*. The same court decided *Bush v. Gore*-the case of elections between two major political parties in 2000. The US Supreme Court ruled that Congress's restrictions on political, commercial, and transparent spending are unconstitutional since they restrict the right to free speech. *Federal Election Commission 2010 v. Citizens United*. In the *Hollingsworth v. Perry* case, Judge Vaughan R. Walker struck down the 2013 same-sex marriage constitutional amendment passed by the California legislature. Similar to the US, the Canadian SC has ruled that the Charter of Rights renders certain government activities illegal. The SC ruled that the government's restrictions in refugee health care was illegal and amounted cruelty and unlawful on July 4, 2014, The Canadian Supreme Court ruled in 2013 that prostitution laws were wrong because they are against the safety of life of people, invoke the Charter of Rights to work. In 2012, the Ontario Court of Appeal announced compulsory imprisonment in gun related issues wrong. In Pakistan, the Apex Courts decision of exclusion of the Prime Minister was marked as activism. Thus, it is clear that judiciary is involved in public policy and governance matters.

### **Research question**

Whether or not the frequent application of Article 184(3) is undermining governance in Pakistan?

### **Research Methodology**

An in-depth examination of the jurisdiction exercised by the supreme court under Article 184(3) has been conducted. A qualitative study is conducted to get insight into the intricate dynamics of judicial activism and governance issues in Pakistan. A comprehensive analysis has been conducted on a specific set of case laws pertaining to the sou moto jurisdiction of the Supreme Court of Pakistan. Secondary data has been used in shape of constitutional law, research articles, statutory law, and books on Law, focusing on the original jurisdiction of the SC of Pakistan. An in-depth analysis has been conducted to comprehend the Articles pertaining to fundamental rights in the 1973 Constitution of Pakistan to propose recommendations.

## Literature Review

Aatir Was of the view that judicial activism is the practice for protecting fundamental rights through judicial decisions and a new phase “supreme court reborn” has opened new debate about *Suo moto* jurisdiction and Judicial review. The author provides a historical perspective on *Suo moto* cases, such as the Darshan Masih case. To avoid institutional authoritarianism, it goes without saying that any authority should have some restrictions (Aatir, 2021). DR Ishrat Hussain in his book “Governing the Un governable” discusses the Constitution's system of separation of power in the shape of check and balance between main organs of government and role of courts allotted by law. The latter is just as crucial in advancing social and economic progress. The post-2007 period of judicial activism caused significant harm in topics pertaining to the economy and finance, and this damage is still present today (D. I. Hussain, 2018). Waseem concentrated on judicialization of politics after Musharraf and divisions in the executive and parliamentary branches. There were rumors that the civilian administration might fall due to the conflict between the court and the executive. The author also included a brief judicial assessment, highlighting issues such as overreaching judicial authority, the judiciary's attempt to veto power over judicial nominations after the 18th amendment and the judiciary's denial of the government's right to supervision. The Pakistani judiciary restored the legal idiom as the overriding political framework (Wasim, 2012). The purpose of consulting this article was to further the discussion of *suo moto* actions, judicial review, and their effects on the democratic system. The text describes the principles, moral values, and rules of the system that governs civic affairs in a manner that is clear, inclusive, thorough, and accessible (Batool, 2014).

### 1. Overview of Article 184(3) of the Constitution of Pakistan

Constitution of Pakistan of 1973 is third constitution ratified by democratically elected government and dominant party of Z.A Bhutto and was the first endemic constitutional framework. It gives remedial powers to Supreme Court and High Court in shape of appellate, advisory and original jurisdiction within particular jurisdictional and procedural power for the implementation of fundamental rights, Article 184(3) gives Supreme Court a unique authority of original jurisdiction which it may exercise apart from the powers of Article 199 of Supreme Court, which encompasses the writ jurisdiction prerogatives of High Courts (Khan, 2015). The language of Article 184(3) states that before the Court may have original jurisdiction over a case, it must be significant to the public. Second, the issue at hand must be a violation of one of the essential liberties safeguarded by the Pakistani Constitution's first chapter, second provision.

