

Judicial Activism and Comparative Analysis of Suo Motu Notices Taken by Chief Justice Saqib Nisar and Iftikhar Chaudhry

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Abstract

This research study explores the concept of judicial activism and conducts a comparative analysis of the Suo moto notices taken by Chief Justice Saqib Nisar and Iftikhar Muhammad Chaudhry, two prominent Chief Justices of the Supreme Court of Pakistan. Judicial activism refers to the proactive role of the judiciary in addressing societal issues and promoting social justice, often through the use of suo moto notices, where the court takes cognizance of a matter on its own initiative. The comparative analysis has focused on the similarities and differences in the approach, scope, and impact of the suo moto notices taken by Chief Justice Saqib Nisar and Iftikhar Muhammad Chaudhry during their respective tenures. This research study has examined the key areas of intervention, such as human rights, governance, public welfare, and accountability. This study has utilized a qualitative research methodology, including a comprehensive review of relevant literature, case analysis, and comparative examination of the judicial decisions and outcomes. This research study found that excessive and miss use of Suo moto power has badly affected political system of the country, This research study recommends that judiciary should play a balance role in order to have in effective federal parliamentary democratic system in the country

Keywords: Democracy, Suo moto power, political system, judiciary, and Supreme Court

Introduction

Before we examine judicial activism in Pakistan, it is important to understand that the separation of powers between the executive, legislative, and judicial branches of government is the corner stone of any enduring democracy. The emancipation of the state is at grave risk, according to French Montesquieu, because the blending of many states bodies' unique function could "expose the liberty of the citizens to arbitrary control" (Vile, 1998, p. 99).

Therefore, it is essential to establish unique limitations for the authority exercised by all state organs in order to protect individuals from unchecked exercise of power by one organ. Suo Motu describes the judiciary's ability to manage matters of public importance in Pakistan independently without formal requests or appeals from any party. It comes from a Latin word meaning "by one's own will". Article 184 of the constitution of the Islamic republic of Pakistan gives the supreme court of Pakistan initial jurisdiction and power to hear cases, often called public interest cases, from the outset. The issue of "judicial activity" is becoming more and more relevant to us in Pakistan. Especially after the judicial "revolution" that culminated in the return of Pakistan's Chief Justice. The origins of legal activity date back to early 19th century. The term "judicial activist"

has its origins in 1950s American political and legal discourse, where Arthur Schlesinger Jr. wrote in an article entitled "The Supreme Court": In 1947, he introduced nine judges as "judicial activists" or "defenders of self-restraint." Justice is pillar of democracy like that it is popular of government as government has three pillars, such as Legislature, Executive and Judiciary. Judiciary is the system of courts that decides cases/disputes and interprets, defends and applies the law in litigation. The branch of the central authority of a state that deals with the administration of justice. Comparing Executive and Legislative branches.

Judicial Activism and Judicial restraint

The advent of a new phenomenon known as "judicial activism" has, however, negated this influence in recent years. Although there is disagreement among the legal community on the precise definition of the term, George W. Bush's definition, which is now widely recognized, describes it as judges' propensity "to legislate from the bench" (Kmiec, 2004). As a result, judicial activism is defined as the judiciary's seizure of legislative and administrative powers for the purpose of enlarging its own authority. The Lawyer's Movement of 2007 in Pakistan, which was initiated with the intention of reinstating the then Chief Justice of Pakistan (CJP), Iftikhar Chaudhry, to office, is where judicial activism in Pakistan first emerged.

Background of judiciary in Pakistan

The historical background of judicial system of Pakistan is spread over a vast period of centuries. After the war of independence in 1857 High courts were set up under the British rule. Appeals against the judgments of these high courts were heard by of the judicial committee of the Privy Council. Its procedure was quite complex in view of such difficulties. It was proposed in the government of India Act 1935 that a federal court established in India which was later on materialized in 1937. After the emergence of Pakistan, the government of India Act 1935 was in forced with certain necessary amendments to run the affairs of the government at that time judicial commissioners were functioning in the Punjab High Court, Sindh Chief Court, Balochistan and the present Khyber Pakhtoon Khwa. In 1949 the federal court of Pakistan was set up as the country's apex court. At the time Quaid-E-Azam took over the charge as governor general of Pakistan. The Viceroy Lord Mountbatten proposed the name of chief justice Leonard Stoneas of Bombay High Court as chief justice of Pakistan which Jinnah rejected. Soon after, the chief justice of Lahore High Court Sir Abdur Rashid was appointed as first chief justice of Pakistan. Later on, improved the judicial system and effective administration of justice, reforms were introduced and separate high courts were set up in the provinces in the constitution of 1956, 1962 and 1973. In 1980 with a view to harmonized existing laws in accordance with the Holy Quran and Sunnah, the federal Shariat court was established. Moreover, Islamabad High Court was set up in the federal capital in 2010.

Importance and impacts of Judiciary in Democracy

Democracy is government; of people by people and for the people. "Abrham Linkon" democracy has certain elements which make it the most preferred form of current government. These elements include;

- Participation
- Accountability
- Conflict resolution
- Concern for equality and justice

Justice is pillar of democracy like that is popular pillar form of government as government has three pillars, these includes below;

- Legislature
- Executive
- Judiciary

Our main concern is the importance and impacts of judiciary in democracy. It has enormous and grieves impact on democracy. In state, if there is not independent judiciary, democracy should be not prevailed there. Independence of judiciary is necessary for democracy. Independence of judiciary means free and fair, secure and financially stable judges. The high authorities will take decision independently due to this democracy. An independent judicial system is the hallmark of a democratic state, there will be no discrimination among people, their class distinction or what positions they hold in the society. It remains uniforms for all. Freedom to the judiciary is what guarantees honest judgment and rule making and complete separation of power.

