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Farhaj Sikander Yar Khan*

Naghma Farid†

Muhammad Siraj Khan‡

Unpacking the Dynamics and Constitutional Limitations of Judicial Activism in Pakistan

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Abstract: *Article 184(3) has been applied in judicial activism situations. During the 1980s, its utilization exploded. The functions of each organ have been delineated by the Constitution; for a robust democracy, a strong judiciary is inevitable. Since the Lawyer movement, many changes have occurred. In Pakistan's federal court, the role of the chief justice is particularly unique. Itikhar Muhammad Chaudhry and Judge Mian Saqib Nisar have been instrumental in implementing Article 184(3) of the Constitution. Some significant cases have been resolved. It has increased the public's faith in the Supreme Court of Pakistan. In the aftermath of Saqib Nisar, nearly all chief justices followed a philosophy of judicial restraint. The paper examines constitutional characteristics of judicial activism in Pakistan; a qualitative study employing content analysis for secondary data and court decisions, acts of parliament, and personal statements for source data has been done.*

Key Words: Judicial Activism in Pakistan, Constitutionalism, Judicial Preeminence

Introduction

Background of the Study

In 712, Muslims got to India by taking over Sindh. They ruled as five separate groups until 1857 when the East India Company took over. This was before the fight for independence. Through careful planning, the company moved into this area. A Charter was written to set rules for the company, its employees, and other important things. This was the beginning of the company's work in the subcontinent. In 1615, King James I asked the emperor Jahangir to let the firm trade more, and Jahangir agreed. Local rules had to be followed when figuring out how to solve the problem. In 1661, Charles II gave the factory a second charter that let the president run things according to English law. This was the start of the company's legal system in the subcontinent. In 1678, another step was taken to make the High Court a place where civil and criminal disputes could be settled. Mr Biggs was named the first judge in 1687, and a second court was set up in Bombay

in 1718. But the wrongs done to the native Indians made the people angry.

In 1726, Madras, Bombay, and Calcutta were given the power to be consistent, but local laws still ruled in these areas. Nawab Siraj U Daula took Calcutta in 1756, but it was later taken back. Mir Jafar and his son took over as Nawab in this area, and by 1765, Shah Alam gave the area to the company for an annual fee of 26 lac rupees. In 1793, the laws of the subcontinent were written down. In the meantime, independent courts, such as courts for civil and criminal cases and circuit courts, were set up in this part of the world. As a result of the independence war, the subcontinent went through a lot of big changes. A law has been made by the British government. The Judicature Act of 1861 took its place. Bombay, Madras, and Kolkata all got their own high courts, but the Supreme Court went away. The Indian High Court Act of 1911 set up many courts on the Indian subcontinent. In 1937, federal courts were set up, and the constitution of 1956 set up the Supreme Court of Pakistan. India and Pakistan got their independence when the 1947 Act was passed.

* Ph. D Scholar, Department of Political Science, Qurtuba University of Science and Information Technology, Dera Ismail Khan, KP, Pakistan. Email: Farhajbaloch@gmail.com (Corresponding Author)

† Lecturer, Law College, Gomal University, Dera Ismail Khan, KP, Pakistan.

‡ Lecturer, Law College, Gomal University, Dera Ismail Khan, KP, Pakistan.

Section 18(3) of the act said that both countries had to follow the rules of British India until their own constitutions were written. All three of Pakistan's constitutions have adopted these rules in letter and spirit, and even Pakistan's most authoritarian governments have followed them.

The British government had different plans for the U.S. and for the Indian subcontinent. The latter method was more organized. They used both English and local laws, and locals were allowed to take part in government activities. This was not the case in the United States, where local laws were not mixed with Majesty's laws. India and Pakistan chose a written constitution when they got their independence. On the other hand, the United States chose to write down a short, strict constitution. India and Pakistan both have political systems that are a mix of ideas from their colonial rulers and ideas from other countries. For example, India and Pakistan both use the parliamentary system, which was brought to them by the British. The judicial systems of both subcontinental countries are similar to those of the United Kingdom and the United States. The hierarchical structures are similar to those of England, while the roles they play are very similar to those of the United States. For example, interpreting the Constitution, protecting basic rights, and so many other things are very similar to the US.

Methodology

Research is the methodical process of gathering facts to answer questions and provide explanations for problems.

