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An Assessment of Judicial Activism to Empower the People: A Case of Pakistan (2007-2013)

Vol. VI, No. II (Spring 2021)

URL: [http://dx.doi.org/10.31703/gpr.2021\(VI-II\).09](http://dx.doi.org/10.31703/gpr.2021(VI-II).09)

Pages: 79 – 91

p-ISSN: 2521-2982

e-ISSN: 2707-4587

p-ISSN: 2521-2982

DOI: 10.31703/gpr.2021(VI-II).09

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Abstract

The year 2007 was proved as an eventful for the judiciary of Pakistan because Iftikhar Chaudhry, Chief Justice of Pakistan, started to assert the power of the judiciary. He vehemently tried to make the judiciary only and the real institution of enforcing the law for the liberty of the people. However, under tremendous public pressure and lawyers' movement, Musharraf had to reinstate the Chief Justice. Now Iftikhar Chaudhry resumed the halted task of taking suo motu actions to provide relief to the public. Against this backdrop, the study traces the causes behind judicial activism in Pakistan and its impact on the liberty of people. The performance of the judiciary in the form of Public Interest Litigation (PIL) to empower the masses is discussed. The study also focuses on the important cases handled by the apex court in the manners that gave the impression of judicial martial law. It is an analytical study where important cases are analyzed to show the power and strength of the judiciary in Pakistan. The research concludes that there is a need for judicial restraint so that the democratic principle of separation of power should be maintained.

Key Words: Judicial Activism, Empowerment, Suo Motu, PIL, Chief Justice

Introduction

In Pakistan, people at large consider the Supreme Court's unlimited jurisdiction and powers to issue an order on any matters by using suo motu provision under article 184(3). Article 184(3) provides a wide range of powers in the form of suo motu. The cases like LNG, NICL, Hajj Scam, and OGRA (Oil and Gas Regulatory Authority) are a few examples where high-ranked officials contracted with foreign and local companies for their personal benefits ignoring the proper constitutional procedures. The other important public interest cases are missing persons, the mega scandal case of privatizing the Steel Mills of Pakistan (PSM),

Musharraf's presidential election, and the issue of postponing general elections. These cases were handled by the apex court; resultantly, billions of rupees were brought to the national exchequer to be utilized for the welfare of the people (Niaz, 2020). These trends set by the apex court made the JCP a folk hero of Pakistan. During the tenure of Iftikhar Chaudhry, the JCP, a novel concept of empowering the people through PIL, was also introduced. Many suo motu actions were taken to empower the people. (Malik and Rana, 2019, pp.26-35) This study deals with the historical background of the judicial activism mainly under the

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Chief Justice Chaudhry (2005-2013) with the military regime of Musharraf and the civilian regime of PPP.

Method

The nature of the study is a mixed type of research, i.e., descriptive, analytical, and qualitative. The data relating to facts and events are mostly based on secondary sources. The data is analyzed through arguments, reason, and logic.

Significance and Scope

The study's significance is its important analysis of judicial activism in Pakistan, the constitutional role of the judiciary in parliamentary democracy, accountability, and the enhancement of people's empowerment. The scope of the study is limited as it focuses only on judicial activism in Pakistan from 2007 to 2013. In order to explore any similarity with Pakistan, the research also explains the key dimensions of judicial activism in developing countries. Likewise, it inquires that how Pakistan is different from developing nations where judicial activism has been used as a tool to enhance the empowerment of the people. Furthermore, the study highlights the mechanism and functioning of the state institutions, i.e., executive and judiciary, and their role in policymaking.

Research Objectives

The key objectives of the study are as under:

1. To investigate the causes of judicial activism in Pakistan.
2. To know whether or not judicial activism in Pakistan is undermining the parliamentary democracy.
3. To understand whether or not judicial activism has empowered the people.

What is Judicial Activism?