Judiciary historical role and impacts

Supreme Court popular appeals were primarily public denunciations of the government Seen as corrupt, incompetent, and unable to meet basic needs Pakistani people. With the absence of an effectively functioning government, people realized that: The Supreme Court, especially the Chief Justice, is their beacon of hope of the Supreme Court has accepted this new role. Immediately after returning the Chief Justice said in May 2009. The 170 million people of this country have pinned hopes on the judges and lawyers and they have to prove their mettle in all fairness and with faithfulness so that people get rights guaranteed to them under conventions and statutes. The Supreme Court's claim to independence in 2006 was an important step a break from the court's past and the beginning of a new chapter for the court History of the Supreme Court of Pakistan. Before 2006 there was judicial review it is seldom used to challenge the executive branch or parliament. The Supreme Court For the most part, they continue to respect executive branch decisions, this will lead to widespread impunity at all levels of government and throughout the state's infrastructure. Led by chief Notably, Justice Chowdhury has been Chief Justice since being reinstated in 2009. Courts may distance themselves from other state authorities a wise step to establish the rule of law. Few would dispute the Supreme Court's success in fighting corruption, Concerns about populism, arbitrariness and lack of transparency in the conduct of a court, especially in the exercise of its original jurisdiction.

The Lawyers movement and the 2007 state of Emergency

However, the success did not last long. General Musharraf maintained his power and on November 3, 2007, it issued a second Interim Constitutional Regulation. (PCO). State of emergency declared, 1973 constitution suspended and again a rule without judicial oversight was introduced. General Musharraf. He again asked the Supreme Court and Supreme Court Justices to be sworn. A new oath to keep the (second) PCO. The judge who refused was dismissed. General Musharraf responded by dismissing and appointing Chief Justice Chowdhury. He under arrested in his house. About 63 other Supreme Court Justices and High Court Justices followed suit. Refused to take oath following Supreme Court decision (second) Interim Constitutional Order. All the judges were dismissed, and many of them were also dismissed was also placed under house arrest. In the days that followed, security forces cracked down on demonstrators. From On November 10, 2007, he had 5,400 arrests. Journalist arrested and the news channel was closed for several weeks. There are also suspicions about security forces punished many high-profile lawyers through torture and other means abuse.

The transition to democracy and the return of the Chief Justice

The battle for judicial independence did not end in February 2008 election. The newly established government will be led by the Pakistani people Zardari's Party (PPP) Fulfilled Promise Reinstated the judge. This was thought to be part of the reason for PPP's reluctance Chief Justice Chowdhury fears overturning immunity deal defended ex-President Zardari and other prominent politicians from corruption. It will last for over a year and lead to political rivalries between former presidents. Zardari and Pakistani opposition leader Nawaz Sharif Muslim League in front of Chief Justice Chowdhury and other expelled Supreme Court justices will be reinstated March 17, 2009. When Chief Justice Chaudray was finally reinstated, he was enthusiastically welcomed admiration and extraordinary expectations. The crowd shouted, "Secretary Terai Jan Nissar, Beshmar Beshmar" ("Innumerable people are willing to give their lives for you. (Chairman) His expectations of the Supreme Court in particular were high. Chief Justice Chaudray will resolve many crises facing Pakistan.

Suo Motu notices of Saqib Nisar and Iftikhar Chaudray

The tenure of Justices Iftikhar Chaudray and Saqib Nisar as Chief Justices of the Supreme Court of Pakistan will be remembered for the massive exercise of Sua Motu power. Judge Iftikhar Chaudray has filed 70 suit cases affecting almost every aspect of life in the country, setting a new record high. At the time of his retirement, critics called his tenure "the reign of Sua Motus". His successor, Judge Saqib Nisar, eventually broke his record by receiving over 100 sumotu warrants in both major and minor cases. This is what lawyers describe as a form of legal action that, in some cases, ignores constitutional provisions and undermines government injunctions.

Former Chief Justice Saqib Nisar; Judge Iftikhar began targeting government and military installations after hearing the famous 'missing persons' case and investigating the deteriorating security situation in Karachi. Another case is the implementation of municipal elections. Despite public support, his actions were harsh. Towards the end of his term, however, relations with public opinion slowly deteriorated. No one could say for certain that the incoming Chief Justice would change that scenario.

Former Chief Justice Iftikhar Chaudray was thought to be in favor of the Sharif family, but Sua Motu has turned his interests to Hamza Shebaz Sharif, who was accused of building a bungalow in Dunga Gali. Noted changes to the Murray gas pipeline plan that are said to bring about. The change cost him Rs 750 crore and destroyed thousands of trees. He also started the Sua Motu action against the overextension of the Lahore Canal Road, where hundreds of trees have been cut down to support the elite.

Research Questions

- What are the impacts of judicial activism on democracy?
- How the Sua Motu power has been misused in the tenure of chief justice Saqib Nisar and Iftikhar Chaudhry?

Research Objectives:

- To find out the impacts of Sua Motu notice on democracy.
- To analyze the exercise of Sua Motu power in the tenure of chief justice Saqib Nisar and Iftikhar Chaudhry.

Research Significance

The research plans to research the explanation of Sua Muto notices it used the peruses to appreciate distinctive difficulty and torments identified to Give Justice to the people. . Finding a balance

between judicial intervention and the democratic process is crucial for a healthy and effective local democracy.

Statement of the Problem

This research paper aims to examine and compare the approach and effectiveness of *Suo Motu* notices taken by two prominent figures, Saqib Nisar and Iftikhar Chaudhry. By analysing their respective personas and examining the outcomes of their *Suo Motu* interventions, this study seeks to shed light on the similarities and differences between their approaches and assess their impact on the legal landscape.

Literature Review

A more general phrase, judicial activism, is used to describe the judicial review process, which is a constitutional right granted to the superior courts to decide whether a legislation, statute, administrative decision, constitutional provision, or amendment is constitutional. As a powerful legal tool in the hands of the judiciary to nullify any extra-constitutional acts and policies of the administrative, executive, and legislative authorities, the power of judicial review is exercised by superior courts all over the world. To check the arbitrary nature of various state/government actions and policies, the Supreme Court of Pakistan likewise uses this power, albeit more frequently these days. Although not new in Pakistan, this practice dates back to the infamous *Maulvi Tameezuddin Case* in 1953 and continues to the present day in Panama. (Shamim Feb 19,2018).

