



JUDICIAL ACTIVISM AND HUMAN RIGHTS: A LEGITIMATE MECHANISM FOR JUSTICE IN DEVELOPING COUNTRIES?

Barrister Dr Anwar Baig
Senior Advocate/AP Bahria University

Abstract

Judicial activism as a topic has been controversial as both a legal and political issue especially in regards to its validity and effectiveness as a means of protecting human rights in Pakistan and similar developing nations. The role of judicial activism as an effective instrument for safeguarding human rights in Pakistan is further evaluated in this study. The study includes the jurisprudential principles of judicial activism, such as its integration with the law, judicial activism, and the division of authority. In what ways do Pakistani courts utilize the American doctrine of judicial activism to achieve justice? This is the question that guides the analysis of case law, constitutions, and court rulings in Pakistan. The study reveals that judicial activism is a critical device in addressing executive and legislative deficiencies in governance, assuming it is exercised within reasonable constitutional limits. This study also analyzes the issues confronting the judiciary in most developing countries like Pakistan such as excessive governmental control and inadequate autonomy. This paper attempts to address the debate around judicial activism by advocating for such activism while observing the limits of constitutions and ensuring compliance with stated human rights provisions.

Keywords: Judicial activism, human rights, rule of law, Pakistan, constitutional law, judicial discretion, separation of powers.

Introduction

Judicial activism has been an area of contention for legal scholars and practitioners, especially in the case of human rights and constitutionalism. It describes the proactive stance of the judiciary in exceeding the particular intention of the legislation in question, and has fundamentally influenced different jurisdictions throughout the world. Some consider it as necessitated by the deficiencies of the legislative and executive arms of government, while others consider it as an attack on democratic values by empowering judges who are not elected (Schlesinger, 1947). The most conflicting aspect of judicial activism usually manifests in developing nations with weak institutions, political volatility, and systemic human rights abuses that require judicial intervention to remedy. Such a scenario creates a reasoned suspicion: should judicial activism be considered a necessary evil in the pursuit of justice?

Judicial activism is most prevalent in places where the executive and legislative do not guarantee basic rights. In regions where justice is stifled, courts attempt to fill the power void created by corruption, authoritarianism, or institutional ineptitude. This has been seen in places like Pakistan where, at times, the judiciary has sought to remedy governmental inefficiencies (Khan, 2020). Such interventions, nonetheless, remain quite controversial. Proponents of these argue that judicial activism enforces justice and defends constitutional rights, while opponents argue that it oversteps and alters the delicate equilibrium between government branches (Rosenberg, 2008).

Investigating judicial activism from a comparative perspective is helpful for understanding its influence on human rights and democratic governance. The United States and India offer classic cases where courts have historically practiced judicial activism for the attainment of social justice. For example, *Brown v. Board of Education* in the U.S. and *Kesavananda Bharati v. State of Kerala* in India mark important historical moments when judicial activism changed legal paradigms to address social systemic discrimination. The Pakistan judiciary's oscillation between activism and restraint is indicative of the country's politically and



constitutionally volatile history (Cheema & Gilani, 2015). The cases of Asma Jilani v. Government of Punjab and Mian Nawaz Sharif v. President of Pakistan demonstrate the degree to which judicial activism has at times supported or at times undermined democratic governance.

Judicial activism can promote justice, yet it has faced criticism for breaching the separation of powers. The judicial activist teaches policies that judges should refrain from policymaking. Courts undertaking activities that have always been the duty of the legislative body or the executive head of government is judicial overreach, which many argue is detrimental to democracy (Hirschl, 2004). Nonetheless, in the context of weakened or compromised institutional frameworks, activism can serve as a protective shield for the state's misuse of power and other human rights violations (Shah, 2018). This tension requires the careful disengaging of judicial activism from its constitutional boundaries.

The Pakistani account offers an arduous narrative of optimism and a hazard in judicial activism. It has, at times, acted as a protective guard in the encroachment of abuse of power with respect to constitutional liberties. However, it has also been criticized, especially in politically sensitive cases, of going beyond constitutional boundaries. The increase in the exercise of suo motu permits by the Supreme Court has strained the dependability and uniformity of judicial self-intervention (Newberg, 2019). In addition, political meddling and low institutional independence continue to undermine the functioning of the judiciary in the protection and promotion of human rights. To respond to these issues, there is a need to devise a robust strategy that positions and keeps judicial intervention within reasonable bounds.

With regard to declining scope of judicial review, this research attempts to contribute to the debate around judicial activism by focusing on its practice in developing countries and particularly Pakistan. This study aims to determine, through examination of constitutional provisions, judicial precedents, and international legal comparison, if judicial activism is a feasible remedy, and attempt to construct an argument for or against such assertions. This study will provide an analysis of the changing role of the judiciary in a democracy by situating the judicial action within a theoretical framework and its practical embodiment of that action.