In the *Wukala Mahaz* case, Chief Justice Muhammad Haleem stated that this maintains the authority of the High Courts to carry out review power and gives impacted applicants the option of seeking redress from the both benches High court or Supreme Court. The next two characteristics of this clause fundamental rights and public importance relate to two steps in the process that must be taken in order for a claim brought under this clause to be successful.

The language of the provision states that before the Court may have authority over a case, it must first be of public importance. Second, the issue at hand must be a violation of one of the essential liberties safeguarded by the Pakistani Constitution's first chapter, second provision (PLD 1263, 1998). Moreover, the language of 184 (3) makes no indication whatsoever that Public Interest Litigation cases are excluded from the standard procedural procedures, including *locus standi* and the Supreme Court's status as the last resort, to mention a few (Manzar, 2019).

## **2. Explanation of the Provision's Purpose and Scope**

When two primary requirements are satisfied, the Supreme Court may use its original jurisdiction under Article 184(3): either an issue of common interest is implicated, or the claimed matter relates to the enforcement of basic rights (Article 8 to 28) (Munir, 2021). The exercise of original and *Suo motu* jurisdiction among the legal strata became tense due to this circumstance of public significance. The opponents of judicial activism contend that the Supreme Court has hampered the executive branch by using Article 184(3) to a greater extent than before. Pakistan's higher courts have progressively grown to play a significant institutional role and have acquired the power to arbitrate cases within. The Supreme Court of Pakistan has landmark judgment in 1988 *Benazir Bhutto v. Federation of Pakistan*, since then it is decided that court can be moved by any party irrespective of aggrieved person ("*Benazir Bhutto vs Federation of Pakistan*," 1988). Much criticism of the nation's understanding of constitutionalism has been directed towards the courts' meddling in political disputes. The judicial branch's representative function is crucial in guaranteeing that citizens' rights are upheld, and the political class has frequently viewed this judicial activity as a clear threat to democracy.

### **2.1 Similar Provisions in World**

Article 184(3) is a rare provision. Though few other written constitutions grant the top courts such sweeping powers for the enforcement of human rights, India grants its Supreme Court similar jurisdiction. For example, "any party" may petition the Supreme Court in Pakistan under Article 184(3) of the Constitution; yet, only aggrieved parties may file applications under Articles 102(1) and 126 of the Bangladeshi Constitution and Article 126 of the Sri Lankan Constitution. Furthermore, the provision permits the Supreme Court to consider issues of public concern pertaining to human rights on a *Suo moto* basis.

Renowned Indian legal scholars such as S. P. Sathe and Upendra Baxi elucidate that judge-induced social action litigation (SAL) was an endeavor by the Indian Supreme Court to establish a fresh and historical justification for judicial authority. This was in response to the period of heightened enthusiasm following the end of the Emergency and the restoration of liberal democracy. The aim was also to enhance the Court's political influence in relation to other branches of government. Nick Robinson claims that this "new interventionism" emerged approximately thirty years after SAL first appeared, during a period when the nation's other representative institutions, including Parliament, were seen as progressively more divided politically and as abdicating their role in governing. The Indian Supreme Court was allowed to enter politics and extend its jurisdiction and remedy to cover a wide range of governance functions as a result of this governance vacuum (Khan, 2015).

### **3. Brief Discussion on the Controversy Surrounding the Application of Article 184(3) (Historical Background)**

The provision for the enforcement of fundamentals rights was the part of the constitution of 1956. Later on, when the Constitution of 1973 was promulgated by Pakistan Peoples Party, the provision for the enforcement of the fundamentals rights has been retained in the shape of Article 184 (3) under which the apex court of Pakistan exercises it's jurisdiction for the enforcement of fundamentals rights.

The provisions of the fundamental rights are thus invoked often and with great awe. Beyond the preliminary question of whether any constitutional rights are in question, however, the character and extent of judicial review are quite similar to the writ jurisdiction conferred by

article 199 to the High Courts. Even with article 184(3)'s expansive wording, the Supreme Court has mostly addressed issues of procedural legality and administrative appropriateness. Its jurisprudence in administrative law has been solidly grounded in the constitutional provisions pertaining to rights. Consequently, the Supreme Court has established itself as the overseer of the administration by making its original jurisdiction the primary venue for reviewing executive actions (Cheema, 2018).

