

BEYOND THE BENCH: JUDICIAL ACTIVISM AND ITS IMPACTS ON EXECUTIVE GOVERNANCE IN INDIA, PAKISTAN AND BANGLADESH

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Abstract

This paper explores the dynamic interplay between judicial activism and executive governance in India, Bangladesh, and Pakistan. This research is primarily aimed at examining the relationship between judicial activism and executive in South Asia through a comparative analysis of India, Pakistan, and Bangladesh. By analyzing how judicial interventions influence governance by the executive and impact democratic landscapes, this study highlights the judiciary's role in shaping democratic institutions, civil rights, and political accountability. It investigates the challenges and successes of judicial activism, focusing on a few landmark cases and their implications for governance. Ultimately, the research underscores the necessity of a balanced approach to judicial activism that maintains the integrity of democratic principles while safeguarding executive accountability. The results show that just as judicial activism may serve to strengthen constitutional responsibility and guard against avoidance of the steady norms of accountability, it might bring about the disorganization of democracy when used lacking procedural precaution or institutional control.

INTRODUCTION

Judicial activism describes the proactive role of courts in interpreting laws and protecting rights, often going beyond traditional boundaries to address governance failures. In South Asia, where political instability and weak democratic institutions remain common, this phenomenon has become especially noticeable. India, Bangladesh, and Pakistan show different paths of judicial activism shaped by their historical, legal, and cultural backgrounds. Understanding how judicial activism affects executive governance in these countries is important for evaluating the health of their democracies.

Judicial activism in South Asia is the result of violent political history, weak democratic shifts, and ongoing

institutional difficulties. In countries where executive power or legislative inertia have frequently weakened constitutional equilibrium, the legal system has occasionally come forward not just to interpret the law, but also to actively influence executive authority. This assertiveness has fluctuated between required intervention and organizational overreach, generating serious concerns about the scope of the judiciary. Judicial activism in India Pakistan and Bangladesh has evolved along with distinct historical pathways, but each represents a larger regional effort to establish the judiciary's function within a challenged democratic system. In India, judicial activism is frequently characterized as an answer to governance deficiencies,

with courts taking a more active stance to enhance rights and redress social Injustices. Pakistan has been severely impacted by repeated dictatorial regimes as well as constitutional upheavals, with the court alternately justifying power grabs and establishing independent institutions. Pakistan's judiciary has been in political instability, with attempts by the executive branch to affect the judiciary while performing its constitutional duties. On the opposite side, India's judiciary is part of a democratic nation with strong constitutional guarantees and highly healthy case legislation in terms of independence of the judiciary and its active handling of public interest litigation (Shahzad Khalid, 2024).

The doctrine of separation of powers is a principle in constitutional design, aiming to protect the concentration of power by dividing responsibilities of government among different branches: Executive, Legislature, and Judiciary. This division is intended to create a system of checks and balances, ensuring that no single branch can dominate or usurp the functions of another, thereby safeguarding democracy and protecting citizens' rights. The integration of the theory of separation of powers with comparative political process theory provides a comprehensive framework for understanding how different political systems maintain democratic integrity. By combining the structural division of powers with active judicial oversight, this model ensures that democratic processes are protected from both internal and external threats. The separation of powers provides the structural framework, while comparative political process theory offers the judicial mechanisms necessary to protect and adapt this framework to contemporary challenges. (wang, 2024)

The question of the judiciary in shaping strong or weak norms of democracy in India, Pakistan, and Bangladesh helps this study to improve the understanding of the quality and constraints of judicial activism in countries with large and diverse democracies. Additionally, the research explores the effects of judicial activism on the separation of powers, especially regarding the recently evolving relationship between the executive, legislature, and the judiciary in India, Pakistan and Bangladesh. Judicial activism originated from this concept, as seen by the decisions of "activist" judges. They have been in charge of bringing justice to citizens' doorsteps, even

if it is an unnecessary measure. The judiciary has gotten involved in cases of executive discretion abuse or a lack of action against corruption along with anti-social components by bending the language of the legislation and acting in accordance with its spirit (Saha, 2008). Panday, elaborating Judicial activism, argued that in order to protect civil liberties and uphold constitutional discipline, judicial activism is seen as a tool of social engineering and legal realism. Equal access to the highest courts is ensured, and the concept of a "basic structure" is supported. Activism is typically tolerated, especially among judges, who continue to be the institution that the public trusts. When other branches of government are unable to carry out their duties, judicial activism sometimes arises out of need rather than desire. In addition to protecting individual rights and the public interest, judicial intervention aims to rebuild public confidence in the legal system (Panday, 2022)

In Bangladesh, judicial activism has a profound impact on the country's democratic framework, leading to the landmark rulings that reinforce constitutional rights and promote justice. However, its effectiveness is often compromised by systemic issues and challenges like delays in case processing, corruption, and executive interference. Thus, democracy largely depends on the judiciary's ability to enforce rules effectively (Haque R. , 2011).