In this manner, an understanding of the mechanisms of judicial activism is part of the formulation of a legal system that protects human rights without undermining democratic institutions.

Theoretical Framework

During political and legal debates, judicial activism has remained a controversial topic and different scholars seem to have contrasting opinions about it including meddling with democratic governments, as well as the very basic aspects of human rights. As early as Schlesinger (1947), he coined the word "activist" to mean anything more than a "restrained" approach to constitutional interpretation by the courts. His view continues to evolve with some arguing that judicial activism avails itself as a much-needed aid to legislative and executive blunders, while other believe it endangers democratic legitimacy (Rosenberg, 2008). This is even more common in developing countries where the institutions are weak and need the thrust of the judiciary for the protection of their constitutional rights.

However, if we consider the context surrounding one of the most powerful arguments for judicial activism, its ability to correct basic failures of governance is staggering. Judicial activism is viewed positively by supporters as it fulfills the objective of dispensing justice in a



weak or non-functioning judiciary. In effect, Hirschl (2004) maintains, judicial activism has also been available in many situations for constitutionalism and the fostering of human rights, especially when dominant law is ineffective. For example, in Pakistan where there exists excessive power by the executive and political-security crisis, this has led to the erosion of democratic norms, therefore, judicial activism has played a vital role in safeguarding constitutional integrity (Shah, 2018).

Like any other feature of government, judiciary power is exercised and constrained by social forces – in this case, judicial activism. From this perspective, the United States and India stand out as the realms where one can observe the hyperactive exercise of courts in the pursuit of social justice. Both the *Brown v. Board of Education* case in America in 1954 and *Kesavananda Bharati v. State of Kerala* in India in 1973 illustrate the cases in which the judiciary's prerogative to change legal doctrine and eliminate systemic discrimination was not only accepted, but welcomed and applauded (Cheema & Gilani, 2015). Theocratic regimes have often taken extreme measures to suppress dissenting voices, but have simultaneously relaxed or removed restrictions and prohibitions on activism when it is used to challenge fundamentalist extremists. These cases affirm the claim that judicial activism, when used within the constitutional limits, is a powerful weapon for advocacy of humanitarian rights. But activism in the Pakistan judiciary operates in a different paradigm where the court alternates between being active and inactive, handing power to the executive while the political climate in the country continues to change (Newberg, 2019).

Judicial activism is a positive step, but one that often raises numerous complications, particularly concerning the principle of separation of powers. Regarding the first issue, judicial activism refers to the courts' overreach into powers assigned to the executive and legislative branches of government, causing a state impairment of healthy democracy and a possible case of governance by judges (Rosenberg, 2008).

This is particularly the case with Pakistan, where the judiciary regularly exercises suo motu powers, which further erodes the credibility and consistency of these actions (Khan, 2020). The debate on judicial activism vis-a-vis judicial restraint serves as a reminder of the needing a middle-of-the-road approach that enables the courts to safeguard rights while allowing a functioning democracy.

Different scholars have studied the Pakistani judiciary's functions within its political and constitutional history. The Supreme Court decisions in *Asma Jilani v. Government of Punjab* in 1972 and *Mian Nawaz Sharif v. President of Pakistan* in 1993 demonstrate the erratic attitude of the judiciary towards executive overreach and the protection of fundamental rights (Shah, 2018). In some cases, judicial activism has advanced democratic practices but in some, it has been deemed to be influenced by politics rather than objective legal reasoning (Newberg, 2019). There is an acceptance of judicial activism which stems from a process of rethinking the politics of judicial decision-making.

As much as the Western democracies seem preoccupied with the idea of judicial activism, little has been done to study its consequences on developing nations. Pakistan is selected as a case study which attempts to fill this gap due to the evolving role of its judiciary in governance over the decades. Through an analysis of court decisions, constitutional documents, and other legal systems, this research will attempt to determine whether judicial activism can be recognized as a legitimate form of justice delivery. The findings will advance the discussion around the concepts of judicial autonomy, constitutional democracy, and the protection of human rights by the courts.

Methodology



The focus of this research is to understand how judicial activism has advanced human rights within a particular context of Pakistan, using qualitative forms of analysis, such as doctrinal legal analysis and comparative case studies. It looks into how judicial activism influences human rights, governance institutions, and the politicization of the separation of powers. It examines the impact of judicial activism on legal institutions in developing countries through a detailed analysis of constitutional provisions, judicial precedents, and other relevant literatures.

Research Design

This study employs a qualitative doctrinal approach, which entails careful examination of constitutional provisions, court judgments, and legal documents. It is comparative in nature to analyze landmark cases in various jurisdictions, both in the United States, India, and Pakistan, to determine whether judicial activism has strengthened or eroded constitutional rule.