Chaudhry Court deliberated on adopting controversial concepts such as its own interpretation of the "basic structure doctrine" and the controversial theocratic introduction to the Constitution. These ideas had previously been dismissed by Supreme Courts as possible Basic theory to contest other constitutional provisions. In the end, the Chaudhry Court refrained from granting itself the power to evaluate constitutional amendments.

#### **4. Detailed Analyses of the Legal Framework Surrounding Article 184(3) as a Constitutional Remedy**

It is important to note that constitutionalism has resulted in an enormous expansion of judicial authority. Courts in many countries have asserted their power and influence in areas that are clearly the province of the legislature or the executive branch by using their constitutional jurisdiction. As a result, a new era of constitutionalism has seen the transfer of an unparalleled number of powers from representative organizations to the court (Hirschl, 2006). Courts have decided various legal questions and cases having political background using different these provisions. Legislative amendments came also under this scrutiny. This legal precedent is associated with the concept of basic structure doctrine formulated in India (Amin, 2023).

The Court conducted a linguistic examination of Article 184 (3) to determine the remedies it may provide. The Court determined that proceedings conducted under Article 199, which pertains to the jurisdiction of the High Courts to issue writs, are essentially the same in nature and scope as orders that might be issued under Article 184 (3). According to Article 199, a legal order cannot be reduced or limited by the law, and it can be issued to instruct any individual or authority as deemed suitable. The Supreme Court expanded its discretionary remedial powers by utilizing the provisions of Article 199 to evaluate the remedies provided under Article 184 (3).

The Supreme Court, in the case of Darshan Masiah, determined that Article 184 (3) grants it the authority to collect evidence and summon parties in an inquisitorial manner. Furthermore, it permits the court to independently hear and commence proceedings. According to the Supreme Court, Public Interest Litigation matters necessitate more than just legal research and textbook law knowledge. The Court align itself from traditional position as the last arbiter of legal disputes. According to its opinion, depending on the specifics of the case, it might serve as an organ of state, with the authority to find evidence of fundamental rights abuses and carry out fact-finding investigations to help alleviate them. Although the Darshan Masih case is sometimes cited as a watershed in Pakistani Article 184(3) jurisprudence, it was actually a coup de grace for the maintenance of traditional procedural norms in Public Interest Litigation cases (Manzar, 2021).

#### **4.1 Judicial Activism, Debates and Perspectives**

The first-ever case was filed under Article 184(3) ("Ch. Manzoor Ilahi vs State of Pakistan," 1975). From mid-80's judiciary started to become active, when Zia restored Constitution and lifted martial law. 1990-95 is treated as golden era of PIL. Suo moto power in public interest litigation dates back to the well-known ("Darshan Masiah v. State," 1990), in which the CJP

responded to a telegram about forced labor in brick kilns. Later, the CJP responded to a letter about the construction of a power plant and its potential negative effects on public health ("Shehla Zia vs Wapda," 1994). Court has taken *Suo motu* cases ranging from kite flying, bonded labor, NICL scam, Hajj scam, inhuman treatment in jails, ephedrine scam, missing persons' cases to name a few which have given relief to common people.

The Chaudhry Court has gained fame for accepting public interest litigation (PIL) cases and for frequently using its *Suo motu* authority to take cognizance of matters fall within jurisdiction of executive and legislature as dismissal of Prime Ministers, Governance perspective, policy making/policy implementation, regulatory frameworks of other state institutions (Khan, 2015). The legitimacy of the regime, legal reform, economic policy and deregulation, electoral process regulation, legitimacy of the constitutional amendment process, executive appointment, eligibility of elected politicians to maintain office, and even some foreign policy problems were among these political questions.

### **Case Studies and Analysis**

Following are the land mark judgments in which the supreme court of Pakistan has exercised it's jurisdiction under Article 184 (3).