Research Questions

1. How does judicial activism manifest across India, Bangladesh, and Pakistan?
2. What are the implications of judicial interventions on executive governance in these countries?
3. How do historical contexts and political dynamics shape the relationship between the judiciary and the executive?
4. What are the potential risks and benefits of judicial activism for democratic institutions?

Research Objectives

1. To examine the historical evolution of judicial activism in India, Bangladesh, and Pakistan.
2. To explore the challenges posed by judicial activism, including issues of overreach and politicization.

3. To provide recommendations for balancing judicial activism with executive accountability and democratic integrity.

Methodology

This study employs a qualitative research methodology, utilizing a comprehensive literature review and case study analysis. Primary sources include landmark judicial rulings, legal frameworks, and government documents. Secondary sources consist of academic articles, books, and reports from international organizations. Interviews with legal scholars and practitioners provide additional insights into the impact of judicial activism on governance.

Literature Review

The literature on judicial activism emphasizes its dual nature: a tool for enhancing rights and a potential source of overreach. Scholars argue that judicial activism can fill gaps left by the executive and legislature, particularly in contexts with weak governance structures (Shahzad Khalid, 2024; Wang, 2024). However, critics highlight the risk of judicial overreach undermining the separation of powers and leading to a "judicial oligarchy" (Singh S. K., 2024). The effectiveness of judicial activism is often contingent on the historical and political contexts of each country, reflecting the ongoing tensions between legal interpretation and political reality. Various landmark cases in each country illustrate both the successes and limitations of judicial activism in fostering democratic principles.

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Judicial activism frequently causes substantial alteration in legal precedents or public policies (Sinha, 2024). Sinha says that although some believe that judicial activism is vital for adjusting legal principles to changing societal norms and values, others say that it damages the functioning of democracy and the power of legislation (Singh S. K., 2024). Activism is used as a negative term in the rhetoric of politics. Defining judges as activists implies that they may prioritize their own political goals over following the rules, compromising their impartiality and "legislating from the bench." Opinions might be labeled as activist if they overturn or uphold either executive or legislative actions.

Such an account of the development of judicial activism in India sees its evolution through the judicial restraint followed by more interventionist turns that followed after the independence of India in the constitutional scheme of things. High-profile cases like *S.P. Gupta v. Union of India* (1981), which opened up wider access to justice to the Public Interest Litigation (PIL), are the major declarations and game changers made by the Supreme Court on the subject of Justice. Judicial activism in India has expanded the scope of basic liberties and fostered public interest lawsuits (Devi, 2024).

The Indian judiciary is always torn between judicial activism and judicial restraint, two opposing legal theories that influence decision-making. Judicial activism is an active capacity in which courts interpret and implement constitutional principles, safeguard individual rights, and intervene outside of customary judicial limits. In contrast, judicial restraint argues for a cautious approach, citing the legislative and executive branches as major policymakers. Sharma, discussing the mode of judicial activism in India elaborates that the equilibrium between judicial activism and judicial restraint is fluid; it must adjust to society's changing circumstances. The Indian court must handle concerns such as gender equality, environmental protection, economic justice, and social inclusion while maintaining democracy and the

division of powers. Major court decisions have influenced Indian jurisprudence, demonstrating the judiciary's commitment to constitutional norms, fundamental rights, and societal issues. Yet, judicial nominations, vacancies, and delays in administering justice nonetheless jeopardize the judiciary's effectiveness and efficiency (Sharma S. , 2023).