Political circumstances of many nations with varying political systems and regime types are significantly shaped by judicial activism. There are different arguments in academic writing and discussions for and against judicial activism. This study examines a variety of data sources to investigate judicial activism cases in Pakistan from 2005 to 2013. In Pakistan, judicial activism appeared to be sporadic and selective. In cases involving representative MPs who were already bound in many ways by other unconstitutional powers, the Supreme Court of Pakistan (SCP) engaged in unrestrained activity. Without a doubt, it examined many executive misconducts in the areas of governance and public policy, which improved its reputation and credibility. (Farid 2021) Iftikhar Muhammad Chaudhry the former chief justice of Pakistan served in the capacity from 2005 to 2013 during which time the supreme court of Pakistan witnessed a tremendous transition in the terms of its institutional and constitutional standing. During Iftikhar Muhammad Chaudhry's time as a former chief justice of Pakistan (2005-2013) the supreme court of Pakistan witnessed a notable transition in the terms of its institutional role and constitutional standing. Therefore, rather than addressing the question of whether the Chaudhry court engaged in judicial politics at all, this paper concentrates on the nature and effects of such politics. In doing so, it connects with the literature on the global "judicialization of politics" and examines the underlying factors that allowed the court to use a greater variety of judicial powers. (Cheema 2016)

Judicial activism is a new school of thought that refers to the judiciary's active role in the state institutional matters. The administration of justice and the development of the rule of law in a nation can be both successfully and accomplished by the judicial department. In Pakistan, the judiciary, which is the third pillar of the state and has widespread popular trust, actively participates in issues pertaining to the fundamental rights and the welfare of public. The idea of judicial independence has strengthened the states, judicial branch over the past ten years and as a result Pakistan's superior courts are now more frequently used the review power while serving as chief justice and he publicly encouraged the idea of judicial activism by referring to it as a mandatory duty of supreme court judge. This study will shed light on the notion of judicial activism in Pakistan and analyses Mr. Saqib Nisar's time as Pakistan's chief justice. (Ahmad 2020)

Methodology

This study has been carried out under explanatory Social Sciences approach where reality to be exposed from the view point of the respondents. Consequently, qualitative approach will adopt to undertake the study. Therefore we conducted interviews for our research study.

Nature of the study

This research is qualitative in nature having no statistical data. The interviews have been taken from different experts. It includes open ended questions on the basis of which we recorded their response thus getting findings and conclusion.

Sample size and technique

Basically, this research encompasses of the Judicial Activism and comparative analysis of Suo Motu notices taken by the most two main dominant figure in the history of Pakistan Chief Justices Saqib Nisar and Iftikhar Chaudry.

Data collection

Secondary sources were used for data collection in the respective area. Secondary data were collected from government publications, historical statistical documents, magazines, books, journal and others. It may be either published data or unpublished.

Data analysis

Qualitative data analysis has been used because it is often subjective, rich, and consists of in-depth information normally presented in the form of words. Analyzing qualitative data entails reading a large amount of transcript looking for similarities or differences, and subsequently finding themes and developing categories.

Discussion

Article 184(3)

For the protection of human rights many liberal democracies have ceded the power to the judiciary for the enforcement of human rights. Supreme Court can declare the law is null and void when it against the basic structure of political system or Islamic laws. This power under the article 184(3) can be exercise only when there is the matter of public importance involved in the enforcement of fundamental rights, it can't be use for personal interests. The jurisdictions under article 184(3) is conditioned by three prerequisites; when there is the question of fundamental rights; these questions involve enforcement of fundamental rights; and fundamental rights are conferred by chapter 1, part 2 of the constitution. When the rights of citizens are violated, and they are not in position to get access to justice then Supreme Court can take Suo Motu notice against it. (By Ummar Ziauddin)

Historical Perspective:

Hindu Period:

The judicial system during the Hindu period from 1500 BC to 1500 AD in ancient India was characterized by a well-defined administration of justice. The King held the ultimate authority and acted as both the executive and judicial figure, presiding over the King's Court in the capital. A Court of Chief Justice served as the second-highest court, with appeals directed to the King's Court. At the village level, justice was dispensed through tribunals led by the village Headman, who acted as a Judge/Magistrate. These courts followed a procedural framework based on customary or moral law, focusing on determining the truth and administering punishment. Appeals could be made to higher courts, ultimately leading to the King's Court. Overall, the ancient Indian judicial system

exhibited similarities to contemporary systems, indicating a continuation of past practices and procedures.

Muslim Period:

The Muslim period in the Indian subcontinent encompassed two distinct phases, with the early rule of Muslim leaders followed by the Mughal period. Islamic law was implemented for civil and criminal disputes, but customary practices and indigenous institutions also coexisted. The judicial system comprised a hierarchy of courts, with the King's Court at the pinnacle, and judges appointed based on knowledge and integrity. The Mughals further refined the system, establishing courts at various levels and retaining the Hindu system of Panchayats for local dispute resolution. Courts had overlapping jurisdictions, and the choice of court for filing a suit was not strictly based on territorial limits. The emperor held the authority to appoint judges, who were expected to remain impartial, and corruption was taken seriously. Civil cases followed a procedure similar to the present judicial process, with evidence presented, investigations conducted, and judgments executed.

British Period:

The East India Company, authorized by the Charter of 1623, established its own courts to handle cases involving its English employees and residents in its settlements. As the Company gained territorial power, additional courts were established, including the Supreme Courts and Recorders Courts, applying English laws in the Presidency Towns of Bombay, Calcutta, and Madras. Separate courts called Sadar Dewani Adalat and Sadar Nizamat Adalat governed the native inhabitants in the Mufussil under local laws. The High Court of Judicature Act in 1861 abolished the Supreme Courts and Sadar Adalats, replacing them with High Courts of Judicature in each Presidency Town. These High Courts had jurisdiction over civil and criminal cases, overseeing the functioning of Subordinate Courts. The enactment of the Government of India Act in 1935 retained the existing High Courts and established a Federal Court with original, appellate, and advisory jurisdiction. The judicial system underwent further developments and expansions, with the establishment of additional High Courts in various regions.

Post-Independence Evolution:

After India gained independence, the provisional Constitution retained the Government of India Act 1935, which meant that the legal and judicial system established during the British rule continued to operate with necessary adaptations and modifications to suit the new Republic's requirements. This ensured that there was no vacuum or breakdown in the legal system, and it continued functioning uninterrupted. The existing judicial structure, including the Lahore High Court, Sindh Chief Court, and the courts of Judicial Commissioner in NWFP and Balochistan, remained in operation. Additionally, a new High Court was established in Dacca, and a Federal Court for Pakistan was also set up. In 1980, new courts called the Federal Shariat Court were established in Pakistan. These courts were given the authority to determine, either Suo moto or upon petition by a citizen or the Federal or provincial government, whether a certain provision of law is in accordance with the teachings of Islam. Pakistan operates as a Federal Republic, granting significant powers to the provinces, including the administration of justice. The High Court serves as the primary court within each province, exercising original jurisdiction in issuing writs for the enforcement of Fundamental Rights and appellate jurisdiction to review orders and judgments made by subordinate and special courts. The Subordinate Courts operate under the administrative control of the respective High Courts, and their funding is provided by the Provincial Government.