#### **a. An Assessment of Chief Justice Iftikhar Choudry's Era**

In more recent cases the Supreme Court has applied its original jurisdiction-based interpretation of "public importance" or definition of "fundamental rights" based more on political considerations than on appropriate legal basis. Following his reinstatement, Justice Chaudhry and the Supreme Court actively worked to rewrite the Supreme Court's past in an effort to appease the public. They did this by using the *Suo motu* power under Article 184(3) of the Constitution of 1973 and most of the cases are from the administrative and policymaking areas. Land in Islamabad's sector E-11 were ruled unconstitutional by the court (SOU MOTO CASE NO 13 of 2009, 2011) and ordered to finish the project.

#### **18<sup>th</sup> amendment**

An important success of the PPP government was its ability to establish a national political consensus, achieved through a thorough and transparent process, to reexamine the Constitution and address different modifications. Additionally, the government included significant new processes, provisions, and rights. A significant component of the 2010 Constitutional Amendment entailed the implementation of a novel protocol for the selection of judges for the appellate courts. The 18th Amendment established a transparent process, giving the Chief Justice, along with senior judges and legal representatives of the executive branch making up the majority of the commission, primary responsibility for making all nominations for appointments (O. Siddique, 2010). Four members each from both chambers of parliament were to serve on a Parliamentary Committee that would review the nominees and make a final acceptance from both houses of parliament equally (O. Siddique, 2018). Protesting the amendment and raising the judicial independence concerns Choudry court accepted petitions that opposed it. This was a contentious move because it appeared to give the Court the authority to review constitutional amendments ("Nadeem Ahmad vs Federation of Pakistan," 2010).

Chaudhry Court responded by admitting a petition and stating that the technical know-how was absent from the Parliamentary Committee. The only options available to the Parliamentary Committee were to approve or reject the nominees on the basis of reasons coming within its purview, with any such rejections being subject to judicial review ("Munir Hussain vs Federation of Pakistan," 2011). Chaudhry Court deliberated on adopting controversial concepts such as its own interpretation of the "basic structure doctrine" and the controversial theocratic

introduction to the Constitution. These ideas had previously been dismissed by Supreme Courts as possible Basic theory to contest other constitutional provisions. In the end, the Chaudhry Court refrained from granting itself the power to evaluate constitutional amendments.

The Judicial Commission rules were created by judicial commission in 2010 which again return to an individual-centric approach by limiting the authority to begin the nomination process to the Chief Justice of an appellate court. Essentially, these changes have increased the judiciary's influence over the judicial appointment process.

Suo motu notices of corruption in the annual hajj (pilgrimage) in Saudi Arabia were taken by the Supreme Court of Pakistan (Hajj Corruption Case No 24, 2011). Officials from the government acted unethically while planning the Hajj (pilgrimage). The court ruled that Hamid Saeed Kazmi, the Minister of Religious Affairs, must be placed under arrest for his involvement in anomalies pertaining to the transportation of pilgrims to Saudi Arabia and for failing to provide for their lodging. The Supreme Court noted that Pakistan Steel Mills (PSM) had a significant level of corruption. In only the fiscal year 2008–09, PSM suffered a staggering loss of 26 billion rupees (SUE MOTO CASE NO 15 Of 2009, 2012). The matter concerned poor governance and accountability and was beyond the court's jurisdiction; thus, the court directed the Federal Investigation Agency to provide documents to Chairman NAB for investigation.

#### **b. Post Choudry Era**

Thus, the Supreme Court, which underwent a positive direction shift between 2014 and 2017 under the headship of five successive chief justices, wrote the epilogue to the Chaudhry Court. With the exception of a fleeting twenty-three lyrical days, during which the Chaudhry legacy was reinstated by Pakistan's twenty-third chief justice, Supreme Court has gradually diminished its initial judicial power and drastically decreased use of its original jurisdiction.(Cheema, 2016).