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The judiciary in Pakistan plays an important role in protecting people's rights and upholding the constitution. To address and manage challenges, political and state institutions must collaborate within an elected constitutional framework (Khalid I. , 2012). In Pakistan, the Zafar Ali Shah v. General Pervez Musharraf (2000) ruling showed the judiciary's controversial application of the Doctrine of Necessity for legitimizing military rule. During Pakistan's political history, its military or bureaucratic elite with judicial backing has repeatedly disbanded elected bodies in undemocratic ways (Bazmi S. , 2022). Somro narrates that the country's Constitution defines the borders and functions of any single state entity in exercising its powers. However, there are several situations in Pakistan where one state entity interferes with another's affairs. Pakistan's courts cannot direct the legislative branch to create legislation based on their preferences, but they can merely interpret existing laws. Pakistan's constitutional courts use executive authority, either by petition or suo motu jurisdiction (Khadim Hussain Soomro, 2023).

Mollah narrates that judicial activism in Bangladesh has emerged as a significant force in shaping the legal landscape, particularly in areas such as public interest litigation, human rights, environmental protection, and Islamic family law.

Likewise, in Bangladesh, the Fifth Amendment case (Bangladesh Italian Marble Works Ltd. VS Government of Bangladesh, 2005) reflected the Court's willingness to undo constitutional distortions imposed during military regimes. These rulings exemplify the broader role of courts in enabling or confronting executive dominance, relying upon political and historical contexts. The judicial system of Bangladesh has grown over centuries and took a particular period of history. Bangladesh got independence on March 26, 1971, and formally became a nation on December 16, 1971 after facing two decades of internal colonialism and liberation war, claiming millions of lives (Kumar & Mollah, 2011).

Main Discussion

Judiciary-Executive Relations in India

In India, judicial activism has often emerged as a response to governance deficiencies and social injustices. Key cases, such as *Kesavananda Bharati v. State of Kerala (1973)*, which established the Basic Structure Doctrine, showcase the judiciary's role in maintaining constitutional integrity. The introduction of Public Interest Litigation (PIL) has expanded access to justice, allowing courts to address pressing social issues actively. However, challenges remain, including accusations of judicial overreach and delays in justice delivery.

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fundamental rights, and societal issues. Yet, judicial nominations, vacancies, and delays in administering justice nonetheless jeopardize the judiciary's effectiveness and efficiency (Sharma S. , 2023). The relationship between judicial activism and judicial review has had a profound impact on India's constitutional jurisprudence. Judicial review relates to the judiciary's authority to determine the constitutionality of legislative acts and executive choices, ensuring that they are consistent with the constitution. This function is critical for upholding the rule of law, defending fundamental rights, and limiting the authority of the government. In contrast, judicial activism entails the courts acting assertively by going beyond the conventional divide to protect rights and address social issues, frequently moving in to fill voids left by legislative or executive inertia (Singh, Arora, & Lal, 2024). The groundbreaking innovation of public interest litigation (PIL) is critical to judicial activism. In this context, the judiciary has made various attempts to emphasize the evolution of the locus standi doctrine and to provide an introspection into the formation of new aspects of human rights jurisprudence within the Indian legal system through public interest litigation (Sharma S. , 2024).

The Indian judiciary has demonstrated integrity and independence in handling executive power and impact. India's shifting socioeconomic and political realities have led to increased demands of the judiciary. Providing justice to those experiencing a lack of education and poverty is a tough task. The system of governance is founded on fairness for all. The judiciary has evolved into a socioeconomic institution (Khosla, 2008).

Judicial activism in India is a unique aspect and institutionalized characteristic of Indian constitutional democracy. Although it started early to have its movements made through Public Interest Litigation (PIL) systems during the post-Emergency era, it has not also been confined to the matter of social justice only. The political accountability and constitutional interpretation are high-stakes and thus Indian judicial activism has greatly expanded in this area to encompass many of the high-stakes disputes between varying branches of government. One of the landmark decisions in this development was the U.N. Rao vs Indira Gandhi when the Supreme Court was asked to put some interpretation of the constitutional

provisions on the appointment of a Prime Minister without a functional Parliament. The manner in which the Court pushed to resolve claims of executive legitimacy demonstrates how the judiciary was ready to intervene in political controversies in which consensus had not been established, constitutionally. The Matters of other politically relevant judgements, (include but are not limited to Kesavananda Bharati v. State of Kerala (1973) that enacted the Basic Structure Doctrine and S.R. Bommai v. Union of India (1994), which restrained arbitrary invocation of Article 356 to overturn state governments is further testimony to the leading role the courts have played in defending democracy norms against the excesses of the majority or the executive. These remedies provide us with an idea that the Indian judicial activism not only argues to bring out social and economic rights but also prevents constitutional distortions of political control. Judges have also become a key player in democratic consolidation by employing activism to not only administer justice to the marginalized groups but also to enforce political accountability and the constitutional equilibrium (Ahuja, 2022).