Philosophical Foundations

In social science research, two distinct ideologies are employed. Positivism focuses on scientific knowledge; questionnaires and other senses are used to collect data. Before deciding on Research Questions and Goals, hypotheses are examined. The researchers have reflected post-positivist standards. The researcher has employed post-positivism as a research philosophy.

Research approach

Many ways have been utilized to conduct research in the social sciences; the researcher has employed the inductive approach to investigate the current topic.

Research Methods

In social science, numerous research methods are used, including Qualitative, Quantitative, and mixed

approaches. For this study, the researcher employed the Qualitative method.

Data collection

The steps of data collection involve defining the scope of the study, collecting data through unstructured or semi-structured observations and interviews, documents, and visual materials, and developing the technique for recording data. The scholar has conducted a study on the constitutional dimensions of judicial activism in Pakistan using both primary and secondary data.

Data Analysis

Data analysis is the process of making meaning of text and visual data. It entails preparing the data for analysis, executing various studies, and gaining a deeper and deeper comprehension of the data. With primary data, the scholar employs Thematic Analysis, and for secondary material, Content Analysis.

Limitations of the Study

The judicial system is a massive phenomenon. It is not possible for a researcher to consider all of the criteria and theories of the Judiciary because there are so many. Researchers have no control over the data provided by government and non-government entities.

Delimitation of the study

The Judiciary has always been an inherent element of the government, and it plays a crucial role in any democratic society; the scholar has restricted his research to the constitutional constraints of judicial activism in Pakistan.

Analysis

This section examines judicial activism through the lens of history. Important incidents of judicial activism have been evaluated in light of the 1935 act from constitutional criteria, the Constitution of 1956 from constitutional parameters, and the Constitutions of 1962 and 1973 from historical views.

Judicial activism from a historical perspective

This portion will analyze judicial activism in light of the 1935 Act.

1935 Act & Role of Judiciary

With this law, the British government put in place a strange structure. The idea came from the judiciary.

Section 204 of the Act of 1935 says that the federal court must settle disputes between the federation and the provinces and between the units. This is because the federal court has powers of original jurisdiction, appeal, and advice. It hears appeals from Supreme Court decisions that raise a legal question. It also gives advice on issues that are important to the whole country (Section 213, 1935 Act).

As a result of this act, some high courts that were already running were left where they were. The act had given a lot of thought to how judges are chosen, how much they get paid, how they move up the ranks, and other things that were important for improving the state's court system. Since they were hired by the crown, their pay had to come from India's national fund.

The law explained how to get rid of members of the judiciary who have done very bad things. Reports say that the Privy Council of England was very important in this process. The impeachment process had to be started and finished after the government agreed to it. At the district level, judges had to be approved by the Governor of the province. It was important for the Public Service Commission to list the qualifications of current employees (Art. 254, 255 & 256 of the 1935 act).

1947 Act & Superior Judiciary

This part shall analyze judicial activism in light of the 1947 Act.

Section 18 of the law made it clear that the system that was in place before India was split up would stay in place until a new constitution was made. (Part 8 of the Indian Independence Act of 1947) The provisional constitutional order of 1947 made the Act of 1947 the new constitutional document. The legal system, which was made by the British, was used in the independence laws (Governor General order, 3 of 1947). Pakistan kept the high court in Lahore, the chief court of Sindh, and the Commissioner System of Judiciary in Peshawar and Quetta. However, East Pakistan got a new high court in Dacca. The legislature passed a law that took away the Privy Council's power over legal matters in this part of the state and gave the federal court jurisdiction over appeals.

Constitution of 1956 and Federal Judiciary

This portion will take into account judicial activism in light of the 1956 constitution.

In 1956, Pakistan's first official constitution was put in place. It protected the independence of the Judiciary in a good way. The people who wrote the

Constitution made sure that there is enough paperwork for a fair judicial system. For the judiciary to be independent, it's important that the way people get hired, how they get promoted, and how secure their jobs are in good hands. Provisions have been put into the constitution to make sure that the ideals of justice are followed enough. The Supreme Court took on the form and power of the federal court, and lower courts had to follow its decisions. Even though the rest of the government had to help the judiciary with all kinds of writs, orders, decrees, and decisions, the judiciary could act on its own (Constitution of Islamic Republic of Pakistan 1956, Article 163).

