

Decade of Judicial Politics in Pakistan: 2008-2018

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Abstract



A historical summary of the judiciary's role in undermining Pakistan's democratic process is the aim of this article. To give a thorough analysis of the activism of the judicial and its effects on democracy, establishing a suitable point of view can be aided by a quick historical overview that judicial interference has played a significant role in Pakistani politics throughout its political history. Throughout Pakistan's political and constitutional history, other institutions have repeatedly killed political rights in the country. In Pakistan's political history, there have been many examples of the military or bureaucratic establishment dissolving elected assemblies in an undemocratic way, often with the support of the judiciary. The goal of this research is to determine whether successful democracies and the theory of separation of powers are related. The theory of separation of powers, which has been applied to this inquiry, states that the allocation of power among the three branches of government is the primary cause of a weak democracy. This study is conducted using the qualitative technique. Moreover, the content analysis method is used to get the historical underpinnings of particular issues.

Keywords: Judicial Review, Judicial Activism, Constitutionalism, Disqualification, Parliamentary Democracy

Introduction:

The division of authorities among the three arms of the government—the legislative, executive, and judicial—is the cornerstone of any robust democracy. Understanding this theory of *Separation of Power* is necessary before participating in judicial activism. According to Montesquieu, combining the various and distinct functions of various state organs puts a state's autonomy at grave risk since it may "expose the liberty of the citizens to arbitrary control" (Vile, 1998). Therefore, the specific boundaries of each state organ's jurisdiction must be established to safeguard the populace against the unrestrained and unchecked exercise of authority by one organ. This entails defining the exact domain of jurisdiction that the judiciary operates within unrestrictedly. Increasing judicial activism has become commonplace worldwide, especially in Asia's developing nations. However, compared to other democratic states, judicial activism is more prevalent in Pakistan, which has led to judicial excesses instead of judicial activism in its current form.

Judicial activism falls into two categories: the Supreme Court's intervention in national political decisions and its unrestricted interpretation and application of Article 184 (3) (Kamal, 2019). Judicial activism has gone through several stages in Pakistan, but it was at its height during the tenure of former Chief Justice Saqib Nisar (Abbasi, 2019). The poor performance of governments and legislatures is the cause of the rise in judicial activism. Judicial activism in Pakistan is seen in two stages: first, it aims to enforce the rule of law by interfering in political matters, and second, it defends citizens' constitutionally guaranteed fundamental rights, which other governmental institutions have failed to uphold. Article 184 (3) of the 1973 Constitution grants the apex Court of Pakistan the authority to act in suo motto. This authorizes action to be taken to protect citizens' fundamental rights.

Whenever the Pakistani Supreme Court acted by its suo motto power, various reactions were displayed from various sections of the society. Suo motto practices that protect people's fundamental rights have gained widespread support, but some actions, such as the ruling in disqualifications of the then premiers Yousuf Raza Gillani and Nawaz Sharif, have generated conflicting views among the masses. Politicians used to benefit from Supreme Court rulings like this for their gains, but doing so undermined the legislature's constitutional authority (Iqbal, 2018).

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Research Objectives:

- Identify significant constitutional challenges faced by the judiciary during the decade 2008-2018, including conflicts with other branches of government, interpretation of constitutional provisions, and protection of fundamental rights.
- Investigate the impact of judicial decisions and actions on governance dynamics in Pakistan, including their influence on policy-making, executive-legislative relations, and the overall functioning of democratic institutions.

Research Questions:

- How did the interplay of institutional, political, and societal factors shape the evolution of judicial politics in Pakistan during the period spanning from 2008 to 2018?
- What are the implications and impacts of landmark judicial rulings that disqualified elected two elected premiers, on democratic institutions and parliamentary democracy in Pakistan?

