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Judicial Activism Shaping the Future of Pakistan

Syeda Saima Shabbir*

Introduction

Judicial activism is a neologism for a broader term i.e. judicial review which in simple terminology is a power vested with the superior courts to adjudicate on the constitutionality of a law, statute, administrative action, constitutional provision or an amendment. The power of judicial review is exercised worldwide by the superior courts as it is a strong legal tool in the hands of the judiciary to make ineffective all extra-constitutional acts and policies of the administrative, executive and legislative authorities. Likewise, the Supreme Court of Pakistan is also exercising this power though more frequently now-a-days to check the arbitrariness of various State actions. This exercise of judicial review has increased substantially after the restoration of *de jure* judiciary in 2009.¹

In the present state of affairs in Pakistan the judges of the Supreme Court are often criticized for being over active. Critics say that the Supreme Court is intermeddling in the affairs of the State by travelling beyond its jurisdictional domain thus damaging democratic values. This research paper focuses mainly on the question as to whether judicial activism on the part of the apex court i.e. the Supreme Court of Pakistan is obstructing democratic development or rather improving the role of the executive and legislative authorities while setting a roadmap for future democratic stability and good governance in Pakistan.

No doubt Supreme Court's decisions are highly complicated and assessing their intricacies is difficult, if not impossible for anyone other than a specialist in the area of law. Therefore, I have tried to be more simple and straightforward by relying on the common sense understanding of Constitution and offering a perspective from which a rational person can judge the nature of Court's duty and its activism. In Part-I of this paper I have discussed the background of judicial review encompassing the pioneer case laws from American and British jurisdictions; and how that concept travelled to India and Pakistan being the ex-colonies of Britain.² I have specially focussed on the role of the Federal Court later replaced by the Supreme Court of Pakistan in the initial years of Pakistan's inception when it acted as a docile and subservient institution of the executive and military. In Part-II, I have discussed a new dimension assumed by the judicial review in the shape of judicial activism after the restoration of *de jure* judiciary in Pakistan in November 2009 and the impact of this activism on democratic

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¹ The incumbent Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry was made dysfunctional along with many other superior courts judges by the then Chief Executive General Pervez Musharaf on November 3rd 2007 through imposition of emergency. The Chief Justice got restored to his position in 2009 after the return of democratic rule in Pakistan.

² The Islamic Republic of Pakistan got independence from the British rule in 1947; prior to that the areas now comprising Pakistan and India were British colonies. After independence Pakistan and India adopted the Government of India Act 1935 as the basic constitutional structure which was later replaced by the respective Constitutions of both the countries.

governance of Pakistan. I conclude with divulgence on the executive and legislative authorities' weaknesses and lack of will to ensure rule of law and democratic governance in Pakistan.

Historical Background

Judicial review in the United Kingdom takes its roots from the case of *Thomas Bonham* (1605)³ wherein *Sir Edward Coke* the Chief Justice of the Court of Common Pleas declared a statute of Parliament to be null and void. The London College of Physicians under the 'College of Physicians Act' 1553 imposed fine upon the petitioner *Dr. Thomas Bonham* for practicing medicine without license and for the violation of college rules. Sir Edward Coke ruled that the Common Law would control an Act of Parliament which was against 'common right and reason'.⁴ He observed that no person could be a judge in his own cause and the imposition of fine upon the petitioner was unjustifiable.

Coke's observation remained disputed among scholars for a number of years. According to some Coke's interpretation led to the later development of judicial review of parliamentary actions in the United States and United Kingdom while according to others Coke's interpretation was exclusive to a particular statute and not the parliamentary sovereignty as a whole (Edlin, 2008: 7). Some scholars claimed that Coke's decision was founded on 'medieval authorities that indicated that courts did indeed declare statutes void' (Walters 2001:111). However, generally in England Coke's ruling was not taken as a sound verdict as those at the helm of affairs including *King James I* and the Lord Chancellor, Lord *Ellesmere*, were deeply unhappy with the same. (Orth, 1999: 37) It is also believed that the same verdict became the cause of his dismissal in 1613 (Orth, 1999: 37).