#### **Memo Gate Scandal**

The Memo Gate case, determined by the Supreme Court under Suo Moto jurisdiction, is regarded as a contentious decision because it expands the concept of the right to life in a way that deviates from international law. A Pakistani source reportedly delivered a memo to the U.S. Chairman of the Joint Chiefs of Staff on May 10, 2011, purportedly offering the PPP-led government promises of increased cooperation with the US government in counterterrorism operations in exchange for US support to thwart a possible military coup d'état (Mr. Stefan Trechsel, 2012). Due to the matter's public significance, PMLN Chairman Mian Nawaz Sharif, the Supreme Court said on December 30, 2011, that the application may be pursued and set up a judicial commission to look into the memo's intended use. The Court came to the conclusion that Pakistan's sovereignty, security, and independence would be seriously threatened if the memoranda were out to be authentic. As a result, the Court found that the petition was within the purview of Article 184(3)'s basic rights.

#### **Muhammad Yasin v. Federation of Pakistan (2012)**

In Muhammad Yasin v. Federation of Pakistan, the complainant disputed the standards by which the Chairman of the Oil and Gas Regulatory Authority (OGRA) was selected. The Apex Court ruled that all people are required to pay indirect taxes, which fund regulatory organizations like OGRA, and so opted to exercise its discretionary power in this case. The Court held that the appointment of persons to important posts that are funded by the

government without taking into account their credentials violates their basic human rights ("Muhammad Yasin v. Federation of Pakistan," 2012).

### **Disqualification of Yousaf Raza Gillani**

The judicial branch has begun to exercise its authority with renewed determination after being restored after lawyer's movement. The country's poor democratic system was the result of multiple constitutional irregularities brought about by this increase in judicial power. The legal proceedings that led to Prime Minister Yousaf Raza Gillani's disqualification provide valuable perspective in this regard. When the country's executive head refused to carry out the court's ruling and Supreme Court declared him guilty of contempt of court and disqualified him (Dr. Mobashir Hassan v Federation of Pakistan, 2010).

Supreme Court declared the Executive head guilty of contempt of court due to his failure to abide by Court's orders. Decision of contempt of court was an extreme step and it did not determine that the court conviction would automatically disqualify the Prime Minister from his seat as a parliamentarian (D. I. Hussain, 2018). Speaker of National Assembly has the constitutional power to disqualify any member of national assembly after inquiry proceeding. Constitutional provisions also empower Election Commission to investigate the grounds of disqualification of a member of National Assembly and Senate, emphasizing the fact that the issue had not come up during the court proceeding. Supreme Court intervened again and declared the five years disqualification of Yousaf Raza Gillani (D. I. Hussain, 2018). Some critics saw this development as a judicial monopoly (Wasim, 2012). Many critics believe that this judgment set a dangerous custom for the country.

### **Disqualification of Nawaz Sharif**

Disqualification of Gillani marked the beginning of judicial monopoly over the head of executive under Panama proceedings. According to the Panama papers, Prime Minister Sharif's children received benefits from two offshore firms. The Prime Minister and family have assets in London's affluent Mayfair District that were owned by these corporations. Initially, two judges from the five-member Bench determined that the Prime Minister should be immediately removed from office because he had not disclosed his riches. Nonetheless, the majority of Bench decided to form a special JIT to probe the matter. The Executive head had concealed his unreported income from Capital FZE, a UAE-based corporation. The Supreme Court disqualified the Prime Minister based on an unimportant offence and instructed the National Accountability Bureau (NAB) to investigate the wealth of the country's executive head (Imran Khan and others vs Nawaz Sharif, 2017). The inquiry ultimately led to his exclusion on a previously ignored issue during the proceedings. And even now this decision is a controversial verdict called political victimization (Hussain, 2018). SC play an inquisitorial role in cases with political base, which left a question mark whether the highest court might function as a trial court in cases involving the public interest.

Justice Nisar's ambitions as Chief Justice have brought him into clash with the authoritarian regime. Amidst the *Suo, motu* probe into the dual nationality of politicians, there was a widespread debate regarding the political intentions behind this decision. However, his activism extended beyond mere criticism of the country's political system for its inadequate governance and efforts, to raise awareness about water scarcity (Rehman, 2019). By undermining the authority of parliament and elected officials, these interferences made the judiciary in clash due to allegations of interventions inside the political jurisdiction (Jamal, 2018).