Judicial System of Pakistan

Superior Judiciary or Supreme Court

Its rulings are binding on all other courts. The Court is composed of a Chief Justice and other judges who are appointed by the President following the procedures outlined in the Constitution. The number of judges in the Court is fixed at 17, including the Chief Justice and 16 other judges. The Court can also appoint acting judges or ad hoc judges if needed. To be eligible for a position as a judge, a person must have either five years of experience as a judge in a High Court or fifteen years of experience as a lawyer in a High Court. It also has the authority to enforce Fundamental Rights, along with the High Courts, when a matter of 'public importance' is involved. The Court acts as an appellate body in civil and criminal cases and provides advisory opinions to the government on questions of law. To ensure a speedy and affordable resolution for infringements of Fundamental Rights, a Human Rights Cell has been established under the Chief Justice's supervision. This Cell efficiently processes complaints and grievances from the general public, seeking redress through reports, hearings, and decisions. Through this mechanism, the Court provides relief to marginalized individuals, paving the way for statutory reforms in matters of public significance. The Supreme Court has the power to appoint its own staff, determine their terms of service, and frame its own rules of procedure, facilitating the smooth functioning of the judiciary. In contrast to other countries like the United States and the United Kingdom, where fewer cases reach the highest court, the Supreme Court of Pakistan faces a substantial overload of cases that exceeds its capacity. The Court's jurisdiction, both in terms of original and appellate jurisdiction, is quite extensive. In addition to handling appeals from the High Courts in civil and criminal matters, the Supreme Court also reviews judgments made by the Federal Shariat Court, Federal/provincial service tribunals, and certain special courts. Moreover, the Court exercises its original jurisdiction in addressing cases related to the violation of Fundamental Rights. To ensure timely resolution of cases and make it convenient for the public, the Court operates through benches at the main location and four branch registries in provincial cities. These benches work throughout the year. While this system benefits the public by bringing justice closer to them, it can affect the quality of judgments and prevent the Court from benefiting from collective wisdom, which is crucial for addressing important legal and constitutional matters. Therefore, it may be necessary to reconsider the bench system, but this is currently difficult due to the high workload and increasing number of cases filed. One solution could be to transfer the appellate jurisdiction in service-related matters to the High Courts, relieving some burden from the apex Court. The High Courts, which have recently been strengthened and are fully operational, could handle appeals arising from judgments of provincial service tribunals. Appeals against the decisions of the Federal Service Tribunal could be filed at the Islamabad High Court, although it may require an increase in its capacity to deal with the substantial number of pending cases.

High Court:

Each province in Pakistan has its own High Court, and there is an additional High Court for the Islamabad Capital Territory. Each High Court is composed of a Chief Justice and other judges. The Lahore High Court has 60 judges, the Sindh High Court has 40, the Peshawar High Court has 20, the Balochistan High Court has 11, and the Islamabad High Court has 7. The qualifications for a judge include either 10 years of experience as an advocate in a High Court, or 10 years of service as a civil servant, which includes 3 years as a District Judge or 10 years in a judicial office. In the past, the process for appointing judges to the High Courts involved the Chief Justice of the respective High Court preparing a list of candidates. This list was then submitted to the President through the Governor of the province and the Chief Justice of Pakistan. The President would make the final selection from the provided list. However, in the case of *Al-Jehad Trust v Federation*, the

Supreme Court ruled that the President must follow the recommendations of the Chief Justice of Pakistan and the Chief Justice of the High Court, unless there are sound reasons to deviate from their suggestions. The court also ruled that the most senior judge would have a legitimate expectation of being appointed as the Chief Justice.

The process of appointing judges in the High Courts has undergone changes following the 18th and 19th amendments. The appointment of High Court judges now involves the Judicial Commission and Parliamentary Committee. The Judicial Commission consists of the Chief Justice of Pakistan as the Chairman, along with the four most senior judges of the Supreme Court, one former Chief Justice or retired Supreme Court judge appointed by the Chairman in consultation with the four-member judges of the Supreme Court, the Attorney General for Pakistan, the Federal Minister for Law & Justice, the Chief Justice and most senior judge of the High Court for which the appointment is being made, the provincial Minister for Law, and an Advocate nominated by the respective provincial Bar Council. The Commission is responsible for recommending candidates for the appointment of High Court judges. However, in the case of appointing the Chief Justice, the most senior judge of the High Court is not a member of the Commission.

The High Court has two main roles: enforcing Fundamental Rights and serving as an appellate court for judgments and orders made by lower courts in both civil and criminal cases. It also hears appeals against decisions made by Special Courts. However, there is a significant backlog of cases pending in various High Courts. The High Court has the authority to oversee and control all the subordinate courts under its jurisdiction. It is responsible for appointing its own staff and establishing procedural rules for itself and the lower courts. One highly controversial provision in the Constitution allowed for the transfer of a judge from one High Court to another without their consent or proper consultation. The original Constitution of 1973 stated that such transfers required consent and consultation. However, the Constitution (Fifth Amendment) Act of 1976 added a provision that allowed the President to order such transfers for a maximum period of one year, and President Order No. 14 of 1985 extended this period to two years. This clause was later removed by the 18th Amendment to the Constitution, restoring the original requirement. As it stands now, a judge of a High Court cannot be transferred without their consent and proper consultation with the Chief Justice of Pakistan and the Chief Justices of both High Courts.

Federal Shariat Court:

The Federal Shariat Court in Pakistan consists of 8 Muslim judges, including the Chief Justice. The appointment procedure for these judges has changed, and they are now appointed through the Judicial Commission. This Commission, headed by the Chief Justice of Pakistan and comprising senior judges, the Attorney General, and other members, approves the nominations. The nominated judges then go through a review process by an 8-member Parliamentary Committee, representing the Government, the Opposition, and both houses of Parliament. If the recommendation is approved, it goes to the Prime Minister and then to the President for appointment. However, if the Committee does not confirm the recommendation by a three-fourth majority, it goes back to the Commission for another nomination.