Indira Gandhi vs U.N.R. Rao (1971)

On December 27, 1970, President V.V. Giri dissolved the 4th Lok Sabha at the recommendation of the then-Prime Minister Indira Gandhi, a year before the completion of its term. Prime Minister Gandhi acknowledged that her minority government no longer had the confidence of the House of the People, she dissolved the Lok Sabah and suggested the new elections. Despite the dissolution, Prime Minister Gandhi and her Council of Ministers remained in their positions. The petitioner subsequently sought a writ of Quo Warranto from the Supreme Court of India, challenging the Prime Minister's continued occupancy of office in the absence of the Lok Sabha. Article 75(3) of the Indian Constitution mandates the collective responsibility of the Council of Ministers to the Lok Sabah, the appellant argued that once the House was dissolved under Article 85(2), there was no longer a body to which the Council could be responsible. Therefore, the Prime Minister and Council of Ministers should cease to hold office. The appellant suggested that in the absence of a Council of Ministers, the President could directly exercise

executive powers or through subordinate officers, as per Article 53(1). (Thomas, 2024)

The Court clarified that Article 74(1), which states that there will be a Council of Ministers to aid and advise the President, is mandatory. This means the President cannot function without the aid and advice of the Council of Ministers, even when the House stands dissolved. The term was interpreted as imperative, establishing a continuous requirement for the Council of Ministers. The Court explicitly rejected the notion that the President could exercise executive powers without the Council of Ministers. The ruling firmly established the principle that the Prime Minister and the Council of Ministers can continue in office despite the dissolution of the Lok Sabha. The judgment provided crucial clarity on the relationship between the executive and legislative branches in India, ensuring governmental stability and continuity during transitional periods.

Pakistan

Since the colonial era, a close relationship between the executive and judiciary has developed, primarily due to the executive's control over judicial appointments and the judiciary's role in legitimizing extraconstitutional actions. The judiciary has often approved martial laws and executive decisions, justified by principles like "state necessity". Judicial activism in Pakistan has a complex history marked by political volatility and military rule. Landmark rulings, such as *Zafar Ali Shah v. General Pervez Musharraf* (2000), illustrate the judiciary's dual role of legitimizing and challenging executive power. The exercise of suo motu jurisdiction, particularly under Chief Justice Iftikhar Muhammad Chaudhry, reflects a shift toward increased judicial engagement in governance issues. However, this activism has also drawn criticism for politicization and overreach.

The history of judicial activism in Pakistan can be well termed as a modern instance of a judiciary between its constitutional duty and political expediency. Since the initial justification of executive excesses through the Doctrine of Necessity to the late trend of interventions of high-stakes cases, the courts of Pakistan have been in a smooth evolution, or rather transition progression, of inactivity to hyper-activity. These aspects of judicial activism in Pakistan have old precedents in post-colonial judicial conservatism,

where the courts habitually authorized the assumption of power by the military. *Federation of Pakistan vs. Molvi Tamizuddin Khan* (1955) and *Begum Nusrat Bhutto vs Federation of Pakistan* (1977) depict the validations of extra-constitutional actions in the situations of political crisis. These rulings used the Doctrine of Necessity, in which a military coup or emergency can be granted military authority by the judiciary. These dicta led to an initial trend towards judicial submission to the executive at the cost of parliamentary supremacy and democratic succession (Reayat N. , 2024).

Justice on the price of sugar, appointment of bureaucrats, and the privatization of Pakistan steel mills are all other instances of over-reach by the Court, which overturned an executive order based on a procedural impropriety (*Pakistan Steel Mills Case*, 2006).

As the interviewee pointed out, "Activism has often been the reaction to the failure of the executive in Pakistan, or to some scandal or the other." It does not have any philosophical integrity and it many times provides a surrogate to the lack of fixed principles and established democratic traditions". The constitutional rule of activism, particularly in Article 184(3), gives the Supreme Court a right to pick up issues of societal concern suo motu, and during the past 20 years, this provision has been exercised in an unprecedented manner with much controversy.