Coke observed in the case of *Proclamations* (1610) that 'the King hath no prerogative, but that which the law of the land allows him'⁵. The decision though not properly resolving the extent of royal power proved to be influential for future development of judicial review in English history. (Bradley and Ewing, 1997: 271) Similarly, *Hobart* CJ in *Day v. Savadge* (1615) declared an Act of Parliament void for being against natural equity. He based his judgment on the same principle as laid down in the case of *Thomas Bonham* that a man could not be a judge in his own cause.⁶ However, the doctrine got defeated with the *Glorious Revolution of 1688* when the *King James II* was overthrown and the elected Parliament declared itself to be supreme.⁷ Presently, the higher courts of England and Wales are

³ *Thomas Bonham v College of Physicians* (1605) 8 Co Rep 114.

⁴ *Thomas Bonham v College of Physicians* (1605) 8 Co Rep 114.

⁵ [1610] EWHC KB J22. The King James I under a 'Royal Prerogative' issued proclamations for prohibiting new buildings in London and making of wheat starch, the matters already settled by the Parliament. The matter was referred to the Court and Sir Edward Coke after consultation with his colleagues declared that the King could not use royal power arbitrarily by issuing proclamations once the matter was already settled by the Parliament.

⁶ *Day v Savadge* (1615) 86 ER 235.

⁷ In 1688 the rule of King James II of England was overthrown by William Henry of Orange. The King was a Catholic by faith and entailed severe opposition from the Protestants and the

exercising judicial review under the 'Civil Procedure Rules'⁸ which largely replaced the earlier 'Rules of the Supreme Court', the 'County Court Rules' and the 'Senior Courts Act' 1981 enabling the higher courts to judicially review a matter upon an application. The higher courts are empowered to issue 'a mandatory, prohibiting or quashing order' and 'a declaration or injunction' in their application of judicial review.⁹

In American colonies and some bars of young States Coke's dictum as laid down in *Bonham's* case bore substantial impact for the reason that his books were quite influential there and till 1803 the doctrine was not only employed by the State and Federal Courts in actions concerning the legality of statutes but also enshrined in the constitutions of some States (Fletcher & Steve, 2004:132-134). *Marbury v Madison*¹⁰ (1803) is regarded as one such case that formally laid the foundation of demarcating the spheres of executive, legislature and the judiciary and placed restraints on exploitation of power through exercise of judicial review by the courts. Succinctly, Mr. *William Murbury* who had been appointed as a Justice of Peace by the President John Adams in the District of Columbia was refused commission by *James Madison* the new Secretary of State. *John Marshal*, the Chief Justice of the US Supreme Court denied relief to the petitioner on the ground that the Judiciary Act 1799 that enabled him to claim relief was itself unconstitutional by observing that 'an act of another branch of government repugnant to the Constitution is void'¹¹. President Jefferson severely criticized Marshall's reasoning by alleging that it would set a dangerous tenet to make judges as final arbiters as

[T]he Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. (Taranto and Leo, 2004)

He believed that the Constitution 'has more wisely made all the departments co-equal and co-sovereign within themselves.' (Taranto and Leo, 2004) Marshall's opinion also entailed criticism from legal scholarship for selectively quoting and interpreting the provisions of the Judiciary Act of 1799 in order to grant the power of mandamus on original side to the Supreme Court. (Reistein, 2004) Despite criticism on various planes the principle in *Murbury's* case got reaffirmed later in *McCulloch v. Maryland*¹² wherein CJ *John Marshall* declared void the imposition of tax by the State of Maryland on 'Baltimore Branch of the Second Bank of the United States'.¹³

Parliament for getting directly involved in the political rifts between the Catholicism and Protestantism. Also available <http://en.wikipedia.org/wiki/Glorious_Revolution>

⁸ Civil Procedure Rules, Part 54.3. Also available at <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#IDAXJSBB>>

⁹ The Senior Court Act 1981. Section 31. Also available at <<http://www.legislation.gov.uk/ukpga/1981/54/section/31>>

¹⁰ *Marbury v Madison* (1803) 5 U.S. (1 Cranch) 137.

¹¹ *Marbury v Madison* (1803) 5 U.S. (1 Cranch) 137.