There are three dimensions in the research

1. **Theoretical Framework** – Examining theories of judicial activism, critiquing and defending them.
2. **Comparative Case Law Analysis** – Reviewing the landmark cases of different jurisdictions to study the implications of judicial activism.
3. **Contextual Analysis of Pakistan** – Analysis of Pakistan's constitutional history against the backdrop of judicial activism, with particular focus on governance, and the protection of human rights.

Data Collection Methods

This study employs secondary sources, which are:

- **Case Law Analysis** – Examination of landmark court rulings that demonstrate the role activism has played in upholding constitutional rights.
- **Constitutional and Legal Texts** – An examination of the provisions in the Constitution of Pakistan that establish judicial power and human rights.
- **Academic Literature** – A synthesis of articles, books, and legal commentaries on judicial activism.
- **Judicial Reports and Institutional Documents** – Analysis of reports generated by Pakistan's judiciary, human rights organizations and think tanks across the globe.

Comparative Case Law Analysis

This study utilizes several areas of comparative analysis legal systems. In this case, it allows one to measure the degree of judicial activism in different countries. The study deals with certain precedent setting cases in India, Pakistan, and the United States, and seeks to determine patterns and deviations in judicial conduct. The comparative study increases the reliability of results by checking if judicial activism is particular to a certain context or if it is a trend that transcends boundaries (Siems, 2018).

• **Table 1: Comparative Case Law Analysis Framework**

Country	Landmark Case	Key Issue	Impact on Judicial Activism
United States	<i>Brown v. Board of Education</i> (1954)	Racial segregation in schools	Strengthened judicial power in enforcing civil rights



India	<i>Kesavananda Bharati v. State of Kerala (1973)</i>	Constitutional amendments and basic structure doctrine	Established judicial review supremacy
Pakistan	<i>Asma Jilani v. Government of Punjab (1972)</i>	Legitimacy of military rule	Declared martial law illegal
Pakistan	<i>Mian Nawaz Sharif v. President of Pakistan (1993)</i>	Executive overreach	Restored parliamentary democracy

By examining these cases, the study identifies trends in judicial activism, particularly within post-colonial legal systems like India and Pakistan. The comparative approach strengthens the argument that judicial activism serves as a necessary corrective in politically unstable regions while also highlighting the risks of judicial overreach.

Techniques in Data Analysis

The research employs doctrinal legal analysis as the primary method of assessment. The research employs the following tools of analysis:

1. **Constitutional Interpretation Analysis** – Examination of how courts construe constitutional provisions in an activist manner.
2. **Judicial Precedent Analysis** – Analysis of the way in which past rulings shape future court judgments and limitations on judicial activism.
3. **Governance Impact Assessment** – A review of whether judicial activism is strengthening or undermining the rule of law and institutional autonomy.
- 4.

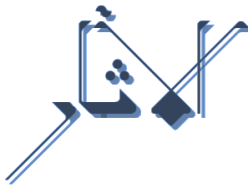
Table 2: Analytical Framework for Evaluating Judicial Activism

Analytical Criteria	Description	Application in Study
Constitutional Consistency	Evaluates whether judicial activism aligns with constitutional provisions	Assesses legitimacy of judicial decisions
Governance Influence	Determines whether activism strengthens or undermines democratic institutions	Examines judicial role in governance crises
Human Rights Protection	Measures the impact of judicial activism on fundamental rights	Identifies judicial interventions that safeguard liberties
Separation of Powers	Examines whether judicial activism encroaches on legislative/executive functions	Analyzes judicial overreach concerns

Ethical Considerations

Because this study is based on secondary legal sources, there is no human subject ethical concern. However, the study has academic integrity in the form that it guarantees:

- **Proper Citation and Attribution** – Proper citation to give credit to scholarly work.
- **Objective Legal Analysis** – Avoid judicial decision interpretation bias.
- **Adherence to Legal Frameworks** – Adhering to established legal doctrines and principles.



Limitations of the Study

While this study provides a wide-ranging analysis of judicial activism, there are some limitations that must be mentioned:

- **Jurisdictional Scope** – The study is primarily done in Pakistan with comparative data from the U.S. and India. Future studies can extend the scope to other legal systems.
- **Case Law Choice** – Although the essential cases have been quoted, there may be further decisions that are able to reveal more about the intricacy of judicial activism.
- **Subjectivity in Legal Interpretation** – Judicial activism is a subjective method, and different scholars may interpret cases differently.

This study employs a comparative doctrinal approach, emphasizing case law analysis and constitutional interpretation to evaluate judicial activism. The study aims to determine if judicial activism is an efficient tool of justice in the developing world through comparative case studies and rigorous legal analysis. The study will further advance academic research on judicial independence, constitutional rule, and the judiciary's evolving role in democratic states.