Justice Saqib Nisar's judicial activism has overshadowed his previous pro-parliamentary and executive posture, known as judicial restraint. He believes that the objective of fund donations is not to construct dams, but rather to raise awareness among people. Being an advocate for the utilization of *Suo motu* powers, he established specific conditions for judicial review under Article 184(3) of the Constitution. He presided over a substantial number of cases of public significance in the Lahore Registry (Abdul Rasheed, 2020).

## **5. Impacts of judicial activism on Governance**

Two significant cases in Pakistani history *Bhutto v. Federation of Pakistan* (1988) and *I.A. Sherwani v. Government of Pakistan* (1991) have reinforced the judiciary's role in upholding fundamental rights and constitutional principles. The Supreme Court's proactive approach in cases like the 2017 Panama Papers case and its decisions on election reforms and openness, which have had a significant impact on politics and society, demonstrate the judicial role in governance (Shah, 2021). Bringing the judiciary into high-profile cases has often proved beneficial in tackling issues related to corruption, governance, and human rights (Nawaz, 2018). These cases show how the judiciary may guarantee that public employees are held to constitutional norms and that the actions of the legislative and executive branches are subject to checks and balances. The judiciary's role in these cases demonstrates how important it is to maintaining the rule of law and defending individual rights (Siddique, *Pakistan Experience with Judicial Review*, 2018).

### **A) Positive impacts**

#### **1. Strengthening Rule of Law**

The case of Steel Mills was an example of how the executive governments were in a hurry to privatize the state assets expensively and ineptly. Although, the court may have indirectly saved the Steel Mills money through its intervention towards the annulment of the privatization deal, the company was locked in considerable losses after the episode. It was comprised that the amount of payable debt increased to more than 80 billion rupees and losses remained aggravated.

The legal writing and the real-life case of *Riaz Hanif Rahi Vs Federation of Pakistan* (2021) also explains the judiciary's dedication for fair rule. Supreme Court has declared the constitutional and legal validity of the Protection of Pakistan Act, 2014 in relation to special courts for the protection of Pakistan unconstitutional. The Court held that such courts (special courts) denied the right to a fair trial and due process enshrined under the Constitution confirming the judiciary's duty to check that laws in the country do not infringe on constitutional guarantees.

#### **2. Protecting Fundamental Rights**

In Pakistan, judicial review has been crucial to maintaining constitutional order and protecting fundamental rights. The judiciary's willingness to challenge presidential and legislative actions has improved public accountability and reinforced the rule of law. However, there are now more disagreements on how the judiciary and other branches of government should be balanced in terms of authority as a result of this activity (Ahmed, 2018). The Pakistani government's efforts to combat electoral malpractice, corruption, and violations of human rights are indicative of the judiciary's power over the country. In times of political turmoil, the court has often filled in the gaps in the executive branch (Munir K. , 2008).

### **3. Policy Implementation**

Pakistan which has been a focal point of judicial activism have affected policy making and in particular the issue of accountability. Some of the very important subject areas getting resolved by the Judiciary through PIL are Environment, Human rights and Administrative Reforms. Due to the exercising of jurisdiction in these areas, the government has been forced to adopt policies as a way of being in par with judicial dictates thus improving on governance and accountability. The 2012 "Rental Power Plant Agreement" was also revoked due to a deficiency in openness, revealing that government officials, including Water and Power Minister Raja Pervez Ashraf, were involved in corrupt practices (Omer, 2013) Analyzing the RPP case, the Supreme Court focused on corruption and abuse of power of managers, which preserves foreign exchange and money.

#### **b) Negative impacts**

##### **1. Political Instability**

Validation of imposition of martial law by supreme judiciary has a history in Pakistan which creates political instability but derailment of democratic process two times with dismissal of Yousaf Raza Gillani and Nawaz Sharif after Panama episode has grim effects for political landscape (Wasim M. , 2012) (Wasim M. , 2012). Judiciary after restoration adopted a different role not only for military government but also for political regime almost proactive. Interference in executive matters and increase in Suo moto actions on the ground of inefficiency and corruption charges slow down the political process.