Judicial Activism, the Pakistani Court and Political Developments: A look into the activities of the Pakistani judiciary, especially during its tenure under the military activists, depicts a scenario of a legitimization of extra constitutional measures by the judiciary, based on the Doctrine of Necessity. The classic case in this respect is that of *Federation of Pakistan v. Molvi Tamizuddin Khan* (1955), the judiciary accepted the rejection of Governor-General of Pakistan to dissolve Constituent Assembly. This decision created a precedent of further approving the executive and military powers on judicial proceedings. The subsequent development of suo motu jurisdiction, especially since the 1990s, introduced a new era of activism on the part of the judiciary. Suo motu powers by the Supreme Court have been used in greater volumes under Chief Justice Iftikhar Muhammad Chaudhry and have been used to intervene in corruption and human rights violations

and even in the electoral process when there have been no petitions registered. Though these moves signaled adherence to transparency in governance, they also beg the question as to whether there was a case of institutional arrogance and disrespect of due process.

Pakistan's constitutional courts use executive authority, either by petition or suo motu jurisdiction (Khadim Hussain Soomro, 2023). The Higher Judiciary of Pakistan has become involved in governance affairs on multiple occasions, undermining the notion of separation of powers. It frequently justified military leaders' unconstitutional conduct and acted unilaterally on minor issues. As a result, Pakistan's Supreme Court has faced harsh criticism for using Judicial Activism to address the nation's political issues. The Supreme Court was also chastised for falling short to confront and rectify the fundamental systemic issues in Pakistan's judicial system. It failed to provide recommendations for policy to address the accumulation of cases, endemic corruption, and delays in the functioning of justice on all levels in the judicial system (Amir, Muhammad, & Jan, 2022).

The Supreme Court of Pakistan (SCP) routinely exercises its *Suo Moto* and original jurisdiction over political, social, economic, human rights, and constitutional issues. In the past decade, multiple instances have revealed the broad use of these powers, with the SCP frequently intruding in topics usually reserved for the legislative and executive branches (Awan, 2014).

Pakistan, on the other hand, is considered politically strategic judicial activism, which has appeared frequently at times when there has been political instability or a crisis of institutions. Tribunals have in the past intervened in the change of power (e.g., *Zafar Ali Shah vs General Pervez Musharraf*), and they have either justified or challenged executive activities in accordance with a wider scope of power. Judicial activism in Pakistan is especially high under circumstances of low credibility of executive power, but judicial activism does not always remain coherent in principle, according to an Interviewee. Application of suo motu powers under Article 184(3) embodies a tactical judicial stance that, on one hand, can be seen to be at times taken in being accountability-driven and

on the other hand, criticized by being a separation of powers deficit.

Also, the involvement of the Court in administrative functions, like the appointment of a civil servant or the utility pricing, usually usurps the policy-making power of the executive, which causes institutional confusion. The relationship between Pakistan's judiciary and executive has historically been characterized by significant executive influence and interference. Recent efforts have aimed to enhance the separation of powers and judicial independence, but challenges persist.

The Judiciary and the Administration should remain separate entities. The Executive should not wield judicial powers, just as the Judiciary should not exercise administrative powers (Bellamy, 2005). A knowledgeable member of civil society, An Interviewee, noted that while the constitution of Pakistan presents a unique form of "amalgamation," the principle of separation of powers still exists. He explained that various factors influence this separation, which is why we often fail to achieve the desired outcomes. According to the doctrine of separation of powers, the constitution is insufficient for both governance and the enforcement of law. I believe that the separation of powers exists at different extremes. As a nation, we emulate Western democracy, where the majority holds authority.

Zafar Ali Shah vs Pervez Musharraf (PLD 2000 SC 1208)

On February 3, 1997, the PML (N) won the general elections, and Muhammad Nawaz Sharif became Prime Minister of Pakistan. However, a conflict with the judiciary emerged shortly after. Once a list of five Supreme Court judges was provided to the Prime Minister Mr. Nawaz Sharif, who was appointed by the Chief Justice, expressed opposition to two names. The president intervened to fix the matter, and the government announced the selection of justices. Prime Minister Nawaz Sharif denounced the Supreme Court's suspension of the 14th Amendment during a press conference. Prime Minister Nawaz Sharif was found in contempt of court and was required to appear twice and make a written apology. The controversy escalated when Chief Justice Sajjad Ali Shah's seniority was questioned, followed by Justice Sajjad Ali Shah resignation from his position (Ziring,