The term judicial activism is associated with the case of *Marbury vs. Madison* more than two hundred years back when the Supreme Court of the US declared that any act which is contrary to the original essence of the constitution is invalid. It became evident from this historical judgment that the constitution is supreme. This judgment has

maintained its importance even today as all over the world. Whenever the conflict occurs between the judiciary and the parliament, this judgment is used as a precedent. Another case of *McCullough vs. Maryland* is relevant to judicial activism. Supreme Court held that "supremacy of the constitution is paramount." Only the constitution is sovereign over the state institutions. Therefore, it turned down the taxes imposed by Maryland State. These two cases have one distinctive feature regarding judicial activism. Supreme Court took the power of judicial review only on the filed petitions by the citizens. The democratic government is based on the theory of separation of powers between the judiciary, executive, and legislature. Since the other two organs of the state do not provide relief to the common people, the judiciary takes a proactive role to restore and ensure the provision of fundamental human rights of the common people. Such a proactive role by the judicial branch is termed "judicial activism" or *suo motu*. ([Munir and Khalid, 2018, pp.321-334](#))

Literature Review

Ely (1980) pointed out the important issues of America which reflect the present situation in Pakistan. He mentioned two basic approaches of legal experts. These are interpretivism and non-interpretivism. The first approach describes that judges should consider only what is clearly stated in the constitution. The second approach states that the apex court should retain and maintain the core social, cultural, and political ideals of the society. From both of these approaches, Ely suggested that the court should ensure the interests of everyone and solicitation of the judgment will not be influenced while formulating a decision. He stressed more on the protection of the governmental structure than the ideals of a society.

Dawood (1994) and Newberg (1995) described the constitutional history of Pakistan, where the historic role of our judiciary is discussed. According to them, the judiciary has been intervening in purely political matters. This role on the part of the superior judiciary in Pakistan has affected the social fabric and created tension between the institutions.

Ahron (2006) describes the role of judges as an interpreter of the law. A judge has to interpret the law in order to fill the vacuum that occurs in society with the changing circumstances. Judges add new meaning to law without modifying its statute. He further adds that when judges give a new meaning of laws, it may become unconstitutional in the new social reality. But judges have to maintain the balance in such situations. For this, a judge has to consider three points. Firstly, the rationality of the system, secondly, both the power and limitations of the institution and thirdly, the public image of the court. It is argued by the writer that judges should not reflect partiality while deciding the case. He should maintain harmony within the legal system.

While Waseem (2012) states that judicial review is important in the smooth functioning of the government. The purpose of the judicial review was to interfere in constitutional matters; gradually, it has stepped into public affairs. He maintains that in the name of judicial review, the executive is forced to revise its decisions. It also happens that the judiciary assists the dictators in their unconstitutional cases to provide legal cover. (Munir and Khalid, 2019, pp.321-334)

Empowerment as a Concept

According to Julian Rappaport (1981), "empowerment is a social policy and an approach to the solution of social problems stemming from powerlessness." It is a phenomenon under which the oppressed and suppressed people in the society get some relief and feel satisfied over the fulfillment of their basic human rights. The legislation and decision-making process at the national level always affects the foundations and survival of society at large. Therefore, the inclusion of a neglected section of society is inevitable. Generally, this concept is also argued by many scholars that political and democratic development in a country is a prerequisite for the empowerment of the citizens. (Sadan, 1997)

Theoretical Framework

"The judiciary must be treated not simply as a branch of government but as an agent of the people," these remarks about the judiciary were said by Hamilton, the founder of American.

Similarly, the former chief justice of India, A.S Anand, said, "it is because of public opinion that the higher judiciary in the country occupies a position of pre-eminence among three organs of the state." His views about the role of the judiciary in the society are "the court has also been aware of, and sensitive to, the changing social, cultural, and environmental needs of the society." He further says, "... law must keep pace with society to retain its relevance." (Siddiqi, 2015, PP.95, 96) It is evident from the views of the legal experts that necessarily people's confidence in the judicial institutions should be properly built so that the objective of empowering through judiciary can be achieved. In the history of Pakistan, under mentioned period, there are few cases where serious efforts were made to create a powerful liaison between the judiciary and the common people. In this research article, cases relevant to people's empowerment are discussed.

Background of the Story: Constraint relationships between Judiciary and Executive (First Suspension)

Iftikhar Chaudhry became the Chief Justice of Pakistan on June 30, 2005. With courage, he handled high-profile cases with professional transparency and impartiality. He adopted the course of *suo motu* powers to empower the general citizens by picking the cases of human rights violations and many more cases of public interests category. (Niaz, 2020)

In this course of taking *suo motu* on human rights issues, JCP followed the strategy of aboveboard accountability. Nobody was spared, whether military or civil bureaucrats by the JCP in the drive of accountability. This strategy of aboveboard accountability did not compatible with the intentions of Musharraf. He indeed would have supported JCP if there had been the policy of pick and choose. Holding army persons in accountable was problematic for Musharraf. He had to appease the international community. Thus he introduced the system of local government cynically. Mayors (mostly feudal) were indirectly elected to manipulate and control the bureaucrats. But contrary to the wishes of Musharraf, the judiciary under Iftikhar Chaudhry did not follow the policies of coexistence with the military.