¹² *McCulloch v. Maryland* (1819) 17 U.S. 316

¹³ James William McCulloch who was the head of the Baltimore Branch of the Second Bank of the United States declined to pay tax imposed by the State of Maryland under 'An Act to impose a tax on all banks, or branches thereof, in the State of Maryland, not chartered by the legislature' passed by the General Assembly of Maryland in 1818. 'An Act to Incorporate the Subscribers to

The extant Supreme Court of America exercises the power of judicial review under Article III (2) of the U.S Constitution 1787 which extends its scope to all cases 'in law and equity' which may arise under the 'Constitution, the laws [...] and treaties made [...] under their authority.' The Congress under the constitution of the United States of America is empowered to make laws; confirm judicial appointments; and legislate for the government and its officers including ambassadors, ministers and consuls. Since 1803 the US Supreme Court has checked the constitutionality of various State actions, laws and policies. In June 2012, the U.S Supreme Court in the case of *United States v. Alvarez*¹⁴ declared the 'Stolen Valor Act' passed in 2005 unconstitutional. The said Act declared that a person could be charged for misdemeanour for falsely representing himself of wearing, manufacturing, or selling of military decorations and medals.¹⁵

The concept of judicial review travelled to India and Pakistan under the common law jurisdiction. After independence from British Colonial rule in 1947, both the countries adopted various pre-independence laws and regulations along with legal concepts. Articles 32¹⁶ and 226¹⁷ of the Constitution of India empower the Supreme Court and High Courts respectively to exercise judicial review and to issue writs of certain kinds. In India the superior courts started exercising judicial review in 1970s to resolve cases of public interest and violation of fundamental rights by relaxing certain procedural technicalities. In *Mumbai Kamgar Sabha*¹⁸ case involving the matter of non-payment of bonus by the respondent to the petitioner; Justice *Krishna Iyer* introduced the concept of judicial activism by observing that the 'adjectival branch of jurisprudence' in India by and large dealt with the litigants of rural area and the vulnerable segments of society who could not be non-suited merely for deficiencies in drafting pleadings and '[p]eripheral procedural shortcomings'.¹⁹ 'Where foul play is absent, and fairness is not faulted, latitude is a grace of [...] justice.'²⁰

Later in the case of *Fertilizer Corporation Kamgar Union*²¹ wherein the petitioners impugned the sale of redundant plants of a factory by one of the respondents against relevant rules and procedure; the Chief Justice *Chandrachud*

the Bank of the United States' 1816 passed by the Congress of the United States was already in field at that time. The Court while invoking the 'Necessary and Proper Clause of the Constitution' observed that the Congress had implied powers to charter a bank and the State of Maryland that exercised delegated powers under the Constitution could not impose tax in violation of the Federal law.

¹⁴ *United States v. Alvarez*, 132 S. Ct. 1421, 585-586 (S. Ct. 2012).

¹⁵ The Stolen Valor Act of 2005 was signed by President George W. Bush on December 20, 2006. Xavier Alvarez was indicted under the said Act for falsely representing himself to be the recipient of Congressional Medal of Honour by the U.S District Court for the Central District of California. The judgment was reversed by the U.S Court of Appeal.

¹⁶ See Article 32 of the constitution of India. Remedies for enforcement of rights conferred by this Part.

¹⁷ See Article 226 of the Constitution of India. Power of High Courts to Issue Certain Writs.

¹⁸ *Mumbai Kamgar Sabha v. M/S Abdullah Bhai* (1976) AIR SC 1455.

¹⁹ *Mumbai Kamgar Sabha v. M/S Abdullah Bhai* (1976) AIR SC 1455.

²⁰ *Mumbai Kamgar Sabha v. M/S Abdullah Bhai* (1976) AIR SC 1455.

²¹ *Fertilizer Corporation Kamgar Union v Union of India* (1981) AIR SC 344.

while dismissing the petition observed that no fundamental rights of the petitioners as conferred by the Constitution of India got violated. He further observed that the court could not exceed the parameters of judicial review by interfering with the Administration. He ruled that the court's function was limited to ascertain the fairness of an administrative action and where it was free from the 'taint of unreasonableness and ha[d] substantially complied with the norms of procedure'²² then the court could not intermeddle. In *S.P Gupta*²³ case the Supreme Court of India while dismissing the petition dilated at length on the executive-judiciary relationship, their constitutional powers and limits and the concept of *locus standi*. Public Interest litigation 'took its root firmly in the Indian Judiciary and fully blossomed with fragrant smell in *S. P Gupta v. Union of India*.' (Bakshi, 1999: 4).