A way to interpret the Constitution has been set up, similar to how the federal court was set up by the 1935 law. It can settle disputes between the federal government and the provinces, as well as between the provinces themselves. The provinces can ask the court to explain their legal rights and the constitution. It has a unique part of judicial review that is available in the United States and other federal states around the world. The Constitution keeps the writ jurisdiction rules from July 1954, which were supported in the second report of the constituent assembly. The Supreme Court has a chief justice and six other judges, and the number of judges can be increased or decreased at the suggestion of parliament (Constitution of 1956, Article 148).

Article 149(2) explains how the chief justice and other judges of the Supreme Court are chosen. The President of the Republic chooses the CJ and then consults with the CJ before choosing the judges. The way judges can be fired has been taken from India's constitution (1950). After looking into the situation, the parliament must send a report to the president of the Republic for a vote by at least two-thirds of the members present (Ibid, Article 151).

There are two high courts in Pakistan. One is in West Pakistan and the other is in East Wing. The president picks the chief justice and other members for each court. Article 166 of the US Constitution talks about how to make appointments. The document outlined the mechanism for the expulsion of provincial judges; the constitution outlined the method for the appointment of an acting chief justice and other justices as necessary. The method for transfer from one high court to another required the approval of both high court judges. Like the Supreme Court, provincial high courts can issue a wide range of writs to protect the basic rights of residents.

Leading Cases under the Constitution of 1956

Judge Abdul Rashid created the groundwork for a robust judiciary in Pakistan, but following his

retirement, Justice Mian Munir has issued contentious rulings that have shaken the judiciary and the populace of the state. In *Muhammad Ishaq Khan v. State* (PLD 1956 SC 256), the petitioner appealed his acquittal based on Article 159(c) of the Constitution. In this case, special permission to appeal was given, but in the end, the case was decided based on the facts, and the application was turned down. *State v. Muhammad Ishaq Khan*, PLD [1957](#) SC 256 The President of the Republic asked the following question about Article 162 of the constitution: "Is the Governor of a Province in Pakistan allowed by Article 83 or any other part of the constitution or any other principle of law to dissolve the Provincial Assembly of his province that is working under Article 225?" *Muhammad Ishaq Khan v. The State*, PLD 1956 SC 256).

In response to the question, the Supreme Court said that Article 225 is very clear and that the Governor does not have the power to break the law by dissolving the Provincial assembly. Article 233(2) explains how empty seats in the national parliament can be filled. The court had to decide if Article 5 and presidential order rule 5(2) are at odds with each other and if the Constitution has anything to say about this. The problem started when Mushtaq Ahmad Gurmani quit his seat in the constituent parliament, which was required by a presidential decree from 1956. The Secretary of the National Assembly set a date for an election to fill the vacancy, which was challenged in court. Article 141 of the constitution says that by-elections must be held within six months after a seat is declared vacant. In this case, the president has given a three-month extension through the Elimination of Difficulties Order (VII of 1956). The high court first threw out the writ case, but when the Supreme Court was asked about it, it said that neither rule 5 nor article 5 goes against the constitution and that it is legal for the contested seat to be filled (PLD 1957 SC 46). A petition challenging the federal court's decision to throw out the Amendment Act of 1954 was brought to the Supreme Court (PLD 1955 FC [240](#)). It was decided that the amendment did not go into effect when the Governor General signed it. It said that article 233-A is a valid piece of paper. In contrast, the Rehabilitation Commissioner Act was ruled unconstitutional; the Supreme Court upheld the High Court of West Pakistan's verdict and dismissed the case. It said, "Section 233-A of the Government of India Act of 1935 only gives a new way to get a right that already exists. This means that it may apply to the past." Even if section 233-A of the Government of India Act of 1935 had not been passed when the challenged decision was made, the High Court could have used its writ power to overturn the order. In this case, it was impossible to

take away any rights because none had been given by an illegal order (PLD 1958 SC 201).

Constitution of 1962 and the Supreme Court of Pakistan

This portion shall analyze judicial activism in light of the 1962 constitution.