1997). Gen. Parfait Musharraf took over as Chief of Army Staff when Gen. Jangir Karamat was compelled to leave. The 13th and 14th changes to the constitution forced President Farooq Laghari to resign. Pakistan's then-Prime Minister, Mr. Nawaz Sharif, became the most influential as a consequence of these replacements (Khan H. , 2009). On October 12, 1999, General Pervez Musharraf was returning from an official visit of Sri Lanka. After being denied permission to land at Karachi airport, the Prime Minister Nawaz Sharif named General Zia Uddin Butt as the new Chief of Army Staff. The army took control of the Karachi airport and grant the permission to land the plane. On October 12, 1999, General Pervez Musharraf abrogated the 1973 constitution, dissolved the National Assembly, and removed Nawaz Sharif. Syed Zafar Ali Shah contested the establishment of martial law in a writ case to the Supreme Court. The case was considered by a full court bench of twelve judges, including Justice Iftikhar Muhammad. Chief Justice Irshad Hassan Khan declared General Pervez Musharraf's actions legal. Mr. Nawaz Sharif was deemed responsible of plane hijacking, was sentenced to 14 years in prison. He was granted presidential pardon and thereafter relocated to Saudi Arabia. The state's democratic process was once more surrendered for the doctrine of necessity (Khan F. A., 2012).

Although criticized for overreach and delays, it is often praised for broadening rights and holding the executive accountable. The debates tend to center around the balance between activism and overreach. In Pakistan, Judicial activism is often linked to a history of political instability and military rule. The judiciary has sometimes acted as a check on executive overreach, but it is also perceived as politicized or complicit in validating coups. Its focus is frequently on constitutional interpretation, challenging executive and military actions, addressing high-level corruption, and maintaining judicial independence. Political cases are prominent, and the judiciary has been more confrontational, particularly with the executive and military, leading to periods of judicial excesses.

An Interviewee told how the intervention of judicial review has been vital in terms of ensuring equilibrium in the Constitution in situations where the institutions have become disoriented. He referred to

the *K.S. Puttaswamy v. Union of India* (2017) on the right to privacy. As an example of how the judiciary can mitigate overreach by executive powers when applied to citizen liberties, it and consequently strengthen democratic standards. As an Attorney from Pakistan, elaborate on the relationship of the judiciary with other branches in these words that the primary issue is the erosion of the separation of powers. When courts frequently overturn decisions made by the legislative or executive branches, it can undermine parliamentary sovereignty, delegitimize elected officials, and create tension between institutions. In severe cases, this may lead to a "judicial oligarchy," where unelected judges wield excessive power. Additionally, it prompts concerns about judicial accountability, especially if actions are not backed by legal rigor and lack public transparency.

Bangladesh

In Bangladesh, judicial activism is often characterized as reactive rather than systematic. The judiciary's responses to executive overreach and human rights abuses are contingent upon the political climate. Landmark cases, like *Masdar Hossain v. Secretary, Ministry of Finance* (2000), reinforce judicial independence but often face challenges from executive influence and procedural limitations. The judiciary's effectiveness remains hampered by systemic issues, including corruption and delays. Political turmoil in Bangladesh has been intense, and judicial activism is often seen as a way to limit the overreach of the executive branch. However, the issue of judicial overreach and its impact on the political process is gaining more attention. This study examines how judicial activism contributes to building democratic institutions in Bangladesh and explores the role of judicial interventions in broader political dynamics (Das, Khan, & Kamruzzaman, 2016).

Bangladesh has a two-party system and faces political unrest in spite of its economic growth. In a representative democracy, the implementation of justice assumes special significance in view of the fundamental rights of individuals, which need protection against executive interference and strong legislation. An independent and supreme judiciary is also an essential requisite of a federal political entity when there is a constitutional division of powers among the federal government and the units of

federation and a functional division of powers between the executive, legislature, and the judiciary. In Bangladesh, the institutional capacity of the judiciary is weak and this is mainly as a result of the influence of the executive because the judiciary lacks procedural mechanisms, as well as continuity between judges. An Interviewee explained that there is no systematic aid to guarantee that the judiciary can be independent when they are overrun in the appointments and promotions introduced by the executive (Arato, 2021).

In the context of Bangladesh, judicial activism has emerged in response to changing political arrangements and recurring threats to judicial independence, shifting away from executive control toward a more assertive judicial authority. In each of these nations, judicial activism has sometimes been used to address institutional failures, while at other times it has faced criticism for exceeding constitutional limits. This chapter explores how each country's historical political landscape, legal culture, and institutional disputes over power have shaped its form of judicial activism, revealing a shared but complex relationship among courts, states, and societies in South Asia (M Abdul Hannan, 2021).