There is long series of cases that reflect judicial atonement. These include the declaring of Hasba Bill (2005) against the spirit of the constitution, considering the petition of Margalla Tower Collapse, taking notice of the unregistered private religious school. Similarly, in October 2005, JCP ordered the local governments of Faisalabad district to submit the asset reports of their politicians who were elected on reserved seats of peasants. Meanwhile, in February 2006, JCP also canceled the decision of CDA regarding the conversion of Islamabad' park into a mini-golf course. JCP took suo motu in April 2006, of destroying the green areas at Jahangir Park Karachi and converting the horticulture territory into the car park. Such like other cases were viewed by the people at large that JCP was desperate to enquire, humiliate and punish the government officials in different departments. It is also the fact that in some circles of society were suspicious about the intentions and legal implications of the suo motu powers, JCP empowered the superior judiciary to take notice of anything of public importance. ([Niaz, 2020](#))

Musharraf did not like such independent initiatives on the part of the judicial branch of the state. Therefore, JCP became a liability for him. Thus Musharraf decided to get rid of permanently from powerful and independent Chief Justice. He, therefore, decided to strike back. It was March 9, 2007, when Musharraf gave practical shape to his cynical wishes. He summoned JCP to army house GHQ Rawalpindi where many senior military officers along with Prime Minister of Pakistan (already present there) provided moral support to Musharraf and psychological pressure on JCP. During conversation with JCP, Musharraf constantly built pressure so that he might either resign from the post of chief justice, or get ready to face the constitutional trial. Under the constraint environment created by Musharraf with other senior military officers, JCP had been given the surety of the lucrative offer and would be accommodated in somewhere executive posts within Pakistan if he voluntarily resigns. Unexpectedly, JCP remained determined to show utmost professional sanctity with courage to refuse surrender before the erstwhile powerful executive. This unexpected refusal of JCP led

Musharraf (chief executive) to desperately issue order of immediate suspension declaring "the President does hereby restrain Mr. Justice Iftikhar Muhammad Chaudhry to act as Chief Justice of Pakistan and a judge of Supreme Court, and he is unable to perform the functions of his office..." (Press Release March 9, 2007)

After four months trial under Supreme Judicial Council, JCP was restored on the ground of Musharraf's unconstitutional act. This decision brought the judiciary back on the driving seat. It resumed the already set momentum of independent decision. ([Niaz, 2020](#))

The active and vibrant roles by the court alarmed Musharraf for his ineligibility in the presidential candidature. As pre-emptive measures, Musharraf imposed an emergency on November 3, 2007. He immediately suspended the Constitution of the state and instead Provisional Constitutional Order (PCO) was imposed. By declaring an emergency in the country, 60 judges were compelled to take the new oath. ("[Provisional Constitutional Order,"2007](#))

Contrary to the expectations of Musharraf, it was the legal community who decided to defend the constitutional rights of the citizens suspended by the Musharraf and struggled to restore the rule of law in the country. They motivated and mobilized the civil society under the slogans of 'Go Musharraf Go' throughout the country. On March 16, 2009, various segments of urban and civil society joined the lawyer's community to start a movement for the restoration of deposed judges of Musharraf's emergency. ([Ahmad, 2012, p.340](#)) It was March 17, 2009 that all the deposed judges of Pakistan's judiciary were restored to the prior position of November 3, 2007. Finally, on March 22, 2009, the deposed CJP Iftikhar Chaudhry resumed his duties of chief justice of Pakistan (JCP). That is the story of all about the independence and hard-earned victory for the judiciary of Pakistan. ([Ahmad, 2012, p.343-345](#))

Judicial Activism under Chaudhry's Court (After Second Restoration)

The constraint relationships between the judiciary and executive branch of the government changed

the entire discourse of political development in Pakistan. This changed discourse is more appropriate to visualize in the performance of the judiciary. The restored, independent, and empowered judiciary once again tried to perform its constitutional duty. The interesting story of judicial independence is already discussed, but to answer the question of how to check the independence of the judiciary, it needs to review the most relevant cases. Although there are many other cases related to the assertive role of the judiciary, the case of NRO seems more relevant to understanding judicial activism.