General Ayub Khan established a constitutional panel for the drafting of the constitution after proclaiming martial law in the state. It was led by Chief Justice Shahab ud Din. He ensured that sufficient protections are included to protect the judiciary. The Cabinet Subcommittee was a strong group that changed the recommendations of the commission. It had a lot of strange things that weren't in the Constitution of 1956. Nonetheless, job stability and other factors have been emphasized. In terms of how judges could be removed, the agrarian constitution was very different from the modern constitution. The Supreme Judicial Council was set up with the power to get rid of judges who were very bad at their jobs. In the previous system, this was determined by a vote of at least two-thirds of the entire legislature. The council was composed of the chief justice, two other senior judges of the Supreme Court, and the chief justices of the high courts. The President of the Republic will implement the council's decision (Constitution of 1962, Article 128). (Constitution of [1962](#), Article 128).

From the first report of the constituent assembly, which was issued in 1954, the framers of the Constitution used this process. They thought that the Indian democracy had reached its full potential. The parliament can decide the destiny of judges, but the Pakistani parliament is not yet fully developed. Under the constitution from 1962, the courts did not have the power to explain how the constitution worked. It was a step in the direction of parliament's autonomy, as was the case in the United Kingdom, where the courts had no authority to declare legislation *extra vires*, unlike in the United States. Under this constitution, the courts had original jurisdiction in disputes between the federal government and the provinces and between the two provinces; they also had the authority to hear appeals against the decisions of high courts (Constitution of [1962](#), article 58).

In 1963, the first change to the Constitution acknowledged the importance of courts in the United States' system of judicial review. The recent change to the constitution is like section 223-A and article 170 of the constitution from 1956. Articles 49, 50, 52, 53, 54, 55, 92, 95, 96, 99, and 124 of the Constitution outline the composition and method of appointing judges. In

accordance with the requirements of the constitution, the president is authorized to issue directives whenever it is deemed appropriate. (Id., Art. 224(i) and 242) The Elimination of Difficulties Order was made by General Ayub Khan in 1962, but it was challenged in Pakistan's Supreme Court. It was deemed an extreme virus by the Dhaka High Court, and the Supreme Court supported this ruling (PLD, 1963, Dacca [669](#)).

During this time, Judge Cornelius was a key figure in the decisions that were made, and Article 98 was often used to help people. Because of the 1965 war, the Defense of Pakistan Ordinance of 1956 was implemented, and a number of leaders were arrested. When they went to high courts, their petitions were turned down. Nawazada Nasrullah Khan was released, and the case against Malik Ghulam Gillani was dismissed (PLD 1967 SC 373). The Supreme Court established fundamental detention guidelines. It asserted that it falls within the scope of judicial review as stipulated by the First Amendment. In this case, the government must show enough proof to keep the people in jail; if it can't, the people must be set free. At that time, Dhaka University students were being held by the syndicate. Upon being approached, the Dhaka High Court ruled in favour of the student. The Supreme Court maintained the same verdict with the comment that it violates the fundamental rights of the people as protected by the Constitution.

When a member of the National Assembly resigned from the Pakistan Muslim League, the speaker notified him of his resignation from the National Assembly. The high court ruled that the candidate had not lost the seat when the case was brought to its attention. Under Article III of the Constitution, the Supreme Court supported the high court's ruling. In addition, the candidate has not sent a resignation letter to the speaker, which is required for membership termination (PLD [1966](#) SC 105). The court had also claimed that the authorities must present sufficient activity against the detainees' names, or else the conduct will be deemed unlawful (PLD 1966 SC 286). Justice Cornelius had described the Mala fide act, which is frequently employed by the government for ulterior objectives. Supreme Court ruled that it constitutes an act without jurisdiction when the administration or legislature issues an order that is not within their domain (PLD [1965](#) SC 671).

Article 2 of the constitution of 1962 outlined the due process of law, and the court ruled that although it is unconstitutional, it might be deemed extra vires if it has retrospective effects via an ordinance (PLD 1966 SC 357). In a separate case, the Supreme Court ruled that it may issue a Sue Motto to a previously acquitted

defendant. If demonstrates that there is a gap in the record, then. This is done to fulfil the needs of justice, and the court also indicated how much time must pass before it may be issued (PLD [1966](#), SC 481). Anwar Khan versus the Crown (1958) Judge Cornelius made the following comments regarding the court system as it was in the 1960s: "A judge under the effect of bias would take one view of his wrongdoing... but on the other hand, he would take a quite different view and could even be encouraged in his wrongdoing... Hence, the application of an absolute rule of nullity is intended to encourage and protect judges' perfect impartiality and to dissuade all those who may seek to influence their decision (Anwar Khan .V. The Crown, 1958).