The constitutionality of judicial activism by the Supreme Court of Pakistan is founded on Article 184(3) of the Constitution of Pakistan 1973. It provides that the Supreme Court under its original jurisdiction can pronounce declaratory judgment *inter ali* on a 'question of public importance with reference to the enforcement of any of the Fundamental Rights.'²⁴ The language employed by the framers of the Constitution in this Article shows that the power of judicial review exercised by the Supreme Court of Pakistan is not the self-creation of the apex Court; rather it is inherent with it as per the constitutional mandate. However, the exercise of jurisdiction under this Article is limited to the questions of public importance and those concerning the enforcement of fundamental rights. The term 'Fundamental Rights' is specific with respect to those rights which are manifestly provided under Articles 8 to 28 of the Constitution of Pakistan; however, the term 'Public Importance' is a general one and wider in scope. Justice *Javed Iqbal* while interpreting the term public importance observed that 'the adjective public necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole.'²⁵ In various other judgments the term public importance has been interpreted in accordance with the facts and circumstances of each case. However, neither the Constitution of Pakistan 1973 nor the Rules of the Supreme Court 1980 specifically define public importance. This fact alone makes the apex court potent enough to exercise judicial review while relaxing procedural technicalities of relevant laws in various cases.

Judges can never be infallible and the constitutional history of Pakistan is tainted with such judicial verdicts which made bad precedents of judicial review by clinching the growth of democratic process instead of nurturing the same. It took decades to undo the impact of such judicial verdicts through subsequent rational decisions by the apex Court. Especially the judicial history written by the Federal Court in the initial constitutional development of Pakistan created a 'legal black hole' for its future development. Later the Supreme Court while following the

²² *Fertilizer Corporation Kamgar Union v Union of India* (1981) AIR SC 344.

²³ *S. P Gupta v Union of India* (1982) AIR SC 149.

²⁴ The Constitution of Pakistan 1973. Art 184(3).

²⁵ *Pakistan Muslim League v Federation* (2007) PLD SC 642.

footsteps of its predecessor court²⁶ rendered such verdicts which arrested the establishment of rule of law in the country.

After gaining independence from Britain in 1947 under the 'Indian Independence Act' 1947, Pakistan was meant to be governed by the 'Government of India Act' 1935 till the framing of its constitution.²⁷ The Act of 1947 created the Constituent Assembly as a legislature²⁸ while the office of the Governor General was established by the Act of 1935.²⁹ In 1954 the Governor General *Ghulam Muhammad* dissolved the First Constituent Assembly of Pakistan when the first Constitution was about to be adopted and reconstituted it by appointing new members. The Speaker of the First Constituent Assembly *Maulvi Tamizuddin Khan* impugned the same before the Sind Chief Court under Section 223-A of the Government of India (Amendment) Act 1954 for issuance of writ of *mandamus* to restrain the government from dissolving the Assembly; and writ of *quo warranto* for determining the validity of the reconstituted assembly.³⁰ Federation took the plea that the Government of India (Amendment) Act 1954 was itself unenforceable as the same had not been assented to by the Governor General.³¹ The Sind Chief Court headed by the Chief Judge *Constantine* declared the dissolution of Assembly unlawful by holding that laws passed by the Constituent Assembly did not require assent of the Governor General.³² However in appeal the Federal Court presided over by Justice *Muhammad Munir* with Justice *A.R Cornelius* (dissenting) reversed the decision of the Sind High Court. The Federal Court observed that the issuance of writs by the Sind Chief Court was unwarranted by law as the enabling Act of 1954 did not receive the assent of the Governor General.³³