The Federal Shariat Court in Pakistan consists of 8 judges, with 3 of them being Ulema (Islamic scholars) who possess a deep understanding of Islamic law. These judges serve for a term of 3 years, which can be extended by the President. The Court has the authority to independently examine and determine, either through its own initiative or by petitions from citizens or government entities, whether a specific law is in conflict with the principles of Islam. Appeals against the Court's decisions are made to the Shariat Appellate Bench of the Supreme Court, which includes 3 Muslim judges of the Supreme Court and up to 2 appointed Ulema. If a law is deemed contradictory to Islamic injunctions, the government is obligated to take necessary measures to

amend it and bring it in line with Islamic principles. Additionally, the Court exercises jurisdiction over criminal courts, particularly in Hudood cases, where it serves as an appellate and revisional authority.

The Federal Shariat Court in Pakistan, established in 1980, has been a subject of controversy. Critics question its rationale and utility, claiming it duplicates the functions of existing superior courts and lacks independence. While some of its judgments expanding individual rights have been commended, others validating controversial laws, such as stoning as a punishment, have faced severe criticism. The Court's jurisdiction has been curtailed with the enactment of the Protection of Women (Criminal Laws Amendment) Act in 2006. A recent attempt by the Court to extend its jurisdiction was challenged and is pending before the Supreme Court. Appeals against the Court's decisions are heard by the Shariat Appellate Bench.

Subordinate Courts

In Pakistan, the Subordinate Judiciary can be divided into civil courts and criminal courts. Specialized courts and tribunals also exist under specific laws. These courts make decisions that can be challenged in higher courts. The provincial governments fund the justice sector, while the appointment and terms of judges are regulated by provincial rules. The High Court has administrative control over these courts. Civil courts include District Judges, Additional District Judges, Senior Civil Judges, and Civil Judges of different classes, while criminal courts consist of Sessions Judges and Judicial Magistrates of different classes. Appeals against their decisions are made to higher courts based on the value of the case or severity of the penalty.

History of Suo motu

The concept of Suo moto notices can be traced back to ancient legal system where judges and authorities had the power to act of their own violation. However, modern understandings and application of Suo moto action have evolved over time. In common law jurisdiction such as United Kingdom and United States, the power of Suo moto notices is often combined with those of courts. Thus, allows judges to initiate legal proceedings and investigations without formal complaints or request from the parties. This power derives from inherent jurisdiction of the courts which ensure that justice is administer and law is complied with. In India the Suo moto Warrant has been an important part of legal system since the supreme court was established in 1950. Article 32 of Indian constitution empower the supreme court to issue the Suo moto orders to protect fundamental rights. Similarly, the supreme court of India has the full power to approve the matters within its jurisdiction. Suo moto's message has been used in India to address a variety of issues including human rights, violation, environmental issues, corruption at public interest. Courts have played an active role in protecting individual rights and taking positive steps to uphold the rule of law. Also, in other Jurisdiction such as Pakistan and Bangladesh, Suo moto's communication are used by courts to handle matters of public interest. These announcements helped draw attention to important issues and ensure accountability. Overall, the history of the Suo motu notices reflects the evolving role of courts and authorities to protect rights, address public interest concerns, and take proactive action to ensure that justice is served.

What is Suo Moto notice?

In the course of court proceedings, a great deal of Latin words is spoken. One of these is Suo moto. Suo is the Latin word for 'in his own right,' and Moto means movement. That is, when the court deals with a matter even though no party approaches it. In the Pakistani legal system, a trial begins when one party goes up against another party. Suo moto notice, however, occurs when the court initiates a case's trial on its own without any party formally bringing the matter before the court. Its foundation may be found in article 184(3).

Without affecting the provisions of Article 199, the Supreme Court shall have the authority to issue an order of the kind described in the aforementioned Article if it determines that a matter of public importance involving the enforcement of any of the Fundamental Rights granted by Chapter I of Part II is at issue.

Simply put, any subject that the Supreme Court determines to be connected to public concern may be brought up.

Purpose of Suo Moto notice

PM Shehbaz: The intention of the suo motu notice is the public interest, not his or her own. The "basic purpose" of suo motu jurisdiction, according to Prime Minister Shehbaz Sharif, is for it to be used in the benefit of the community rather than for a single person. The "basic purpose" of suo motu jurisdiction, according to Prime Minister Shehbaz Sharif, is for it to be used for the benefit of all people rather than an individual. The Supreme Court has the power to give notice to the Supreme Court and to initiate legal proceedings as its own decision in the public interest. According to Traditional Mechanism, the foundation of fundamental rights of citizens violates, they will go through court action. If the persons have no fundamental rights to take any decisions. For that purpose, Suo Moto notice launched, to taking decisions everyone individually.

Power Of Suo Moto Notice:

Suo Moto Notice, also known as Suo Moto Findings or Suo Moto Action, refers to the power of a court or agency to take action in its sole discretion in the absence of specific complaints or demands from the parties. This power allows a court or government agency to initiate legal proceedings or investigations to resolve issues of public interest or interest. The powers of Suo Moto Notices vary according to jurisdiction and the specific laws governing powers. Generally, this power allows a court or government agency to intervene in situations where there may be a violation of rights, a threat to the public interest, or a need for justice. It messages can be used to initiate lawsuits, issue instructions, or order investigations. These enable courts and institutions to act independently and quickly to address issues that may go unnoticed or go unnoticed. It is important to note that the scope and limits of Suo Moto communications are determined by the laws and regulations of each jurisdiction. Therefore, we recommend that you refer to the specific laws of each jurisdiction to understand the exact validity and impact of Suo Moto Communications in any particular situation.

List of Suo Moto notice

The Supreme Court of Pakistan has received a total of 204 Suo Moto notices over the past 20 years, according to the Supreme Court of Pakistan. The data also show that since 2000, 14 Chief Justices have held chief justice positions on the Supreme Court. Former chief justice Ifthar Chowdhury topped the list with 79 notices, followed by Saqib Nisar with 47 and Anwar Zahir Jamali with 25. Chief justice Irshad Hassan Khan took five Suo Moto notices. Chief Justice Bashir Jahingeri didn't take any notice. Shekh Raiz took four notices, Nazim Siddiqui took six notices. During his first term as CJ SC from 30 June 2005 to 3 November 2007, Ifthar Chowdhury received 25 Suo Motu notices. He was appointed to his CJ SC for the second time from March 22, 2009 until he was appointed December 11, 2013, during which time he received a total of 54 Suo Motu notices. Thus, he received a total of 79 Suo Motu notices during the period of 7 years and 2 months. Tasadduq Hussain Jalani took ten notices while Nasir-Ul-Mulk took nine notices. Jawad Khawaja took four and Anwar Zahir Jamali took 25 notices. Saqib Nisar took 47 Suo Moto notices, Asif Saeed didn't take any Suo Moto Notices. Current Chief justice Umar Atta Bandial has taken 5 Suo Moto notices.