The Supreme Judiciary & 1973 Constitution

In the context of the Constitution of 1973, this section looks at judicial activism. Since the 1980s, there have been a lot more events that people care about, and all of them will be looked at.

After the state was broken up, a new constitution for Pakistan's new federation was written. The provisions for the judiciary in the new draught were the same as those in the constitution from 1956. On April 10, 1973, the new constitution was written, and on August 14, 1973, it was signed into law. The 1973 Constitution says that the Superior Courts have the following power: "No court shall have any power other than that which is or may be given to it by the Constitution or by or under any law" (Art. 175(2), 1973 Constitution). It was a clear demonstration that courts can't decide different cases in ways that go against the Constitution. Article 175 (3) says, "Within three years of the start date, the judiciary shall be gradually separated from the executive."

It was an unusual part of the constitution that the executive branch did not interfere with the judicial branch of the government. The legislature added the Fifth Amendment to the Constitution, which said that the government must make sure that the judiciary doesn't interfere for three years. This gave the judiciary a clear way to help people in Pakistan get access to justice. The Sindh Bar Association sent a petition to the Karachi High Court under Article 175 (3) of the constitution, which says that the courts must be independent (PLD [1989](#), Karachi 404).

With a 5-1 vote, the Sindh High Court made it clear that article 175 (3) was very clear and that the government hadn't really done anything since the 5th amendment to the constitution in 1976 to make sure the independence of the judiciary.

The government went to the Supreme Court to try to change what the high court had said. But its petition was turned down, and the government was told to carry out the court's decision. As a result of the previous judgement, the judicial branch was split from the executive branch at the district level in 1996. According to the history of the courts in Pakistan since the country broke up, a number of changes were made in the 1970s to limit the power of the courts, which has slowed progress in this area.

Article 2A of the Constitution talks about the independence of the courts. Several things about the organisation, powers, and jurisdictions of the Supreme Court were clearly stated in the document. The responsibility of the court in the maintenance and protection of the Constitution is outlined in Articles 178 and 194. Articles 177 and 193 discuss the salaries and expenditures of judges, as well as the use of the consolidated fund for the judiciary (Art.81, constitution of 1973). (Art.81, the constitution of [1973](#)). Article 209 has considered the procedure for removing judges; a council has been formed to handle the subject. It is made up of senior Supreme Court and High Court justices, and transparency has been tested in this institution.

The Sharaf Faridi case, which happened in 1994, made it possible for the courts to be financially independent. It can now take the money and change its mind without the Finance Ministry's permission (PLD 1994 SC 105). The decision explains how the judicial branch is different from the executive branch. When the petition to review the decision was started, it told the government that the decision would have to be carried out by March 1996 at the latest. The Federation (PLD [1996](#) SC 324) and *Asad Ali v. The Federation* (PLD 1996 SC 324). The Federation (PLD 1998 SC 33) gave a more detailed explanation of how judges are chosen, but the 18th and 19th amendments to the 1973 constitution changed the way this is done. Judges must now be recommended by a judicial committee made up of the chief justice, four senior Supreme Court judges, a retired judge who will be the chairman's choice for two years, the Attorney General, one member of the Bar Council, and the federal law minister. They will give their approval to the name, which will then be given to the committee in parliament. In two weeks, the process will be finished, and the Prime Minister will send the final names to the President of Pakistan for more consideration (Art. 175-A, constitution of 1973). The constitution also talks about how the Federal Shariat Court is put together and who gets to be on it. The Chief Justice and other senior judges will be on the judicial commission, and

the process for high courts has been spelt out. The Supreme Court of Pakistan is the highest court in Pakistan, with original, appellate, and advisory powers. It makes decisions about cases, protects people's rights, explains what the Constitution says, and protects people's freedom. Unless it's a non-binding opinion, the rulings are final and must be followed (Art. 189). Article 177 tells us how big the court is and who is on it. It will be made up of a chief justice and other judges chosen by the president based on the recommendations of the judicial commission and parliamentary committee, with the approval of the prime minister. Article 184 (3) set the court's original jurisdiction, and Article 184 (3) laid out the most important rights in the constitution. Article 185 set the court's appellate jurisdiction, and Article 186 explained the supreme court's advisory role.