NRO (2007) Judicial Activism and Conviction of PM

On October 5, 2007, President Musharraf promulgated a very controversial National Reconciliation Ordinance (NRO). Under this Ordinance, almost all the subjudice cases during January 1986 to October 12, 1999 about corruption, money laundering, and terrorism against leading politicians and bureaucrats were pardoned off. This Ordinance set free more or less eighty thousand beneficiaries. ([Rajshree, 2012, p.1-7](#))

The question of the legal validity of the NRO was pinching for the government. Soon government had to face its legality in the court. In the petition, it was identified that there were discriminatory provisions in the Ordinance between influential and common culprits. So keeping in view the controversial provisions in the Ordinance, the bench of Supreme Court on December 16, 2009, which was headed by JCP (Chaudhry), gave its historic verdict. This verdict declared NRO unconstitutional, and therefore national interest was at its stake. Because majority of the cases which were related to massive corruptions, murders, and rapes had withdrawn from almost 8000 accused persons for political purposes. Prominent among the beneficiaries from this controversial NRO was the husband of ex-Prime Minister (Benazir Bhutto) 'Asif Ali Zardari.' Since the 1990s, both Benazir Bhutto and Zardari -later, he became president of Pakistan after Musharraf, had been using Swiss bank accounts for money laundering. In Switzerland, cases of money laundering worth 12 million dollars were pending against him. ([Rajshree, 2012, p.1-7](#))

The illegality of the NRO created new controversy in the functioning of institutions in Pakistan. The invalidity of the NRO means the reopening of all the pending cases against politicians. Constitutionally, it was the duty of the government to take the initiative. But, it was the Government of PPP, and the main beneficiaries were in the government. Asif Ali Zardari-the core figure of NRO beneficiaries, was the president of Pakistan, while the incumbent Prime Minister was Yousaf Raza Gilani. This situation was very problematic for Gilani, as writing a letter to Swiss authorities for reopening money laundering cases against Asif Ali Zardari was constitutional responsibility of the sitting Prime Minister but, due to party affiliations, he did not care about the judgment of the apex court rather he opted to refuse. ([Zaidi, 2015, p.23](#))

This flat refusal on the part of the government provided solid grounds for the judiciary to sue the constitutional way. Thus, contempt of the court against PM was charged. The intention of the government was exposed on the judicial branch that PM willingly disregarded the court orders. Hence court-imposed symbolic punishment of "imprisoning him until the court rise" to PM on February 13, 2012. The total duration of this symbolic punishment was thirty seconds. Court provoked article 204(2) of the constitution where accused PM Gilani was found guilty and was convicted for contempt of court. ([Rajshree, 2012, p.1-7](#))

Judicial Activism and Empowerment of People in Pakistan

The above-mentioned discussion highlighted the background of judicial activism in Pakistan. This part of the paper will focus on the important cases of people's empowerment with the provocation of judicial activism.

During the period under discussion, the Supreme Court of Pakistan tried to provide relief to the general public. By provoking article 184(3), important cases affecting the daily life of the people were picked either on petitions or taking *suo motu*. The issue of price hike is very common in the life of people. The price of different commodities was artificially created. Supreme Court took notice of the rising prices of the two areas, CNG and Sugar.

During inquiry Court found that the price hike in the sugar was due to the illegal stock and hoarding in the country. To ensure the sale of sugar at Rs.40 per kg, Lahore high court directed the Provincial government on September 3, 2009. In November 2012, enormous irregularities in the price mechanism of CNG were highlighted by the court and agreed with the petitioners that there were exorbitant prices of the CNG. Following the instructions of the court, the price of CNG was also lowered down by OGRA up to Rs. 30. In addition to lowering down the prices, there were hundreds of cases dealt with by the court on a daily basis for the purpose of speedy justice in order to address the woes and grievances of the helpless people. [\(Mirza, 2015, p.59\)](#)

Reactivation of the Concept of PIL to Empower the People

Pakistani society is sharply divided and highly fragmented in terms of socio-political development. The people below the poverty line cannot afford to get speedy justice in the complex justice system of Pakistan. Even these poor strata in the society have no consciousness about their legal rights. Public Interest Litigation (PIL) was a novel concept in the legal system. While interpreting laws, judges face some formal hurdles. So this concept was devised to overcome the legal formalities. The purpose and logic behind the adoption of this concept was the immediate and cost-free redressal of the grievances of the poor, excluded, marginalized segments of society who are otherwise no access to the complicated justice system. According to [Hussain \(1993\)](#), the reason to adopt PIL "is to break through the existing legal, technical and procedural constraints and to provide justice." He further says that particular individuals, class or community, who on account of any personal deficiency or economic

or social deprivation or state oppression are prevented from bringing a claim before the court of law." Thus, under the article (199) and 184(3) of the constitution of Pakistan, PIL is a constitutional remedy reactivated by the Supreme Court. This article provides Supreme Court wide powers to enforce fundamental rights and ensures access to justice to all segments of society. [\(Hussain, 1993, p.1-6\)](#)