Analytical Discussion on Methodology

This study employs a qualitative doctrinal approach of comparative legal analysis and examination of case law to analyze judicial activism in developing nations with special reference to Pakistan. This study seeks to provide a multi-faceted analysis of judicial activism as a corrective force in weak democracies with regard to apprehensions of judicial overstepping. With the integration of legal treatises, judicial precedents, and scholarly literature, this approach promises a balanced critique of the topic.

Doctrinal Legal Analysis as a Research Method

Doctrinal research, or "black-letter law" research, is the most prevalent kind of legal research that involves research into contemporary legal doctrine, case law, statute, and constitutional provisions (McConville & Chui, 2017). It allows researchers to explore critically the internal coherence of legal doctrine, the judicial dynamics of adjudication, and the broader implications of these for government and human rights.

This research employs doctrinal analysis to examine the evolution of judicial activism in Pakistan and compare it with other nations such as the United States and India. Doctrinal legal approach is justified to be used because it allows

1. **Interpretation of Legal Provisions** – Unveiling the textual and contextual significance of constitutional articles regulating judicial power.
2. **Analysis of Judicial Decision-Making** – Analysis of the reasoning supporting key judgments in Pakistan and worldwide.
3. **Identification of Precedent-Based Trends** – Understanding how courts have long viewed their role in upholding constitutional rights.

This strategy is particularly relevant in the examination of judicial activism since it involves the manner in which courts justify their interventions and whether the activism aligns with the existing principles of law.

Governance and Constitutional Impact Evaluation

This study assesses the overall governance consequences of judicial activism, and it performs this assessment through case law analysis. It uses a case strategy that defines the following parameters:



1. **Legitimate Politics** - The degree to which activism in the courts either complies or goes against the constitutional prescription.
2. **Institutional Roles** - The degree to which the courts go beyond their jurisdictional limits resulting in judicial overstepping.
3. **Judicial Protection** - The degree to which judicial activism effectively protects basic rights and freedoms.
- 4.

Table 3: Governance Impact of Judicial Activism

Assessment Criteria	Description	Application in Study
Constitutional Adherence	Ensures judicial activism remains within constitutional limits	Evaluates case law from Pakistan's Supreme Court
Judicial Overreach Risk	Assesses whether activism disrupts democratic governance	Identifies cases where courts bypass legislative authority
Human Rights Protection	Determines effectiveness of judicial activism in upholding rights	Analyzes landmark rulings on fundamental rights

This evaluation framework provides a multi-dimensional analysis of judicial activism, balancing its democratic benefits against the potential risks of unchecked judicial power (Hirschl, 2004).

Bridging the Research Gap

Even though there is a lot of research on judicial activism in Western democracies, much less exists on its impact on developing countries. This research seeks to fill that void by looking into Pakistan, which has surely seen judicial activism develop along with political turbulence, executive encroachments, and feeble institutional systems (Newberg, 2019).

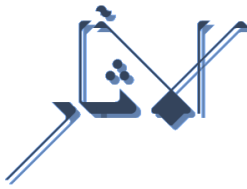
This research makes the following contributions – differing from existing literature in a number of ways:

1. **Concentration on Post-Colonial Legal Systems** – This deviates from the Western scope because it encompasses judicial activism within the context of a post-colonial constitutional framework, which adds more value on how British colonies have modified the judicial review doctrines.
2. **Pakistan Case Study** – A lot of literature exists on judicial activism in India and the U.S., but Pakistan is relatively unexplored compared to its had unique history of military rule, political interference, and aggressive activism in the judiciary.
3. **Reconciling Activism with Overreach** – This is a hotly debated area in literature because some scholars defend judicial activism as necessary, others wholly condemn it for subverting democracy. This analysis attempts to find both the benefits along with the downsides of judicial activism.

Shortcomings in the Methodology

Even with all the effort put into this study, it does admit there are methodological shortcomings:

- **Scope Limitations** – This study focuses solely on Pakistan. Input from other developing countries would be useful in strengthening the analysis.
- **Personal Bias in Case Analysis** – Judicial activism is subjective in nature and therefore, different scholars will have different opinions on how a case is analyzed.



- **Absence of Quantitative Evidence** – This is a qualitative legal analysis study. The addition of empirical evidence regarding the public's opinion on judicial activism would enrich the study.

Conclusion

This study adopts a unique methodology involving doctrinal legal analysis, case law comparisons, and governance evaluation that offers a comprehensive assessment of the impact of judicial activism. It captures the activism in Pakistan's judiciary, analyzes it and compares it with other legal systems. In this way, the study contributes to the body of knowledge on judicial activism in developing democracies, while also striking a balance on its legitimacy and dangers. Filling a gap in the literature, this research contributes to the understanding of the judiciary as an active protector of constitutional and democratic governance.

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