The judiciary has always been the backbone of every country. The Constitution spells out what each part of the government can and can't do. A strong judiciary supports democratic progress, which has been linked to national security, economic growth, good government, and a strong social sector. The administration and legislature must accept the court's decisions if they are in line with the law. "Liberal constitutionalism is what democracy is built on," Dr Hasan Askar Rizvi said. It needs a strong constitution and set of laws that protect civil and political rights and treat all citizens equally, no matter their religion, caste, ethnicity, language, or where they live. An independent judiciary makes sure that the Rule of Law is available to everyone. Civil and political rights must be safeguarded not only against the excesses of governmental institutions and bureaucrats but also against powerful interest groups that resort to violence or a specific community or region" (Rizvi, Express Tribune, n, d.) (Rizvi, Express Tribune, n, d.).

For good governance, there must be a true rule of law and selfless accountability, which must be enforced by the judiciary. Both traditional courts and accountability courts are linked. Similarly, courts ensure fundamental rights, social advancement, and constitutional interpretation for national development. Life, freedom, and property are all protected for every citizen. For a good economic foundation to be put in place, there needs to be an effective court system that includes both public and private firms. These contracts between parties are enforced by national courts.

The Constitution of 1973 set up a hierarchy for the courts. The Supreme Court is the highest court, and it has branches in all four provinces, as well as a branch in Islamabad. In Pakistan, all kinds of cases are heard in district courts. The country's legal system is similar to

what was set up in the 1935 statute and the 1947 act, both of which have been changed since they were first written. Judge Mian Muneer set a bad example for the state by embracing the idea of necessity. Decades later, in 1972, the same doctrine was used to rule that General Yahya Khan's martial law from 1969 was illegal. This could not have been good for the political system, since General Zia ul Haq's military takeover was legalised by the courts using the doctrine of necessity a few years later. In the 1990s and again in 2002, the doctrine was brought back. After 2007, the federal judiciary stood up to the military dictator and declared a state of emergency, which went against the spirit of the constitution. The military dictator took charge and fired everyone on the bench who had a say in the decision. New oaths were given out under the Interim constitutional order. The military dictator quit because the law movement started to make things like they were before 2007. This project will look at how the Supreme Court did in terms of judicial activism in general, especially after 2007, when Iftikhar Muhammad Chaudhry took an active role in making decisions. After him, Mian Saqib Nisar was an activist Chief Justice in Pakistan's judicial history. Although not all Chief Justices since 2007 have been activists, some have advocated for judicial restraint.

Part VII of the 1973 Constitution detailed the structure, methods, and functions of the Judiciary; the 18th and 19th Amendments modified the appointment mechanism for judges. Article 2 (A) talks about how the three parts of the government work separately. Articles 177 and 193 talks about qualifications and nominations, Article 205 talks about judges' pay and benefits, and Article 209 talks about how judges can be removed from office. Article 176 talks about the Supreme Court, which is the State's highest court. It is made up of the chief justice and a number of other judges. Article 189 explained the court's powers, such as its ability to make original, appellate, and advisory decisions. It also helped settle disagreements between the federal government and the provinces (Constitution of 1973, Art.184).

The Federal Shariat Court was set up in 1980 by a presidential order that became part of the 1973 constitution. In 1980, a change was made to the constitution, which became Chapter 3A. The composition of the court is covered in Article 203 D, and the functions of the court are discussed in Article 203 DD; the relationship between the high courts and the FSC is discussed in Article 203 F of the 1973 constitution.

Several changes have been made since 2000. In the case of *Government of Sindh v. Sharaf Faridi* PLD

1994 SC 105, the court said that the chief justice is free to use managerial funds without the approval of the Ministry of finance. Article 175 of the constitution says that the court has financial independence (3). It also says that "within 14 years, the judiciary will be gradually separated from the executive" (Cons. of 1973, Art. 175(3)).

In *Al-Jihad Trust*, the court looked into the role of courts in judicial autonomy, which is important for national growth (PLD 1996 SC 324). Article 184(3) of the Constitution, which said that it was a matter of public importance, was used to decide the case. It dealt with the judicial appointment method. Articles 177 and 193 of the Constitution say that people must be consulted before judges are chosen. It says this: "a living document that was made to meet the needs of all times to come. It is similar to a live tree in that it grows and blossoms with the passage of time to keep up with the expansion of the country and its people. So, when figuring out how to interpret a constitutional provision, the approach should be dynamic, progressive, and aimed at dealing with the real world in a way that works. The definition can't be too narrow or too technical. Still, the Court should try to give broad meaning to the law so that it can meet the needs of a society that is always changing. The general words can't be understood on their own, but only in the context of how they are used. In other words, their meaning and colour come from how they are used" (PLD 1996 SC 324).