Bangladesh's governance system has changed several times since its independence in 1971. Each era inevitably altered the interactions within the three basic branches of government. Bangladesh established a parliamentary structure based on the British Westminster system shortly after gaining independence. The 1972 Constitution, which went into effect on December 16 of the same year, officially established the idea of separation of powers. It established distinct boundaries between the executive, legislative, and judicial branches, making sure each functioned on their own within its constitutionally established field (Ahmed N. , 2006).

While Bangladesh's Constitution imposes the "executive authority of the Republic" on the Prime Minister and the "legislative responsibilities of the Republic" on Parliament, it does not clearly endow the judiciary with the Republic's judicial authority. Therefore, the founders of the Constitution adopted the concept of separation of powers solely in terms of the administrative and legislative branches; however, they preferred to keep silent on the issue of placing judicial power in the courts. This constituted a

notable break from other jurisdictions' constitutional practices. (Hossain M. M., 2020).

Masder Hossain vs Secretary, Ministry of Finance (2000) Masder Hossain, a lawyer, brought the action to challenge the legitimacy of the executive-controlled judge appointment system which violated the promise of judicial independence in the constitution. The Supreme Court ruled favorably. On November 1, 2007, the caretaker administration formally established the separation of the judiciary to comply with the Masdar Hossain verdict, commonly referred to as the separation of powers. The case of Masdar Hossain v Secretary, Ministry of Finance is significant in establishing the independence of Bangladesh's judiciary. The case highlights the separation of powers among the three branches of government. The Masdar Hossain case exemplified the separation of powers idea with its 12 instructions (Hossain M. M., 2020).

Conclusion

Judicial activism plays a crucial role in shaping the governance landscape of India, Bangladesh, and Pakistan. While it serves as a necessary corrective mechanism to address executive overreach and protect rights, it also carries inherent risks that must be managed. The historical and political contexts of these countries inform the effectiveness and challenges of judicial activism, underscoring the need for a nuanced understanding of its implications for democratic institutions.

Implications of Judicial Activism on Executive Governance

Judicial activism influences executive governance by enhancing accountability, protecting rights, and challenging executive overreach. However, it also poses risks, such as undermining the separation of powers and fostering perceptions of politicization. The findings suggest that while judicial interventions can rectify governance failures, excessive activism may lead to tensions between the judiciary and the executive, affecting institutional stability.

The interaction between activist judiciaries and the executive branches in these countries has been complex and frequently marked by tension. There have been cases where judicial rulings—especially those invalidating laws or deeming executive actions

unlawful—have resulted in direct confrontations. A notable example is the case of Maheka Gandhi's passport suspension and the proactive role of Chief Justice of Pakistan Saqib Nisar. This tension can manifest as executive non-compliance, legislative attempts to limit judicial power through constitutional amendments, or even impeachment proceedings. While the judiciary's role is to serve as a check on power, activism can occasionally extend beyond traditional limits, leading to accusations of the judiciary overstepping its authority. Although the public may welcome judicial intervention in response to perceived executive or legislative failures, the political establishment often resists, resulting in power struggles.

Judicial activism has ended up being a reaction to institutional collapse or political malfunction, in all three countries examined. Judicial institutions have been relied upon to help resolve governance gaps especially where the elected arms have become ineffectual to help in maintaining constitution duties. As an example, in India the Public Interest Litigations (PILs) have been deployed to facilitate policy challenges of national essence, like environmental degradation, labor rights, and corruption. The judiciary in Pakistan has extensively used the jurisdiction of suo motu to interfere in the questions of civil accountability when there is a lack of an effective watchdog by the executive. Correspondingly, the writ petitions have afforded some but significant access to judicial redress of the issue of administrative inaction in Bangladesh. Nevertheless, judicial activism requires the trustworthiness of the institution, the reverence of the predictability of procedures, and confidence in the judiciary by the people. Failing to have such bases, judicial interventions, well-meaning as it may be, run the risk of being seen as ad hoc, politicized, or untenable. Therefore, it is possible that judicial activism is able to temporarily make up the shortcomings of poor governing, but cannot replace the need of structural changes, held accountable by institutions and normal operationalization of democracy processes.

The norms of democracy have been compromised, with the role of the executive being played out mainly by Pakistani judges, particularly during the era of Iftikhar Chaudhry.

Judicial independence is too much weakened by executive influence in Bangladesh, particularly in appointments, tenure, safety, and advancement. The lack of an independent judicial commission leaves room for the appointment of judges on the basis of political loyalties.