Significance of the Study:

The objective of this study is to unfold the causes of Pakistan's democracy's ongoing struggle and conflict since the past seventy-four years right after the nation's independence in 1947. Moreover, investigating the judicial politics in Pakistan contributes to the broader understanding of democratization processes in countries with similar socio-political contexts, shedding light on the role of the judiciary in balancing power and upholding the rule of law. This study investigates the relationship between the premise of division of powers and judicial activism. Besides, investigating the judicial politics in Pakistan that contributes to the broader understanding of democratization processes in countries with similar socio-political contexts, this study sheds light on the role of the judiciary in balancing power and upholding the rule of law. This research can elucidate how judicial decisions and actions during 2008-2018 influenced societal perceptions of justice, human rights, and the overall legal framework, contributing to discussions on social justice and accountability. By examining the complexities of judicial politics in Pakistan, this research contributes to the academic literature on comparative judicial studies, providing a nuanced understanding of the challenges and opportunities faced by judiciaries in developing democracies.

Literature Review:

In Pakistan, judicial activism has generated a lot of discussion. Numerous newspaper articles and research papers have addressed the issue; however, there is a dearth of literature comparing Pakistan's two most populist Chief Justices. There is a dearth of research on judicial activism in this field, particularly when it comes to comparison studies between two significant historical periods—that of Justice Iftikhar Chaudhry and Justice Saqib Nisar. The Maulvi Tammizuddin case marked the beginning of judicial activism in political matters, which is still going strong today. Pakistan's political and constitutional history witnessed judicial activism based on the doctrine of necessity, which finally resulted in a legal black hole (Steyn, 2004). The imbalance in the constitution also posed many challenges to Pakistan's democratic process and constitutional development. The judiciary was empowered by weak representative institutions from the very beginning (Kalhan, 2013). These are the seminal cases in Pakistan's political and constitutional history. They explain how and why the judiciary rose to prominence and assumed a pivotal role beginning in 1954. The judiciary is seen as an essential component of democracy. Pakistani democracy is facing an adversarial environment (Sharif, 1963). Judicial rulings in Pakistan have caused chaos for the nation and its nascent democracy. When General Pervez Musharraf overthrew the national assembly in 1999, the Supreme Court dismissed the military chief's constitutional abrogation as a weakness and did not take any further action (Qazi, 2015). Judicial activism has a direct impact on the parliament's sovereignty and supremacy. In Pakistan, the judicial system receives legitimacy from the legislature. Regrettably, through undemocratic actions, the Pakistani judiciary has joined forces to weaken the legislative process (Jamal, 2018).

Constitutional disputes and other wholesome political issues have turned the apex courts into political entities (Cheema, 2018). Pakistan's institutional powers are overlapping, which has an impact on democracy. There is a danger to Pakistani democracy coming from the non-elected judicial and bureaucratic institutions. To increase its control over the legislature, over time, the bureaucracy has provided support to other non-elected institutions. The judiciary has always backed the military whenever it has overthrown democratic governments. In every one of these military coups or coups against democratically elected legislatures, the highest courts have continuously participated in

judicial activism. One chief justice said the higher judiciary has been overriding its powers on parliament," in a politically divided setting. Amidst this unsettling climate, Pakistan's elected Prime Minister was sent home by the Supreme Court on charges of contempt of court. It is impossible to uphold democratic values if one state institution dominates the other, especially the elected one while overriding its prescribed constitutional limits. Pakistani democracy is not likely to fare well given the power struggle between the elected executive and the unelected judiciary (Rizvi, 2012).

Methodology:

The present study employs a qualitative research methodology to investigate the conduct of diverse institutions and their impact on democratic governance. The content analysis method has been used while analyzing the secondary data through books, historical documents, and Supreme Court decisions in different cases, newspapers, research articles, and magazines. Moreover, the study has followed the qualitative method even though some academics contend that one of the main drawbacks of the qualitative method is the researcher's bias. However, the adaptability of qualitative research offers a chance to change the preexisting notions (Silverman, 2011). The study has emphasized documentary analysis of the subject under study.