Scope of Article 184 (3)

Article 184 grants the Supreme Court the authority to issue declaratory judgments regarding provincial government matters brought before it. Additionally, under Article 184(3), the Supreme Court possesses the power to address issues pertaining to the general public's interests regarding the enforcement of central rights. The Chief Justice of the Supreme Court utilizes the broader framework of this article to exercise the ability to take up cases on its own accord. Article 184(3) is a crucial provision that enables the Supreme Court to actively engage in deciding constitutional matters of the state.

Different *Suo Motu* notices taken by many chief justices of Supreme Court of Pakistan.

Abdul Hameed Dogar:

This move came after a 7-member bench of the Supreme Court had previously overturned the PCO. Out of the sitting judges in the Supreme Court, only four, including Dogar, immediately took the oath under the PCO, while most of the judges refused to do so. The other judges who took the PCO oath alongside Dogar were Muhammad Nawaz Abbasi, Faqir Muhammad Khokhar, M. Javed Buttar, and later in the evening, Saiyed Saeed Ashhad in Karachi. However, on December 15, 2007, Dogar took a new oath, this time on the constitution. Abdul Hameed Dogar retired from the Supreme Court on March 21, 2009. Subsequently, on July 31, 2009, the Supreme Court of Pakistan delivered a landmark verdict, deeming the appointment of Abdul Hameed Dogar as Chief Justice illegal and unconstitutional. (Reference: news sources or reports on the events mentioned) According to a recent investigative report from the Daily News, it has been discovered that Farah Hameed Dogar, the daughter of Justice Dogar, had her F.Sc. examination paper reassessed in a manner that goes against previous Supreme Court decisions. The report reveals that while the results of 201 candidates were revised, Farah's examination papers were not only re-marked but also had the numbers increased. On the other hand, in the remaining 200 cases, only mistakes in totaling the marks were rectified. (Abdul hameed dogar: Pakistani judge 1944)

Anwar Zahir Jamali

Chief Justice Anwar Zahir Jamali served as the 24th Chief Justice of Pakistan from 3 September 2015 to 30 December 2016. During his tenure, Chief Justice Jamali communicated with *Suomoto* on numerous occasions to address various issues of public concern.

Saqib Nisar's tenure and *Suo Moto* notices

Mr. Saqib Nisar assumed the position of Judge of the Supreme Court on February 18, 2010. He later became the Chief Justice of Pakistan on December 31, 2016, serving until January 17, 2019. His tenure as Chief Justice was marked by extensive discussion and criticism. The independence of the judiciary is crucial for the well-being of a nation, and Mr. Nisar demonstrated a strong commitment to this principle. He frequently utilized his extraordinary powers under Article 184(3) to take *Suo moto* notices on a wide range of issues, ranging from healthcare and education to access to basic amenities like clean water and mobile services. He regularly visited hospitals to assess their facilities and summoned government officials to his court, often subjecting them to scrutiny and criticism. However, these practices were a subject of controversy due to their frequency and the way they were conducted, leading to a contentious public discourse.

Mr. Saqib Nisar faced considerable criticism for his approach. He often referred to a judge as a wise elder, akin to a village figure known as "baba rehmita," who resolves issues based on experience and intelligence. His actions demonstrated his belief in regularly exercising the power of *Suo moto* as Chief Justice. Some media personnel criticized this as unnecessary and excessive interference in state affairs. However, there were also supporters who viewed his emphasis on judicial activism as essential for establishing and upholding the rule of law in the country.

Former Chief Justice Saqib Nisar took notice of the inadequate health facilities in public hospitals in Lahore, as he believed that health is a fundamental human need and the state has a responsibility to provide basic healthcare to its citizens. He summoned the medical superintendents from 19 public hospitals in Lahore and requested detailed information about the available facilities. He personally inspected hospitals in Punjab and Sindh to assess the situation and urged the authorities to address any deficiencies and ensure that basic healthcare is provided to the public. Some people criticized his approach, stating that it is not the role of a judge to inspect hospitals. In response, he argued that if the state fails to fulfill its responsibilities, someone has to take effective action, even if it means the Chief Justice of Pakistan. He also took action against private hospitals that were charging excessive fees and directed them to regulate their prices fairly. Any hospital found guilty of overcharging or mistreating patients would face court intervention, with the judgment deciding the fate of the hospital. Chief Justice Nisar emphasized that hospitals must adhere to the standards set by the Pakistan Medical and Dental Council and comply with building regulations. During suo moto proceedings on the use of substandard and expensive coronary stents, it was discovered that hospitals were implanting these stents unnecessarily for the sake of commission fees from different companies. The court intervened, regulated the prices, and instructed the relevant authorities to prevent the sale of substandard and expensive stents.

The first-ever Kidney and Liver Transplant Institute (PKLI) in Pakistan faced trouble when allegations of corruption, mismanagement, and high salaries surfaced. The former Chief Justice took notice of the situation and personally handled the case. The PKLI was expected to be a significant advancement for kidney and liver transplants in the country. During the proceedings, the Chief Justice publicly embarrassed the officials and removed them from their positions. Dr. Saeed Elahi, the President of PKLI, was put on a list that restricted his ability to leave the country. The Chief Justice had a political conflict with the Punjab Government, so he suspended Dr. Saeed and the Board of Governors and formed a new committee to oversee the institute's affairs. A forensic audit was also ordered to investigate allegations of corruption. After the Chief Justice's tenure ended, a new three-member bench of the Supreme Court concluded the case. They allowed Dr. Saeed to travel abroad and disbanded the ad-hoc committee formed earlier. The control of the Institute was taken over by the Punjab Government as directed by the Supreme Court. One of the judges on the three-member bench commented that all institutions should operate within their designated boundaries. The judge considered the forensic audit ordered by the former Chief Justice as unnecessary and an example of judicial overreach. Unfortunately, the outcome of the entire case was the humiliation of skilled doctors and the disruption of the hospital's plans due to the political mindset of the former Chief Justice. One of the doctors who resigned described it as a failure of the state authorities, where motivated individuals are discouraged, humiliated, and forced to leave their positions. The plan that was once hopeful for the future became a casualty of the former Chief Justice's political perspective. Furthermore, the subsequent Health Minister also faced criticism from the former Chief Justice during the hearing. The former Chief Justice remarked that as the provincial health minister, she should be concerned about the PKLI issue and accused her of not fulfilling her duties.