Executive Control and Judicial Capture

Among the most important lessons of the interviews was the power-wielding role of the executive in the process of appointments and promotions of judges. An interviewee from Pakistan has confirmed that the Supreme Court is usually expected by the executive to act in a certain way, especially when most political issues of contention are being addressed. He claimed that the lack of a transparent mechanism regarding judicial appointment undermined the independence of the judiciary. According to another interviewee, the acts of validating the constitutional amendments, including the unconstitutionality of the system of the caretaker government, were also marred by the element of political expediency. This is due to the academic apprehension that court approval of the partisan constitution reform can corrupt judicial legitimacy as well as diminish the popular trust (Naseer, 2024).

The Bangladesh example shows not only a politically infested judiciary but also an institutionally weak judiciary in its ability to decide cases independently. Judicial activism is there, though sporadic, reactive, and extremely under siege by the dynamics of executive power. Activism in Bangladesh is thus ad-hoc, not to the rights-based and methodical activism of India or the aggressive and politicized activism of Pakistan. Although the judiciary has been instrumental in some of its landmark rulings, particularly regarding judicial independence, restoration of the constitution, and environmental protection, they are not coupled with a culture of unified jurisprudence of rights. Lack of effective institutional mechanisms in institutionalizing activism is missing, as indicated by the lack of a system such as an independent appointments body or an effective enforcement arm in the court.

Although the courts have sometimes played the role of the rights watchdog, they have just as easily been the inactive or acquiescent watchdog to executive aggression.

Bangladesh is an exception, which offers a hybrid model, in which activism is occasionally progressive on rights (such as environmental PILs), but frequently limited by executive capture. Interviewees described it as a form of opportunistic activism as opposed to a strategic one, more likely to be taken when the ruling party has an advantage to gain or when the civil society pressure is intense enough to gain an advantage.

The judicial activism in India is mostly comprehended as a constitutional need in the context of justice, equality, and public accountability. The emergence of the Public Interest Litigation (PIL) as a form of participation in the Indian judiciary has empowered the courts to play a role of being agents of social justice, environmental laws, and promoting democracy. In Pakistan, judicial activism, in contrast, is more scattered and more politicized, and its impetus is usually spurred by a circumstantial institutional crisis, or popular ground. Activism in Pakistan is often a result of the failure of governance, and rather than a rights-enlarging process, it is strongly influenced by the relationship between the courts and political and military elites. The practice of activism by a judge in Bangladesh is not something that has been institutionalized, and it has not been a uniform pattern over the years either. The basis of its interventions between them is haphazard and frequently contributed by necessity or force of the political need or pressure of the civil society and foreign entities, more often than not pegged on an institutional obligation on account of democratic surveillance. In short, this research concludes that judicial activism, in its procedural rigor, democratic purpose, and institutional independence, can become a fortress against authoritarianism and governing lapse. However, without these props, it may cause the democratic collapse that it attempts to prevent.

Recommendations

To demonstrate effective governance, transparency, and accountability to mitigate public disillusionment that often drives demands for judicial activism. It is necessary to strengthen parliamentary committees and oversight mechanisms to hold the executive accountable by providing an alternative to judicial checks. This is considered part of judicial activism as a load on governing deficits in both the House and the Executive branch. Improving these institutions by

revamping them during election time, by appointing them through merit and anticorruption practices, would result in the judiciary not being forced into confronting policy gaps.

In the region, the source of judicial activism is perceived to be the institutional malfunction, which mostly occurs in governance and takes an interest in legislation. But, the chances of excess may be highest in Pakistan as activism is usually not procedurally disciplined. In Bangladesh, the danger is that of executive capture; in India, in turn, the challenge is how to resist the pressures of rising social expectations and continue to exercise judicial restraint.

To establish clear guidelines for judicial interventions to reduce perceptions of politicization and overreach.

1. Enhance mechanisms for judicial appointments and promotions to minimize executive influence and ensure a robust judiciary
2. Invest in legal education and training for judges to foster a deeper understanding of constitutional principles and the implications of judicial activism.
3. Foster constructive dialogue between the judiciary, executive, and legislature to address governance challenges collaboratively.
4. Encourage structured public interest litigation to address societal issues while maintaining respect for judicial boundaries.

By adopting these measures, South Asian countries can promote a more balanced approach to judicial activism that strengthens democratic governance and safeguards the rule of law.

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