Document Analysis:

The technique of documentary analysis has been utilized to gather data. The information needed to comprehend the historical foundations of particular issues is provided by the documentary analysis. This aids in the interpretation of unique events by political scientists. Documentary analysis has been used in this study to examine previous research that includes legal and constitutional documents that aid in the evaluation, discovery, and synthesis of data. Documentary analysis is a type of written or visual material that offers insights into human behavior and social change (Mangal, 2013). Because documentary analysis requires less time, it is a desirable option for researchers. However, the onus is on the researcher to make sure the document they have consulted is authentic. Instead of gathering data, the goal of documentary analysis is to choose the data. The systematic process of examining and assessing both printed and electronic documents is known as documentary analysis (Rapley, 2007). To acquire knowledge and understanding, data is examined and explained in a qualitative research study (Strauss, 2008).

A Historical View Of Judicialization of Politics:

To provide a comprehensive examination of judicial activism and its impact on democracy, it can be helpful to establish a relevant historical context. Every branch of government, including the military, bureaucracy, and judiciary, must participate actively in a functioning democracy. Pakistan is regarded as a weak democratic state because of the ongoing division and discord within its governmental institutions. Throughout Pakistan's political history, there have been repeated instances of undemocratic behavior, such as the dissolution of elected assemblies or the creation of bureaucracy with the support of the court. Even though democratic governments have also frequently struggled to meet the expectations of the populace, Pakistani voters have always elected their representatives with renewed hope. There has been a vicious power struggle going on between politicians and institutions. Since the colonial era and continuing to this day, there has now a close political interaction between the court and the executive (Innayatullah, 1997). Pakistan, like the majority of third-world nations, emerged from a protracted war with its colonial overlords. Endowed with a captivating leadership style, Quaid-e-Azam persevered through the trials of a newly formed nation and led it with bravery and dignity until his passing. Pakistan's first prime minister, Liaquat Ali Khan, improved the nation's parliamentary system. Unfortunately, on October 16, 1951, he was assassinated. The earlier and untimely deaths have led to the erosion of parliamentary democracy in its very few years of emergence. Moreover, political stability suffered greatly as a result of the civil bureaucracy's use of the governor general's office as a tool (Hassan, 2011; Javaid, 2017).

Later on, the Maulvi Tammizuddin case marked the beginning of judicial activism in political matters, which is still going strong today. Based on the doctrine of necessity, Pakistan's political and constitutional history saw judicial activism that ultimately offered to be a legal black hole (Steyn, 2004). The imbalance in the constitution created numerous obstacles to Pakistan's democratic process and constitutional development. The judiciary was empowered by weak representative institutions (Kalhan, January 2013). These cases represent turning points in Pakistan's political and constitutional history. They explain how and why the judiciary rose to prominence and assumed a pivotal role beginning in 1954. These cases are discussed as under:

i. Moulvi Tamizuddin Case:

Governor General Ghulam Mohammad dissolved the Pakistani Constituent Assembly on October 24, 1954. Speaker of the Constituent Assembly at the time, Moulvi Tamizuddin Khan, filed a writ suit under section 223 in the Sindh High Court, contesting the governor general's unconstitutional act. The Act of Dissolution of Assembly was ruled unconstitutional by the Sindh High Court. Higher courts' acceptance of the doctrine of necessity in the Tamizuddin case in 1955 is to blame for Pakistan's political and democratic instability (Shabbir, January 2013).

Muhammad Sharif A.S.M. Akram, Justice A.R. Cornelius, and S.A. Rehman, four additional judges, along with Chief Justice of Pakistan Muhammad Munir, challenged the Sindh High Court's decision in the Federal Court, declaring the act dissolving the Constituent Assembly to be valid (PLD 1955). The majority of Federal Court judges overturned the Sindh High Court's ruling, but only Mr. Justice Cornelius wrote a dissenting opinion (Dawood, 1994). The federal court's decision drew harsh criticism since it not only had an impact on national politics but also severely damaged Pakistan's democratic progress (Kokar, 2013).

ii. Government of the Punjab vs. Asima Jillani:

On December 22, 1971, Malik Ghulam Jillani was taken into custody in compliance with Martial Law Regulation No. 78. In the Lahore High Court, his daughter, Miss Asima Jillani, contested the detention. The case was dropped after it was heard, citing the court's lack of authority to challenge the imposition of martial law. Miss Asima Jillani contested the decision in the apex Court, which heard the case before Chief Justice Mr. Hamood Ur Rehman and Justices Wahid Ud Din, Muhammad Yaqub Ali, Salah Uddin Ahmad, and Sajjad Ahmed. As per the verdict in *Asima Jillani vs. Government of Punjab*, PLD 1972, the proclamation of martial law by General Yahya Khan was deemed illegal. The only court with the power to rule that a particular law was unfair or unconstitutional was the apex court of the country. The Asima Jillani case provided yet an additional instance of the doctrine of necessity, but eventually, the judiciary discarded the doctrine and considered its responsibility to make amends for its own choices (Newberg, 1995).

iii. Chief of Army Staff vs. Begum Nusrat Bhutto:

A relationship between the armed forces and the legal system was also demonstrated in the Nusrat Bhutto case, in which the Pakistan Supreme Court affirmed the legitimacy of the martial law that had been imposed in 1977. September 1977 saw the confinement of Zulfikar Ali Bhutto, then prime minister of Pakistan during the PPP, and ten of his party colleagues, with the threat of military tribunals being used to try them after General Zia ul Haq put martial law and repealed the constitution. Begum Nusrat Bhutto challenged the validity and legality of martial law in a petition that she filed with the Pakistani Supreme Court (Rizvi, 1986). A bench of nine judges, under Chief Justice Anwar ul Haq, rejected the constitutional petition with a unanimous vote and declared Zia's unconstitutional steps as valid and according to the line of the constitution of the country. This ruling gave the Zia ul Haq government total discretion to maintain power and laid the groundwork for a persistent, deeply embedded military control over civil society (Newberg, 1995).

iv. Federation of Pakistan vs Haji Saifullah:

The 1973 constitution's eighth amendment transformed the parliamentary system into a semi-presidential one. The Eighth Amendment granted the Pakistani the president's power to dissolve the National Assembly due to that it had not accomplished the goals and purposes for which it had been elected, without consulting anyone. It is impossible to argue that the removal of the Pakistani people's representative through a single act of penmanship is unconstitutional. Muhammad Khan Junejo, the elected prime minister of Pakistan, was removed by General Zia ul Haq in May 1988 due to allegations of corruption. The 1989 writ petition contested the dissolution of the National Assembly. Justice Naseem Hassan Shah wrote the majority ruling, which was heard by ten judges, including Chief Justice Muhammad Haleem. The National Assembly's dissolution order issued by the President was found to be unlawful. Except for Justice Saif Rehman, every judge concurred with Justice Naseem Hassan Shah. However, the writ petition was denied based on the Laches principle. The petition was not filed on time according to the British legal doctrine of Laches. Therefore, even though the act of dissolving the assembly was unlawful, the constituent assembly could not be reinstated (Patel, 2000). Even though this decision was overdone, it demonstrated that the judiciary could effectively contribute to the growth of democracy and provided fresh opportunities for elections that had been postponed for nearly 11 years.

v. Federation of Pakistan vs. Ahmed Tariq Raheem:

On August 6, 1990, in exercising power given in article 58(2B), Benazir Bhutto, the prime minister, was fired by President Ghulam Ishaq Khan, who also dissolved the elected National Assembly. The federation's strained relations with its provinces served as the impetus for this action. Another claim made was that nepotism has become endemic and that the public no longer has faith in the National Assembly (Khan T., 2018). In the Lahore High Court, Khawaja Tariq Raheem contested the President's order, and a full bench maintained the dissolution of the assembly order. Mr. Tariq Raheem contested the decision of the Lahore High Court in the Pakistan Supreme Court. This appeal was heard by all ten judges on the Supreme Court bench. Mr. Justice Saifur Rehman wrote the court's order before it was declared that the president's act was illegal. Nevertheless, the petition was turned down since a fresh National Assembly had been sworn in. (Patel, 2000; Khalid, 2012). It was another setback for the country's constitutional and democratic development.

vi. President of Pakistan vs. Mian Muhammad Nawaz Sharif:

The National Assembly was dissolved by President Ghulam Ishaq Khan once more on April 18, 1993, concurrently with the resignation of the Prime Minister of the day. Chief Justice Mr. Justice Naseem Hassan Shah presided over a ten-judge panel of the Pakistani Supreme Court, where the dissolution of the assembly was directly challenged. The president's decision to dissolve the assembly was declared illegal by the bench. The Chief Justice reinstated the national assembly on May 26, 1993. Because this decision was distinct from the others, various political viewpoints were also invited. Mr. Justice Nassem Hassan Shah emphasized the judiciary's commitment to the state constitution in a civilized and democratic world where the parliament now has a reinstated administration by an order from a higher judiciary (Shah, 1993). On July 18, 1993, however, an agreement with Army Chief of Staff Gen. Abdul Wahid Kakar compelled Premier Nawaz Sharif to resign, nearly two months after the decision was made. President Ghulam Ishaq Khan resigned, and Mr. Waseem Sajjad, the Senate Chairman, became the new leader.

vii. President of Pakistan vs. Mohtarma Benazir Bhutto:

Similar events befell Mohtarma Benazir Bhutto's chosen assembly, and in 1996, then-President Farooq Laghari dissolved the National Assembly once again, citing article 58(2B) as justification for the dissolution due to corruption. The Supreme Court of Pakistan upheld the president's decision to dissolve the Pakistani National Assembly, despite opposition in the Apex Court. However, as a result of the decision, a notion that no elected assembly could fulfill its five-year legal constitutional mandate and would always be hampered by 58(2B) started to take hold both inside and outside the state. The choice also caused unrest and instability in the democratic system of the state (Ahmed, 2012).

viii. Pervez Musharraf vs. Zafar Ali Shah:

There was an instant conflict with the judiciary following the PML (N)'s victory in the general elections on February 3, 1997, and the appointment of Mr. Muhammad Nawaz Sharif as prime minister of Pakistan. On the list of five Supreme Court judges that the Chief Justice had forwarded to the prime minister for potential elevation, Mr. Nawaz Sharif stated his disagreement with two of their names. The matter was resolved after the president intervened, and the government announced the judges' appointments. Prime Minister Nawaz Sharif brought up another issue when he later expressed his disapproval of the ruling of the Supreme Court to suspend the 14th Amendment during a press conference. As a result, the court found Prime Minister Nawaz Sharif to be in contempt and ordered him to appear in court twice and write an apology letter. After Chief Justice Sajjad Ali Shah's seniority was disputed, the matter was resolved by Justice Sajjad Ali Shah's resignation (Ziring, 1997).

Gen. Parvez Musharraf took over as Chief of Army Staff after Gen. Jehangir Karamat was forced to step down. The constitution was also changed through the 13th and 14th amendments, which demanded that President Farooq Laghari step down. The most powerful PM at the time was Mr. Nawaz Sharif, the prime minister of Pakistan, following all of these replacements (Khan, 2009). On October 12, 1999, General Pervez Musharraf was returning from an official visit to Sri Lanka. General Zia Uddin Butt was appointed as the new chief of staff of the army staff by the prime minister after his aircraft was refused permission to land at Karachi Airport. Permission to land was granted to the aircraft when the army assumed control of Karachi Airport. On October 12, 1999, General Pervez Musharraf took office and declared the suspension of the 1973 constitution with the dissolution of the

National Assembly and the removal of Nawaz Sharif. Syed Zafar Ali Shah filed a writ petition with the Supreme Court contesting the declaration of martial law. Chief Justice Iftikhar Muhammad Chaudhary and twelve other judges made up the court bench that heard the case. Chief Justice Irshad Hassan Khan declared General Pervez Musharraf's actions to be lawful. Following his conviction for plane hijacking, Mr. Nawaz Sharif was sentenced to 14 years in prison. He was pardoned by the president and left for Saudi Arabia. Resultantly, the state's democratic process was once again sacrificed under the guise of the necessity doctrine (Khan, 2012).