Education is a fundamental right for every individual, and according to Article 25 A of the Constitution. The responsibility of overseeing higher education lies with the executive branch of the country. However, the former Chief Justice took notice of the high fees charged by private medical colleges. Although the University of Health Sciences, Lahore, and the Pakistan Medical and Dental Council were already working on regulating these colleges, the court intervened. During the proceedings, it was discovered that the colleges were charging excessive fees on a yearly basis, without any proper fee structure. The fees were negotiated individually between the college administration and the students before admission. The former Chief Justice directed the

colleges to regulate their fees, as they were collecting large sums of money from students under the guise of donations and educational charges. He ordered the colleges to refund the excess fees and set a limit of 800,000 rupees for one year's fees.

Zainab's murder was a tragic case where a six-year-old girl from Kasur was found dead in a garbage dump on January 9, 2018. She had been raped and killed. The former Chief Justice personally took notice of this horrific incident. The investigating authorities looked into the matter and arrested a suspect on January 23. The person was found guilty by the trial court (Anti-terrorism Court) and sentenced to death. The accused's appeals to higher courts were rejected, and he was executed on October 17, 2018, at Kot Lakpat Jail. This case demonstrates a speedy trial, thanks to the suo moto notice taken by the former Chief Justice. However, it also highlights the mismanagement in lower courts, as without the suo moto intervention, similar criminal cases often take years to be resolved. Response to anticipated water shortages and the recent water scarcity issue, the former Chief Justice initiated suo moto proceedings and urged. The dam fund account remains active, and the government continues to collect funds for the future construction of the dams. The former Chief Justice worked tirelessly for this cause and even organized fundraising campaigns in foreign countries such as the United Kingdom. In 2018, the responsibility for the dam fund was transferred to Prime Minister Imran Khan, who emphasized that it was the government's duty, not the Chief Justice's, to handle such matters.

Furthermore, in May 2018, the Chief Justice took suo moto notice to address the issue of excessive tax deductions on mobile phone recharges. Telecom companies were deducting a significant amount, 40 rupees, on a 100-rupee recharge, and the government had imposed excessive taxes on recharge cards. The Chief Justice ordered an end to these deductions, directing telecom companies to recharge the same amount paid by users without any additional charges, and called for the reduction of taxes. However, after the retirement of the Chief Justice in March 2019, a two-member bench of the Supreme Court expressed concerns regarding the suspension of taxes under Article 184(3). A three-member bench, led by Chief Justice Asif Saeed Khosa, subsequently reinstated all taxes on mobile phone recharge. The bench held that the judiciary should refrain from interfering in tax collection and revenue matters. Additionally, suo moto notices were taken against private news channels for non-payment of employee salaries, and another suo moto notice was issued against Axact for issuing fake degrees. This highlights the range of suo moto actions initiated by former Chief Justice Mr. Nisar during his tenure.

In 2018, the judiciary in Pakistan had a lot of influence over the other branches of the government. While some cases handled by the judiciary had positive outcomes, the excessive use of power by the former Chief Justice had negative effects on many public institutions. The Supreme Court often interfered in matters that should be handled by the Executive and Legislature. The former Chief Justice took an active role without hesitation, which was criticized by lawyers and the media as unnecessary interference in state affairs. Even the Supreme Court judges raised questions about the handling of cases after his retirement, particularly in the PKLI and tax reversal decisions in mobile recharge cases. Critics also raised concerns about the performance of the lower judiciary, accusing the former Chief Justice of focusing on improving other institutions but neglecting his own. There was a huge backlog of cases in the superior and lower courts, and the lower judiciary took years to decide even simple cases. No steps were taken to improve the judicial system in Pakistan. On a visit to Sindh, the former Chief Justice entered a district court, went into a judge's courtroom in front of the media, and humiliated him by throwing his mobile phone on the table. This behavior was not appropriate for a Chief Justice and did not contribute to reforming the lower judiciary. The concept of separation of powers was weakened, and the debate about power politics began with the Supreme Court's intervention during Mr. Nisar's tenure. As Pakistan's institutions are still developing, the Supreme Court should act in a neutral manner and avoid interfering in

state matters unless there is a clear violation of the constitution. Establishing the rule of law should be the top priority of the superior judiciary in Pakistan.

Iftikhar Chaudhry's tenure and Suo Moto Notices

Chief Justice Iftikhar Muhammad Chowdhury was the 18th Chief Justice of Pakistan from 30 June 2005 to 11 December 2013. Chief Justice Chowdhury communicated with Suomoto several times during his tenure to address a wide range of issues of public interest and human rights abuses. Chief Justice Choudhury's tenure was characterized by a notable increase in the use of Suo's message as a tool for judicial activities. He took notes on a variety of subjects, including missing persons, land encroachments, corruption cases, and issues related to the rule of law and constitutional rights. Chief Justice Chowdhury Suo moto's notable announcements include the enforced disappearance case, the illegal appointment of the National Accounting Bureau (NAB), the corruption case in the rental power project, and the illegal land grant case. Chief Justice Iftikhar Muhammad Choudhury served as Chief Justice of Pakistan from 2005 to 2013, and was characterized by his active use of the Suo Newsletter. What follows is a comprehensive analysis of some of the key communications of Chief Justice Chowdhury Suo moto:

Missing Persons Cases:

One of the most important issues that Chief Justice Choudhury dealt with was the enforced disappearance and disappearance case. He used Suo Honshin to investigate and solve cases of alleged illegal detention or disappearance of people. This effort brought attention to the issue and led to the discovery and release of several missing persons.

Land Encroachments:

Chief Justice Chowdhury also accepted the Suo Notice to address the land encroachment issue. He launched an investigation and took action against influential individuals and groups involved in illegal land grabbing. This helped regain public lands and protect the rights of affected residents.