The decision of the Federal Court establishing the 'necessity of assent' of the Governor General as mandatory for lawmaking process of by the Constituent Assembly marked the beginning of constitutional crises in Pakistan. The decision 'foretold sharp political and jurisprudential disagreements to come.' (Newberg, 1995:24) The decision rendered all laws invalid which were passed with effect from the establishment of the Assembly till its dissolution in which no formal assent of the Governor General was taken. Constitutional crises deepened further with the promulgation of the Emergency Powers Ordinance (IX of 1955) empowering the Governor General to validate selective laws already passed by the Constituent Assembly with retrospective effect. Interestingly, the same bench comprising of Chief Justice *Muhammad Munir*, Justice *A. S. M. Akram*, Justice *A. R. Cornelius*, Justice *Muhammad Sharif*, and Justice *S. A. Rahman*; which had adjudicated upon

²⁶ After independence in 1947, the court of ultimate jurisdiction in Pakistan was the Federal Court established in 1948. The Supreme Court replaced the Federal Court in 1956 when the first Constitution of Pakistan was formulated. The Supreme Court retained its name in the second Constitution passed in 1962 and the third Constitution passed in 1973.

²⁷ The Indian Independence Act 1947, Section 8(2).

²⁸ The Indian Independence Act 1947, Section 8(1).

²⁹ The Government of India Act, Section 3.

³⁰ *Maulvi Tamizuddin Khan v Federation Of Pakistan* (1955) PLD Sind 96.

³¹ *Maulvi Tamizuddin Khan v Federation Of Pakistan* (1955) PLD Sind 96.

³² *Maulvi Tamizuddin Khan v Federation Of Pakistan* (1955) PLD Sind 96.

³³ *Federation Of Pakistan v Maulvi Tamizuddin Khan* (1955) PLD FC 240.

Tamizuddin's case declared the Emergency Powers Ordinance (IX of 1955) invalid in *Usif Patel v Crown*.³⁴ Perplexed with the anomalies created by the Governor General himself and their subsequent legitimisation by the apex Court, he sent a Reference to the Federal Court for seeking its advisory opinion.³⁵ The 'doctrine of necessity' initially propounded by the Federal Court in *Tamizuddin's* case, was again set as a norm for validating 'unlawful acts as lawful' under special circumstances. The Federal Court advised the Governor General that he could continue with his extra-constitutional power of validating laws retroactively until the reconstituted Assembly decide the question of their legality.³⁶ The Federal Court introduced an aberrant jurisprudence for the legal scholarship of Pakistan.

The doctrine of necessity travelled in different shapes and interpretations following the rule of 'selective justice' from the cases of *State v Dosso*³⁷, *Miss Asma Jilani v The Government of the Punjab and Another*³⁸, *Begum Nusrat Bhutto v Chief of Army Staff and Federation of Pakistan*³⁹, *Pakistan v. Muhammad Saifullah Khan*,⁴⁰ *Ahmad Tariq Rahim v Pakistan*⁴¹, *Muhammad Nawaz Sharif v President of Pakistan*⁴², *Benazir Bhutto v Federation of Pakistan*⁴³, *Zafar Ali Shah v General Pervez Musharraf*⁴⁴ to the case of *Sindh High Court Bar Association v Federation of Pakistan*⁴⁵.

³⁴ *Usif Patel v The Crown* (1955) PLD FC 387.

³⁵ *Reference By Governor General* (1955) PLD FC 435.

³⁶ *Reference By Governor General* (1955) PLD FC 435.

³⁷ See *State v Dosso* (1958) PLD SC 533. CJ Muhammad Munir validated the imposition of Martial Law on 7th October 1958 through dissolution of National and Provincial assemblies by General Muhammad Ayub Khan the commander in chief of Pakistan Army. He ruled that 'a victorious revolution or a successful coup d'état is an internationally recognised legal method of changing a Constitution.'

³⁸ See *Miss Asma Jilani v The Government of the Punjab and Another* (1972) PLD SC 139. The Supreme Court overruled *Dosso* by declaring the Martial law of 25th March 1969 imposed by General Yahya Khan to be void.

³⁹ See *Begum Nusrat Bhutto v Chief of Army Staff and Federation of Pakistan* (1977) PLD SC 657. The proclamation of Martial Law on 5th July 1977 by General Zia-ul-Haq was legalized by the Supreme Court.