Findings:

The best example of the judicial branch's increasing power is probably how the Supreme Court removed two prime ministers from office. The removal of the head of the executive branch has become the unchecked authority for the superior judiciary due to the Judicialization of politics. Naturally, given the country's newly established rule of law, some experts welcome this development. Opponents of this concentration of judicial power, however, feel that such extreme measures violate the fundamental tenets of a democratic society because they see the court usurping executive powers. It is therefore essential to review the case law regarding the disqualification of a prime minister.

Pakistan's weak electoral institutions have prevented constitutional democracy from taking root.

The judicial branch was resuming its authority after the much-publicized "lawyers' movement," which led to Chief Justice Iftikhar Muhammad Chaudhary's reinstatement. The numerous constitutional irregularities resulting from this expansion of judicial authority have undermined the nation's democratic system. In this regard, the processes that resulted in Prime Minister Yousaf Raza Gillani's disqualification offer valuable insights. In *Dr. Mobashir Hassan vs. Federation of Pakistan*, 2010, the highest court in the land found the executive head of state guilty of contempt of court for his refusal to obey the court's order. In *Muhammad Azhar Siddique v. Federation of Pakistan etc* (2012), the Supreme Court struck down the National Reconciliation Ordinance of 2007 and ordered the executive branch to reopen criminal investigations into cases of purported corruption that had been closed as a result of the aforementioned legislation. With the help of the National Reconciliation Ordinance of 2007, several political figures were cleared of several criminal charges, including Asif Zardari, the 2008 presidential candidate of Pakistan. The Executive branch was reluctant to follow the Supreme Court's order because the Prime Minister thought the President enjoyed immunity from the alleged criminal charges while in office due to constitutional immunity given in Article 248 of the 1973 constitution (Boone, 2012).

The Supreme Court consequently found the Prime Minister guilty of contempt of court due to his disobedience of the court's orders. Finding an elected prime minister in contempt of court was still a drastic step. The prime minister's conviction did not automatically disqualify him from serving as a member of parliament, according to the court's ruling (Hussain, 2018). By the constitution, the Speaker of the National Assembly may petition to disqualify an elected Assembly member. Furthermore, the Election Commission is authorized by constitutional provisions to investigate the grounds for the member's disqualification following the Speaker's referral of the member's case to the Commission. Citing the fact that the disqualification issue was not raised in the court proceedings, the Speaker categorically declined to submit a reference for the Prime Minister's disqualification to the Election Commission (Ghauri, 2012). However, the Supreme Court intervened once more, declaring that Yousaf Raza Gillani was not qualified to serve a five-year term in public office (Hussain, 2018). Some commentators called this development as a 'judicial coup' (Waseem, 2012). Many critics contend that this ruling, which granted unelected judges unrestricted authority to remove elected prime ministers from office, set a dangerous precedent for the nation's democratic future.

The start of judges' hegemony over the top executive position was signaled by Gillani's disqualification. Every Prime Minister that followed was doomed by the decision. In 2017, the Supreme Court once again demonstrated its judicial power by disqualifying Nawaz Sharif from the government. The start of the entire story was the leak of the Panama Papers, which were confidential client records from a Panama law firm that revealed offshore tax havens for affluent individuals worldwide. According to the Panama Papers, Prime Minister Sharif's children were shareholders and beneficiaries of two offshore businesses (Javed, 2018). The Prime Minister and his family occupied four apartments owned by these companies in London's affluent Mayfair District. At first, two judges from the five-judge bench ruled that the prime minister should be removed from office right away

because he had not disclosed his wealth. But most Bench members agreed to form a special Joint Investigation Team (JIT) to look into the Prime Minister's and his family's financial sources (Javed, 2018).

The Prime Minister had concealed his unreported income from Capital FZE, a UAE-based company, from the JIT. Remarkably, the country's Supreme Court disqualified the prime minister for this small transgression and mandated that the National Accountability Bureau, the nation's unique anti-graft agency, look into the issue of the executive head of state's wealth (Imran Ahmed Khan Niazi v. Muhammad Nawaz Sharif, 2017). Thus, what began as a case to identify the Prime Minister's wealth sources concluded with his disqualification on a basis that was not raised during the proceedings at first. Even now, there is still debate surrounding the court ruling that disqualified Nawaz Sharif. Several experts challenged the ruling, arguing that it violated the former prime minister's right to a fair trial (Hussain, 2018). In this case, the Supreme Court also took on an inquisitorial role, which begs the question of whether the highest court could function as a lower court in cases incorporating the public interest. All things considered, the Court reaffirmed its dominance in charge of the executive branch and tipped the scales in its favor.