##### **2. Judicial Overreach**

One of the primary criticisms of judicial activism in Pakistan is judicial overreach, Critics argue that such overreach can lead to a concentration of power within the judiciary, undermining the principles of separation of powers and checks and balances. Supreme Court's decision to take Suo motu notice of issues traditionally within the executive's domain, such as pricing of commodities, was seen by many as an overstep of judicial authority. The case involved the Court intervening in the pricing decisions of essential commodities, a function typically managed by the executive branch. Another example of judicial overreach is the Memo gate scandal (2011).

##### **3. Blurring Separation of Power**

Judicial activism can also disrupt the balance of power among the branches of government. By intervening in areas typically reserved for the executive and legislature, the judiciary can create tensions and conflicts that hinder effective governance. This intervention often leads to debates about the appropriate scope of judicial review and the potential for judicial encroachment on the powers of other government branches (Ginsberg, 2008).

##### **4. Economic Certainty**

Recourse to the judiciary too often in economic and administrative disputes distorts legal expectations and slows government decision-making. Although, judicial activism was made to fight for the transparency and accountability. The reversal of the privatization process remained obvious, because the government had to manage the enterprise's failure and its operating losses. Also, the given decision affected the investment climate in the country as potential

investors considered the judicial interference as a threat to future investments. They include Hajj Corruption case where the Supreme Court of Pakistan, on the basis of *Suo motu*, heard corruption charges. As much as the decision was celebrated due to fighting corruption the impacts brought about dislocation to the administration.

## 5. Institutional Tensions

However, judicial activism has not only paved way to fight against social issues but has also expanded itself in administrative reforms. The Supreme Court verdict of *Sindh High Court Bar Association vs. Federation of Pakistan 2009* manifested the acts of the former President Pervez Musharraf during the emergency rule in 2007 as unconstitutional. This decision has helped the judiciary to gain its independence and has nullified various unconstitutional appointments of judges hence enhancing the principle of accountability and integrity of the judiciary (*Sindh High Court vs Federation of Pakistan, 2009*).

## 6. Evaluation of the Extent to which Judicial Activism has Influenced Decisions Made under Article 184 (3).

'*Suo Moto*' jurisdiction of SC has created serious issues regarding governance, indicating that the different matters that are being run by the government are not effective and mark a question on elected institutions efficiency. Privatization of Pakistan Steel Mill in 2006 has created issues for judiciary and a tussle between judiciary and executive. The enlargement of basic rights and the introduction of PIL have allowed for a wider scope of court intervention in various problems (Wasim, 2012). Nonetheless, the opponents support their position with a number of valid arguments. First, they contend that the judiciary should never go outside its jurisdictional bounds in order to carry out only executive responsibilities (Richter, 1996).

Pakistan's superior courts are characterizing as political entities due to their departure from their traditional judicial role and engagement in policy-oriented, political, governance, and ideology-related issues. This undermines meaningful democratic participation and establishes predetermined judicial results (Azeem, 2007). Supreme court almost every time gave legitimacy to military regimes by validating the unconstitutional acts and an urgent response is needed from the government or military requiring institutional limitations to judicial branch ("*Nadeem Ahmad vs Federation of Pakistan,*" 2010) Supreme Court intervene in matters which truly lies within democratic institutions and challenges amendments as well. It not only increases powers of Chief Justice also give strength to Judiciary after Lawyers Movement (Mr. Stefan Trechsel, 2012). This growing judicial activism in Pakistan came at the expense of supremacy of parliament (Jamal, 2018).

In the 2019 *Allah Wasaya Case*, the Islamabad High Court made a ruling that addressed the religious identity of the "Ahmadi faith" in line with populist ideologies. The court ruled that Ahmadi followers could not compromise their religious freedom by hiding their identity in order to appease the majority or populist viewpoint (*Alah Wasaya Case, 2019*). The underprivileged groups in the nation suffer from these court rulings, which are motivated by the need to satisfy the populist converse, The Ahmadi faith's followers were forbidden by the court from hiding their identities, jeopardizing their fundamental right to religious freedom in favor of the majority or populist perspective. Thus, by giving in to the whims of the populist narrative, activist judges occasionally fail to fulfill their essential duty of defending the rights of the oppressed against dictatorial forces. Nawaz Sharif's ouster as prime minister is a prime example of their "ideological foes" being victimized by the legal system (Katchela, 2022).