⁴⁰ See *Federation of Pakistan v Muhammad Saifullah Khan* (1989) PLD SC166. General Zia-ul-Haq dissolved the National and Provincial assemblies under Art 58(2) (b) of the Constitution of Pakistan and Prime Minister Muhammad Khan Junejo was made dysfunctional. The Supreme Court in the instant case although declared the dissolution null and void didn't restore Muhammad Khan Junejo to his office.

⁴¹ See *Ahmad Tariq Rahim v Pakistan* (1992) PLD SC 646. President Ghulam Ishaq Khan on 14-10-90 dissolved the elected government of the Prime Minister Benazir Bhutto under Article 58(2) (b). The Supreme Court didn't restore Benazir's Government.

⁴² See *Muhammad Nawaz Sharif v President of Pakistan* (1993) PLD SC 473. While exercising powers under Article 58(2) (b) of the Constitution the National and Provincial assemblies were dissolved by President Ghulam Ishaq Khan. The Supreme Court declared dissolution illegal and restored Muhammad Nawaz Sharif to his office.

⁴³ See *Benazir Bhutto v Federation of Pakistan* (1998) PLD 1998 SC 388. For the fourth time the National and Provincial Assemblies were dissolved under Article 58(2)(b) by the President Farooq Laghari. The government of Benazir Bhutto was restored.

⁴⁴ See *Syed Zafar Ali Shah and others v General Pervez Musharraf* (2000) PLDSC 869. A twelve member bench of the Supreme Court including the incumbent Chief Justice of Pakistan Iftikhar Muhammad Chaudhry accorded legality to the 'Provisional Constitutional Order' 1999 whereby

The doctrine of necessity proved to be a 'legal black hole' in the constitutional development of Pakistan, a 'zone in which officials [could] act unconstrained' and which 'in advance declare[d] what they [did] to be legal' and 'by definition both necessitous and made in good faith.' (Steyn, 2004:53). This doctrine of necessity empowered military with all its vested interests to intermeddle with the democratic governance and impose its own extra-constitutional regimes through successive coup d'états. Every time military got into power it strengthened its grip in civilian sectors of Pakistan through extra-constitutional 'Legal Frame Work Orders' and 'Provisional Constitutional Orders'. The military instead of acting 'in aid of civil power' assumed civil power by preponderantly usurping and dissolving civilian governments itself or forcing such dissolution through elected Presidents under 58(2) (b)⁴⁶ of the Constitution 1973. This extra-constitutional doctrine of necessity introduced by the judges of the apex court of the country enabled the military to take more than half of the constitutional history of Pakistan. The grip of military through successive validation of its acts by the superior courts got so firm that it practically ruled even in the civilian regimes through backdoors. The doctrine of necessity established by the apex court as a basis for validating extra-constitutional regimes in 1955 in *Tamizzuddin's* case was finally set at naught in 2009 in *Sindh High Court Bar Association's* case' almost after 54 years; during which period the Country had seen three Constitutions of 1956, 1962 and 1973 and four Martial Laws of 7th Oct 1958⁴⁷, 25 March 1969⁴⁸, 5 July 1979⁴⁹ and 3rd Nov 2007. Therefore, among other factors the judicial verdicts of the apex court were equally responsible for creating democratic disruption and political instability in Pakistan.

Apart from these controversial decisions, the apex Court also rendered many landmark judgments under exercise of jurisdiction of judicial review. In *Miss Benazir Bhutto v Federation of Pakistan*⁵⁰ the petitioner being the Co-Chairperson of the Pakistan People's Party invoked the jurisdiction of the Supreme Court of Pakistan vide a constitutional petition challenging inter-alia the *vires* of certain amendments of the 'Political Parties Act' 1962 being in violation of Articles 17 and 25 of the Constitution; the *vires* of 'Freedom of Association Order', 1978 as being unconstitutional; and the constitutionality of Article 270-A as 'affirmed and

emergency was proclaimed by General Pervez Musharraf and 'Oath of Office of (Judges) Order' 2000 whereby the incumbent Chief Justice himself took oath.

⁴⁵ See *Sindh High Court Bar Association Federation* (2009) PLD SC 879. A fourteen member bench of the Supreme Court of Pakistan headed by the incumbent Chief Justice Iftikhar Muhammad Chaudhry declared null and void the Proclamation of Emergency dated Nov 3, 2007 imposed by General Pervez Musharraf and various Acts and Laws promulgated thereafter.