Conclusion:

Numerous historical examples demonstrate that attempts to curtail the judiciary's authority have always been the reason behind the instability of a state's democratic order (Kazi, 1976). As a researcher, I have seen that every state, including Pakistan, depends on the rule of law to survive. We are at a crossroads in our lives, having been manipulated and exploited for over 77 years. The powerful and influential roles held by the military, judiciary, and bureaucracy have put pressure on Pakistan's political institutions, including the Legislature (Ahmad, 2018). Being the keeper of the constitution and citizens' rights is the judiciary's most significant role in a constitutional democracy. The maintenance of democratic institutions and the equitable administration of justice can be ensured by an unbiased and autonomous judiciary. An appropriate selection procedure for judges of the Apex Court can guarantee the independence and impartiality of the judiciary, which is crucial for the public's salvation. While judicial activism has had an impact on democracy, there are other contributing factors as well. The fact that political leaders routinely turn to the judiciary to resolve fundamentally political issues indicates that political institutions are failing to fulfill their obligations and are instead depending on state institutions like the military and judiciary to save them. These circumstances lead to an imbalance within state institutions, particularly in political institutions. The judiciary is made up of actors who have subverted democracy rather than advancing and safeguarding it. Politicians are the only ones who live with the constant fear of discontinuity; they never know what the future holds. Politicians aren't even guaranteed five years of stability when they enter the stream; civil servants and bureaucrats know they can stay for 35 years if desired. Seldom does a prime minister serve out their entire term. Even Zulfikar Ali Bhutto only served one term in office; by the time he served a second term, the military forces found him to be almost unbearable. Even though the political system was in place after 2008, there was a great deal of unrest and chaos within it. No Prime Minister, not even elected Yousef Raza Gillani or Nawaz Sharif, has ever been able to serve out the full five years of their mandate. Since democratic governments have been overthrown one after another, we must look for the real cause of the instability and uncertainty that currently exists.

Discussion:

The foundation of constitutionalism is the division of powers, the upholding of the rule of law, and the imposition of legal restrictions on the use of public authority. Constitutionalism guarantees that no branch of government will misuse its authority. According to this theory, the judiciary plays a crucial role. To ensure that the rights of individuals are not violated in any way by those in charge of the state's governance, an independent judiciary is required.

A crucial constitutional mechanism that gives the judiciary control over the other two branches of the government is called judicial review. But it would be foolish to believe that the judiciary has unrestricted authority because of the Constitution. The judiciary must carry out its constitutionally mandated duties within prescribed constitutional limits. Because of its special status, the apex court is frequently encouraged to take the lead in decisions that have significant political repercussions. As a result, politics have become more judicialized, gravely undermining the function and power of the legislative and executive departments of government.

Recommendations:

The paper's discussion makes it very clear that Pakistan's superior court has been at the center of every significant political controversy. The Court has exercised its authority for the sake of upholding citizens' fundamental rights. The Court has greatly expanded its constitutional function by resolving political disputes under its original jurisdiction. Significant constitutional cases indicate that the democratic system has been weakened to achieve this expansion of judicial power. The Court has frequently shown no qualms about assuming legislative and executive authority for the judicial branch. The shaky legal precedent in significant constitutional issues also highlights the fact that the phenomena of constitutionalism are not well-served by the judicialization of politics. Since constitutionalism never grants one branch of government precedence over another, it functions best when every branch of government acts within its constitutional boundaries. As a result, all parties involved must reconsider the problems with the nation's constitutional jurisprudence and develop a strong model of constitutionalism that forbids the judicialization of politics. Respect for the constitutional roles of the other branches of government will strengthen the nation's confidence in upholding constitutional democracy.

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