Corruption Cases:

Chief Justice Chowdhury had numerous correspondences with Suomoto to deal with corruption cases, especially those involving high-ranking individuals and government officials. The purpose of these disclosures was to ensure accountability, transparency and an impartial investigation into allegations of corruption.

Rule of Law and Human Rights:

Chief Justice Chowdhury has demonstrated a strong commitment to upholding the rule of law and upholding human rights. He received Suomoto's message to address issues related to police brutality, custodial deaths and violations of basic rights. The purpose of these notices was to protect the rights of the public and hold the authorities accountable for their actions.

Public Interest Matters:

Chief Justice Chowdhury was also informed by Suomoto to address various issues of public interest such as the provision of safe drinking water, medical facilities and education. The purpose of these announcements was to improve the living conditions and quality of life of Pakistani citizens.

Comparative analysis of Saqib Nisar and Chuadhry Iftikhar

Chief Justice Iftikhar Muhammad Chaudhry and Chief Justice Saqib Nisar both served as Chief Justices of Pakistan and made significant contributions to the judicial system of the country. Here is a comparative analysis of their tenures:

Judicial Activism:

Both Chief Justices were known to use *Suo Hontsushin* to proactively address issues of public concern. They covered issues ranging from human rights violations to corruption, demonstrating their commitment to justice and accountability.

Leadership Style

Chief Justice Chowdhury was known for his assertiveness and confrontational leadership style. He has been involved in several high-profile legal battles with government executives, drawing both praise and criticism. Chief Justice Nissar, on the other hand, took a more conciliatory approach, focusing on building consensus and cooperation. He actively engaged with stakeholders and encouraged dialogue to find practical solutions to the problems at hand.

Focus Areas:

Chief Justice Chowdhury's tenure was characterized by a focus on issues related to missing persons, land encroachments and corruption cases. He played a key role in raising his awareness of these issues and taking action against his stakeholders.

Chief Justice Nissar, on the other hand, focused on issues such as water shortages, health care, education and population control. He launched a campaign to address these challenges and brought them to the forefront of public debate.

Legacy:

Chief Justice Chowdhury's tenure is often associated with her role in defending the rule of law and protecting human rights. His efforts to enforce judicial independence and hold the powerful to account left a lasting impact on the judiciary. Chief Justice Nissar's achievements lie in his focus on social issues and the common good. He drew attention to the grave challenges facing the country and initiated reforms to address them. His initiatives such as the Diamer-Bhasha Fund and his Mohmand Dams Fund were aimed at mobilizing resources for major infrastructure his projects.

Public Perception:

Chief Justice Chowdhury's tenure has been met with both praise and criticism. While he has been praised for his efforts to combat corruption and human rights violations, some critics accused him of going too far and interfering in matters beyond the jurisdiction of the courts. Nissar's tenure in office also received mixed reviews. Although he was praised for his focus on social issues and public good, some critics argued that his approach sometimes overshadowed the core functions of the judiciary.

Impacts of Judiciary on democracy

The judiciary plays a crucial role in upholding and safeguarding democracy. Here are some impacts of the judiciary on democracy:

Rule of law:

The judiciary ensures that laws are applied fairly and consistently, regardless of an individual's status or position. This helps to maintain the rule of law, which is a fundamental principle of democracy.

Protecting rights and freedoms:

The judiciary acts as a protector of individual rights and liberties, ensuring that they are not violated by governments or other bodies. This includes protecting civil liberties such as freedom of speech, assembly and religion.

Checks and balances:

The judiciary provides a system of checks and balances by reviewing the actions of the executive and legislative branches. It has the power to declare any law or administrative action unconstitutional in order to prevent abuse of power and maintain a balance of powers.

Resolving disputes:

The judiciary acts as an impartial arbiter in resolving disputes between individuals, organizations or nations. This helps maintain order and stability in society and ensures that everyone has access to justice.

Judicial independence:

An independent judiciary is vital to democracy. This ensures that judges are free from fear of political intervention or pressure and can render their decisions upholding the principles of fairness, equity and justice.

Public trust and accountability:

A strong and independent judicial system helps build public trust in the legal system and the democratic process. It holds those in power accountable for their actions and promotes governance transparency and accountability.

Conclusion**Findings of the study**

It is important to note that Saqib Nisar's use of the Suo Moto Message has drawn both praise and criticism. Supporters appreciated his proactive approach to resolving pressing issues, but critics noted the possibility of going beyond the bounds of justice and a more balanced approach in exercising Suo Motu powers. It is important to note that while the use of Suo Moto notices has democratic benefits, it must be exercised with caution and in a manner that respects the separation of powers and the democratic process. Judicial activism checks local government agencies and serves to prevent abuse of power, corruption, and violations of constitutional rights. Helps maintain accountability and transparency in local governance. Judicial activity can play a role in facilitating social change by interpreting law in ways that are consistent with evolving social values and norms. This helps promote equality, justice and human rights in our communities. It is important to note that the pros and cons of judicial action against local democracy may vary depending on the specific circumstances and the extent to which judicial action is exercised. Finding a balance between judicial intervention and the democratic process is crucial for a healthy and effective local democracy. However, it is important to note that public opinion on such issues may vary among Pakistani individuals and communities. Some may find the Suo Mot ruling of Saqib Nisar and Chowdhury Iftikhar helpful. These rulings have enabled the judiciary to take aggressive action on issues that neither the executive branch nor Congress have addressed. Some saw these announcements as a means of ensuring accountability, protecting fundamental rights and solving pressing social problems. On the other hand, some people may have concerns and concerns about the possibility of judicial intervention in the executive and legislative branches of Suo. Critics say such disclosures give the judiciary too much power and threaten to undermine the separation of powers and the democratic process. To better understand the opinions of the Pakistani

public on this issue, it would be necessary to conduct surveys, analyze public opinion polls, and refer to specific studies dealing with these issues.

Recommendation

Suo moto notices are beneficial for society because if there is not any assessment from any elected institution then judiciary play its active role under article 184(3) of constitution of Pakistan to protect the fundamental rights of people and public interests. However, there are some positive as well as negatives on political system of Pakistan.

It is guaranteeing access to justice, protecting Human Rights, ensures rule of law and provide speedy Justice. While negative impacts are absence of responsibility, legal beat out, detain of justice and judicious attack.

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