Multiple Dimensions of PIL

Normally there are four dimensions of PIL. *Suo Motu*, Human Rights, Constitutional Petition, and Complaints regarding Human Rights Cell are the different modes of empowering the people. Now we will briefly discuss these dimensions of PIL.

Empowerment of People through *Suo Motu*

In this form of PIL, courts initiate the proceedings of the cases related to the violation of fundamental human rights. This is initiated by the judges on the basis of information about the public issues highlighted and remained under discussion publically then viral on the print and electronic media. Thus the vacuum of responsibility to address the public issues by the government (executive branch) had to fill by the apex court by taking *Suo Motu* action. This is the way of empowerment, as Justice Jawaad S. Khawaja in the edited book of Cheema and Gilani argued.

"if one *suo Moto* action is able to deliver justice to one hundred and six thousand female health workers, or where a rape incident can provide the basis for laying down rules of general applicability for investigation of such cases...where environmental pollutants adversely impacting hundreds of thousands of people can be dealt with through one *Suo Moto* action...article 184(3) is fully warranted." [\(Cheema and Gilani, 2015, p. xvii\)](#)

Table 1. Famous *Suo Moto* Actions during (2007-2013)

| Cases Numbers | Main Issues of Public Importance where <i>suo motu</i> actions were taken. |
|-----------------------------|---|
| Suo Motu Case No.14 of 2007 | Cement factory in D.G Khan caused pollution in drinkable water |
| Suo Motu case no.21 of 2007 | Scuffles, clashes and violence outside the buildings of supreme court and election commission of Pakistan between lawyers, civil society, and media persons with law enforcement agencies on October 7, 2007. |

| Cases Numbers | Main Issues of Public Importance where suo motu actions were taken. |
|--------------------------------|---|
| Suo Motu case no.23 of 2007 | Rising of fair charges in the seasons of Hajj and Umrah |
| Suo Motu case no.25 of 2007 | Act of terrorism on Oct 2007 when former PM Benazir Bhutto returned from abroad in Karachi. |
| Suo Motu case no.1 in 2009 | Seventeen year old girl was publically whipped in Swat. |
| Suo Motu case no.2-L in 2009 | Regarding injurious food items reported on TV channels |
| Suo Motu case no.3 in 2009 | Deforestation due to illegal land acquisition by defense housing authority. |
| Suo Motu case no.4 in 2009 | Action was taken on the evacuee trust-unfazed over loss of land worth billions of rupees. |
| Suo Motu case no.7 in 2009 | Journalist's harassment by the police in Gujranwala. |
| Suo Motu case no.9 in 2009 | Human Organs were transplanted illegally. |
| Suo Motu case no.10 in 2009 | The action was taken on the construction of a commercial store on web playground by Makro Habib Pakistan limited. |
| Suo Motu case no.11 in 2009 | Regarding the disparities between the employees of an authority and the employee of the govt. About the terms and conditions. |
| Suo Motu case no.12 in 2009 | Action taken on the compulsory deduction of Zakat. |
| Suo Motu case no.13 in 2009 | Regarding CDA with different professional cooperative housing society's joint adventure at Islamabad. |
| Suo Motu case no.14 in 2009 | Hundreds of millions rupees losses to the national exchequer due to the regularization of 50 acres of land in Karachi at very low prices. |
| Suo Motu case no.15 in 2009 | Massive Corruption case in Pakistan Steel Mills Corporation. |
| Suo Motu Case, No.18 in 2009 | About "Dumping solid waste by Safina Sugar Mills in the forest land of Chak Bahadur on Sargodha Chiniot Road." Chiniot. |
| Suo Motu Case, No.20 in 2009 | About revenue department of Sindh government...allocating the valuable piece of land at cheapest rates. |
| Suo Motu Case, No.21 in 2009 | About the contractor of sand at Multan...overcharging of taxes. |
| Suo Motu Case, No.22 in 2009 | About non-issuance of CNIC to a woman of minority...Hindu married girl. |
| Suo Motu Case, No.23 in 2009 | Action is taken for the widows of retired government employees about their half pension case. |
| Suo Motu Case, No.25 in 2009 | About the project of canal widening by cutting the green trees. |
| Suo Motu Case, No.26 in 2009 | It was about the completion of a multi-millions gas supply project by destroying the thousands of green trees. |
| Suo Motu Case, No.1, in 2010 | About the collection of very high dues...by the administration of the private medical college. |
| Suo Motu Case, No.1-P, in 2010 | Action was taken regarding the open field physical torture of accused persons by the police of Bawana police station at district Chiniot. |
| Suo Motu Case, No.3, in 2010 | For the proper implementations of laws regarding social security. |
| Suo Motu Case, No.04, in 2010 | Constitutional issue related to the proper implementation of the court judgment about NRO, 2007. |