In the 2000 case *Syed Zafar Ali Shah v. Chief Executive*, it was decided that "Since the Parliament can't change the most important parts of the Constitution, the Chief Executive of the measure can't be given more power to change the Constitution than the Parliament can. Obviously, the Chief Executive can't have unrestricted power to change the Constitution, not even during the transitional period and not just because it's necessary for the state. The Pakistani Constitution is the highest law of the state, and even the Parliament can't change its most important parts. These include the independence of the courts, federalism, parliamentary government, and Islamic principles. As a result, the Supreme Court's rules make it very hard for the President to change the Constitution" (Syed Zafar Ali Shah, 2000). The Emergency Proclamation and the Provisional Constitutional Order were challenged by the Supreme Court of Pakistan, but the court ruled that they should stay in place. Last, on March 15, 2009, it got the courts back. *Sindh High Court Bar Association v. Federation of Pakistan* was the case (PLD 2010 SC 879).

The 18th change to the 1973 constitution was proposed by the Pakistan People's Party government (2010). It changed how judges are chosen, and it added Article 175A to the Constitution. The above amendment set up a judicial commission. The list must be given to the legislative committee, which recommends the names for an appointment if a majority of 34 members agree. Before, this was done by the head of the Supreme Court. When the 18th Amendment was argued before Pakistan's Supreme Court, the dispute between the judiciary and the executive was decided to be over for good. The 19th Amendment was put forward in parliament to settle the dispute between the judiciary and the executive. On January 1, 2010, President Asif Ali Zardari signed it. The number of people on the judicial commission and legislative committee was increased, and the chief justice was given a key role in choosing new judges for higher courts. When the judicial commission and the parliamentary committee had different ideas about the recommendations, the administration told the court, "The Parliamentary Committee represented the position of the Parliament, so it had priority over all other bodies." He also said, "Its decision could not be reviewed by a court because Parliament was the highest body that made laws, and no court could question its decision." The court decided that the judicial commission is the legal body that should suggest judges for Pakistan's higher courts. Mr Khawaja and Mr Shahid Qureshi, both honourable justices on the bench, focused on following Article 175 A of the constitution. Also, the court said that "the process of making judicial nominations was closely tied to the independence of the judiciary," which was a matter of public interest, so the petitioner had "rightly claimed the jurisdiction of this Court." (Parliamentary Committee, 2010).

Conclusion

Since Mr Arthur Schlesinger first used the term in the January 1947 issue of "Fortune Magazine," many courts around the world, including Pakistan, have used it often. Before judicial activism is finished in Pakistan, the

idea needs to be looked into all over the world. In the first few decades, the Supreme Court of the United States decided constitutional questions, but the dicta have changed over time. After 2017, it decided ideological cases by a score of 5-4. Some anti-trust laws were ruled unconstitutional, and powerful chief justices like Robert, Rehnquist, and Warren were key players in cases of judicial activism in the United States. The Indian Supreme Court ruled on a number of cases related to health, education, the environment, child labour, domestic abuse, corruption, and socioeconomic issues. This increased public trust in the federal judiciary. Articles 21, 13, and 32 of India's constitution were successfully used by the courts, which strengthened India's commitment to the constitution. After getting their independence under Section 18(3) of the 1947 Act, both subcontinental republics had to follow British laws until their own constitutions were written. Ironically, the British government set up different systems for each of its colonies around the world. In the United States, for example, it set up a truly democratic system because of the way the country was set up, but in India, it mixed English laws with local laws. An in-depth look shows that the federal judiciary in Pakistan has used both American and British laws. The hierarchy of courts is similar to that of England, and the interpretation of many laws, constitutions, and basic rights is similar to that of the United States.

Recommendations

Article 2 (A) of the 1973 constitution explained judicial independence; articles 178 and 194 explain where courts can save the constitution. Articles 177 and 193 focus on the security of judges and the salary mechanism; if the judges breach the rules and regulations, they can be dealt with under Article 209 of the constitution, which establishes a method for dismissal from service. Since the 18th and 19th Amendments were passed in 2010, a lot has changed. Article 175 has been changed to show that the roles of the parliamentary committee and the judicial commission are important.

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