## **7. Lessons Learned and Potential Insights for the Interpretation and Application of Suo Moto**

The authority of Suo motu is more prone to misapplication due to its centrally vested nature within chief justice. There are no settled and defined parameters regulating its use, ICJ recommended that in addition to defining standards, the Supreme Court should decide which cases to consider Suo motu or not. These principles may exhibit a greater degree of adaptability compared to the rules guiding the assignment of cases to Chambers, and it is necessary for Suo motu proceedings to be exceptional exercises of authority (Omer, 2013).

The courts have issued decisions with significant political ramifications by adopting positions analogous to those of technical specialists or public policy experts. Examples of these decisions include setting aside money for dam building and controlling commodities prices. These acts jeopardize the court's neutrality as well as the idea of judicial restraint (Farrah Aamir, 2022). This not only overrides the authority granted by the constitution to these kinds of public policy decisions by the institutions, but it also raises the possibility that ill-considered policy proposals like the dam fund will be enacted haphazardly.

### **Recommendations**

1. In exercising its authority under Article 184(3), the Supreme Court shall adhere to Pakistan's commitment under international law to advance, defend, and safeguard human rights, to maintain separation of powers, and preserve the rule of law. within Article 184(3), the court must set flexible criteria for choosing cases, especially those that fall within the Supreme Court's Suo motu jurisdiction and bench makeup.
2. It will define "public importance" and "fundamental rights" and provide rules for their interpretation. Supreme Court must make sure that anybody who could be impacted by use of Article 184(3) authorities has an equal opportunity to request the Court's assistance in the case. This norm ought to consider the fact that Suo motu actions represent a unique use of authority.
3. The Supreme Court should ensure that all judgments and orders it issues are inconsistent with human rights, the rule of law and power division. It should also ensure that no one whose rights are impacted is left without recourse or remedy. Where there have been and continue to be grave abuses of human rights, Apex court should retain its original jurisdiction. But Supreme Court shouldn't use its sou moto authority in a way that interferes with the criminal justice system's ability to operate as it should.
4. Rather than serving as a stand-in for the regular authority of legitimate authorities over criminal cases the Supreme Court's original jurisdiction should be used to further the criminal process. When using Suo-moto powers, Apex court must abide by procedural and constitutional standards (Manzar, 2019).The development of openness in judicial decisions made by Pakistan's Higher Courts is important since it is necessary to guarantee judicial impartiality.

### **Conclusion**

It is widely believed that the judiciary in this nation has actively expanded the scope of judicial review into non-traditional areas that were previously thought to be outside the purview of the courts (Dass,2014). Based on the aforementioned study, the concept of an impartial and independent judiciary has been severely compromised by judicial activism. The Pakistani PIL was a complicated amalgam of judicial catharsis following the dictatorship and governance crisis inside institutions of Pakistan. There were severe political divisions inside the new

civilian government as well as between the military junta and the political elite. This gave the constitutional courts enough room to develop a different story about socioeconomic fairness and governance. The increased use of Article 184(3) has some unintended repercussions that, if uncontrolled, might weaken justice system and the rule of law. A two-tiered arbitrary justice system is one of these. Other difficulties include the Supreme Court's expanding backlog, which delays plaintiffs, decisions that leave harmed parties with no remedy, institutional power meddling, and separation of powers violations.

After considering the foregoing debate, it is clear that judicial review plays a crucial role in preserving the constitutional boundaries of the executive, legislative, and other branches of government. They must remember that *Suo motu* power is an extraordinary authority and can always use in extraordinary circumstances. Where ever there is violation of fundamental rights or vice versa the superior judiciary must intervene to restore the balance set by constitution.

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