| Cases Numbers | Main Issues of Public Importance where suo motu actions were taken. |
|-------------------------------|---|
| Suo Motu Case, No.5, in 2010 | About the irregularities and lack of procedure in awarding the LNG contract, consequently huge loss to the national exchequer. Lowest bids by the relevant multinational firms and Fauji Foundation were ignored. |
| Suo Motu Case, No.7, in 2010 | Action taken by the court on the issue of small children's illegal usage in UAE as camel jockeys. |
| Suo Motu Case, No.8, in 2010 | About the martyrs at Mian Channu. |
| Suo Motu Case, No.09, in 2010 | Benevolent fund was not paid to the widow of Syed Yousaf Shah. |
| Suo Motu Case, No.10, in 2010 | About the issue of Contaminated water in Manchar lake. |
| Suo Motu Case, No.12, in 2010 | Instant issue was about the transferring of the tannery zone in Sialkot. |
| Suo Motu Case, No.14, in 2010 | Instant issue was the police torture on two young persons at Sialkot. |
| Suo Motu Case, No.15, in 2010 | About the regularizing of contract employees in the department of Zakat. |
| Suo Motu Case, No.18, in 2010 | The case was about the "Violation of public procurement rules 2004 in a procurement loss of billions of rupees to the exchequer caused by the national insurance company." |
| Suo Motu Case, No.23, in 2010 | About the Punjab police fake encounter held in EME Colony Lahore. |
| Suo Motu Case, No.24, in 2010 | Action was taken on massive corruption and irregularities about Hajj Arrangements in 2010. |
| Suo Motu Case, No.25 in 2010 | About plot allocation to influential persons in diplomatic Enclave by CDA at very low prices. |
| Suo Motu Case, No.26, in 2010 | The action was taken at the death of an eleven-year-old child in the Drag car racing incident in Rawalpindi. |
| Suo Motu Case, No.1 in 2011 | About "land grabbing in Banni Gala." |
| Suo Motu Case, No.2, in 2011 | The issue was about the "non-supply of gas connection" to Miss.G. Fatima from Gujjar Khan. |
| Suo Motu Case, No.7, in 2011 | About lack of transparency in purchasing of 150 locomotive by railway ministry, causing 40 billion rupees loss to the national exchequer". |
| Suo Motu Case, No.12, in 2011 | About enhancing Rs.500/ per month as a salary of industrial home teachers. |
| Suo Motu Case, No.16, in 2011 | About deteriorating law and orders situation in urban city of Karachi. |
| Suo Motu Case, No.17, in 2011 | About the illegal composition of the board of directors, stoppage of salary to the faculties of 26 colleges under the directions of CM pilot project. |
| Suo Motu Case, No.18, in 2011 | The instant case was about the irregularities in the issuance of salaries to the employees of Pakistan railway. |

Sources: [\(Cheema & Gilani, 2015, PP.342-357\)](#)

Cases of Human Rights and the Empowerment of People

Fundamental human rights are mentioned in the chapter (1) of the constitution of Pakistan. These fundamental rights are related to the security of person, safety against retrospective punishment,

prohibition of slavery, and equality of citizens. Article 184(3) provides massive power and maintains the prerogative of the apex court to pass orders on the issues involving the violation of fundamental human rights. During the period of judicial activism (2007-2013), there was a

widespread hue and cry for the enforcement of the fundamental rights in Pakistan. The immediate measures to the complete enforcement of the fundamental human rights and the empowerment of the people were consolidation and reactivation of the Human Rights Cell in the Supreme Court. This Cell was created to address all those applications directly sent by the citizens to the JCP. A very simple procedure was adopted in the Human Rights Cell. In this process, citizens were required to first register their complaints, and then the auto-generated system would convert those complaints into judicial cases. Reports are also collected from the concerned departments of whom the complaints were lodged. The team of judicial assistants was deputed to summarize the responses of the alleged departments. Then the scrutiny process starts under the supervision of the Director and deputy director of the Supreme Court for the preparation facts sheet. All the reports and comments from the various departments and concerned authorities are examined to satisfy the aggrieved party. If these findings are contrary to the satisfaction of the applicants, then the cases are

addressed and fixed as matters of HR cell in Supreme Court. Finally, JCP orders to issue the notice to the concerned departments.

Citizens can check the record of all these cases present at the main website of the Supreme Court under the heading of Important Human Rights Cases. In this way, citizens without any discrimination of caste, creed, and colour would have direct access to the justice. The popularity of the human rights cell can be reflected from the response of the ordinary and marginalized class of the society. The frequency of complaints applications received was almost two hundred on a daily basis and fifty thousand on an annual basis. Approximately two hundred thousand applications were received during 2009-2013. Interestingly, all the complaints received by the Human rights cell were related to the highhandedness of law enforcement agencies (police), injustices from the court, blackmailing of the people by the jail authorities, and the mistreatment in the public offices by the officials ([Cheema and Gilani, 2015, p. xx](#)).

Table 2. Some Important Human Right Cases dealt by Supreme Court during 2009-2013

| Cases | Issues Concerned |
|------------------------------------|---|
| Human Rights case, 4768-P, in 2009 | Recovery of a minor |
| Human Right case 17070-P in 2009 | About the recovery of abducted person. |
| Human Right Case, 23032-G, in 2009 | It was also related to the recovery of an abducted person. |
| Human Right case I 356-P in 2009 | About the minor person's recovery. |
| Human Right case, 7734-G, in 2009 | About the corruption charges in Rental Power Plants (RPP). |
| Human Right case, 432, in 2009 | The main issue was getting benefits from public sector jobs prior to its regularization. |
| Human Right case, 8340-G, in 2009 | About illegal promotion of grade 22 officers. |
| Human Right case, 4181-N, in 2009 | About the case registered against the members of a Jirga. |
| Human Right case, 2148-S, in 2009 | Against the compensation of vehicle damaged by police. |
| Human Right case, 2041-P, in 2009 | To compensate a woman over the death of her husband due to the fall of an official building over him. |

| Cases | Issues Concerned |
|-------------------------------------|--|
| Human Right case, 12837-P, in 2009 | Compensation regarding acquired land. |
| Human Right case, 4308-P, in 2009 | The issue involved was the renovation of a temple. |
| Human right case, 66, in 2009 | Murder of an applicant's husband. |
| Human Right case, 70, in 2009 | About the highhandedness of police against citizens. |
| Human Right case, 1532-S, in 2009 | About a person was murdered in the custody of police. |
| Human Right case, 2155-P, in 2009 | About the mistreatment in the Revenue Department. |
| Human Right case, 29, in 2009 | About the misuse of office by NGO. |
| Human Rights case, 48659-A, in 2010 | About recovering of abducted person. |
| Human Right case, 10785-P, in 2010 | About the recovery of a minor person missed for the past six years. |
| Human Right case, 48012-P, in 2010 | The issue was about the illegal appointment in EOBI. |
| Human Rights case, 5446-P, in 2010 | About the newly wedded couple requested for protection. |
| Human Right case, 22865-P, in 2010 | The issue involved was the registration of the case. |
| Human Right case, 3104-B, in 2010 | About the payment of compensation regarding the death of three-person due to the negligence of WAPDA department. |
| Human Right case, 47864-P, in 2010 | About the request for compensation. |
| Human Right case, 25508-P, in 2010 | About pollution matter. |
| Human Right case, 446-P, in 2010 | About the request of compensation and compliance with ombudsman order. |
| Human Right case, 16369-P, in 2010 | About the humiliation of police officials. |
| Human Right case, 24028-P, in 2010 | Related to the arrest of the accused. |
| Human Rights case, 56878-P, in 2010 | About the developmental work in a housing society. |

Source: [\(Cheema and Gilani, 2015, p.342-357\)](#)

Empowerment of people through constitutional petitions under article 184(3)

This is also another form of judicial activism to empower the people. Simple mechanism is

adopted in this form of PIL. Cases are filed under the article of 184(3). Following are a few famous constitutional petitions filed by the citizens during 2007-2013

Table 3. Important Constitutional petition filed by citizens under the article of 184(3) during 2007-2011

| Cases of Constitutional Petitions | Issues Related |
|---|---|
| Constitutional Petition No, 1-6, in 2007 | Filed by a citizen regarding net profits earned through "Hydel Power Plant." |
| Constitutional Petition No, 45, in 2007 | About the voters registration in the electoral roll on the basis of the record in NADRA. |
| Constitutional Petition No,53, in 2007 | About the appointment of "chairman of FST with consultation of HCJ." |
| Constitutional Petition No, 70, in 2007 | About making of law for the forced conversion of religion by any person. |
| Constitutional Petition No.8- 9, in 2009 | About the case of PCO Judges. |
| Constitutional Petition No.43, in 2009 | About fundamental rights granted to eunuchs. |
| Constitutional Petition No.47, in 2009 | About the free treatment of patients with acute renal failure disease. |
| Constitutional Petition No.51, in 2009 | About the petitioner's harassments, violence, and intimidations related to the Bank. |
| Constitutional Petition No.9, in 2010 | About converting the public land into residential and for the purpose of the commercial estate at Karachi. |
| Constitutional Petition No.30, in 2010 | About mega corruption scandal in Pakistan Steel Mills Karachi. |
| Constitutional Petition No.77, in 2010 | About protecting the life, property, and business of people in Baluchistan province. |
| Constitutional Petition No.66, in 2010 | About increasing the pensions of retired government servants at the rate of 50 percent, equal to the serving government employees, w.e.f from July 1, 2010. |
| Constitutional Petition No.45, in 2010 | About environmental pollution. |
| Constitutional petition no.62 in 2010 | About diverting the course of floodwaters and all breaches in embankments of barrages and canals allegedly. |
| Constitutional Petition No.58, in 2010 | About the appointment of "President of National Bank of Pakistan." |
| Constitutional Petition No.65, in 2010 | About the boundary differences at "Diamer Bhasha Dam". |
| Constitutional Petition No.64, in 2010 | About the concession agreement signed between the government of Pakistan and Singapore. |
| Constitutional Petition No.2, in 2011 | About 141 acres of land leased out in old railway for golf club. |
| Constitutional Petition No.77-80, in 2011 | About the memo allegedly delivered by Mr. Hussain Haqqani (Ex Ambassador to the USA) to Admiral Mike Mulan of USA. |

Sources: [\(Cheema& Gilani, 2015, PP.342-357\)](#)

Conclusion

If judicial activism is to empower the people, then the judges must be free of ambitions and lust for power along with the inbuilt sense of judicial restraint. However, only relying on judges for

judicial restraints is not a permanent solution. It lies in the institutional procedures. In the liberals and the rational democratic discourse, rule of the law occupies the core position. This lifeline and

dominant characteristics in the civilized world retains their credibility when citizen constitutionally get equitable treatment.

The people of Pakistan experienced such type of environment under the assertive and vibrant judicial institution. This assertive and independent role of the judiciary is, although applauded as a positive development in the constitutional and political history of Pakistan, led to the empowerment of the people, but the real and genuine empowerment of the people seems an entirely different and mere illusion. To check the real empowerment, one has to experience at the working of courts at a lower level. These lower courts deal with almost 80 per cent of cases of the common people. It is commonly observed in Pakistan that to get free, fair and speedy justice from the courts (lower courts, high courts and Supreme Court) needs a lot of patience. The distance of nearly 10 to 20 years have to cover for the final decision. Poor, marginalized and downtrodden people have to face a lot of difficulties to get justice from the time consuming procedures of the courts. This unsatisfactory performance of the courts

creates mistrust on the courts by the people. A survey regarding the court litigation was conducted in 2010-11. It was found that 51.5% people in Pakistan dislike to seek justice from courts-reflects the real empowerment through the judicial system. Conversely, the culture of violence dominates and the rate of crimes increases in the country. Thus the other unfair channels of justice are traced for the immediate resolution of disputes by the people. In other words, people take the laws into their own hands.

Concluding safely, it is evident from the above discussion that empowerment and liberty of the people is linked with the strict application of the rule of law and ideal institutionalism in the country. The prolonged and frequent intervention of the military in the democratic process did not favour the independent functioning of the main institutions of the state. For the first time, democracy under civil government of PPP (2008-2013) had completed its five year term. The proper judicial system exists in Pakistan, but it requires overall centralized settings to empower the people.

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