⁴⁶ Article 58(2) (b) was introduced during General Muhammad Zia-ul-Haq's regime in the Constitution of Pakistan vide Eighth Amendment. It empowered the President to dissolve National Assembly in case a situation had arisen in which the Government of Federation could not be carried out in accordance with the Constitution.

⁴⁷ First Martial Law was imposed by the President Iskandar Mirza.

⁴⁸ Second Martial Law was imposed by the President Ayub Khan.

⁴⁹ Third Martial Law was imposed by General Zia-ul-Haq.

⁵⁰ *Miss Benazir Bhutto v Federation of Pakistan* (1988) PLD SC 416.

purportedly validated⁵¹ by the 'Constitution (Eighth Amendment) Act', 1985 curtailing the power of superior courts to judicially review its contents and restricting the scope of the superior courts' jurisdiction with respect to the enforcement of fundamental rights including 'the right to form or be a member of a political party'.⁵² An eleven member Bench headed by the then Chief Justice *Muhammad Haleem* exhaustively dilated upon the scope of Article 184(3) of the Constitution and the power of judicial review. He observed that in the exercise of power of judicial review the court shall not adhere to 'ceremonious observance of rules' of interpretation. The court shall decide in accordance with the object of various constitutional provisions which aim to achieve 'democracy, tolerance, equality and social justice according to Islam'.⁵³ The Supreme Court accepted the petition and "paved the way for public interest litigation in Pakistan and opened the doors of the superior courts to such litigation" (Menski, Alam & Raza, 2000 : 44). Similarly in the case of *Darshan Masih v The State*⁵⁴ the Supreme Court took cognizance of the matter of bonded labour in brick kilns on a telegram received from bonded labourers working in various areas of Lahore in the province of Punjab. The matter was considered to be of public importance and in violation of Articles 9⁵⁵, 11⁵⁶, 14⁵⁷, 15⁵⁸, 18⁵⁹ & 25⁶⁰ of the Constitution of Pakistan 1973. Justice *Muhammad Afzal Zullah* observed that public interest litigation could not be treated merely in the context of knowledge of textbook law but the court had to consider the circumstances of the case while formulating any scheme of action.⁶¹ The court while disposing off the matter on the basis of agreement observed that there was a need for proper legislation for defining the term 'forced labour' and its nature. Subsequently, the Bonded Labour System (Abolition) Act was promulgated in 1992 in Pakistan.

A well reasoned judicial verdict by a five member's bench of the Supreme Court of Pakistan extended the scope of Article 4⁶² of the Constitution in a Human Rights Case⁶³ while taking notice of gang rape cases in Pakistan in 1992. The Court referred to the earlier judgments of *Ms. Benazir Bhutto* and *Darshan Masih* and ruled that Article 184(3) of the Constitution 1973 read with Article 199⁶⁴ of the Constitution empowers the Supreme Court to pass any 'appropriate' order for the enforcement of fundamental rights.⁶⁵ The Supreme Court made certain

⁵¹ *Miss Benazir Bhutto v Federation of Pakistan* (1988) PLD SC 416.

⁵² *Miss Benazir Bhutto v Federation of Pakistan* (1988) PLD SC 416.

⁵³ *Miss Benazir Bhutto v Federation of Pakistan* (1988) PLD SC 416.

⁵⁴ *Darshan Masih v The State* (1990) PLD SC 513.

⁵⁵ Security of person.

⁵⁶ Slavery, forced labour, etc. prohibited.

⁵⁷ Inviolability of dignity of man, etc.

⁵⁸ Freedom of movement, etc.

⁵⁹ Freedom of trade, business or profession.

⁶⁰ Equality of citizens.

⁶¹ *Darshan Masih v The State* (1990) PLD SC 513.

⁶² Right of individuals to be dealt with in accordance with law, etc.

⁶³ Human Rights Case No. 1 of 1992 (1993) SCMR 2001.

⁶⁴ See Article 199 of the Constitution of Pakistan pertaining to the 'Jurisdiction of High Courts'.

⁶⁵ Human Rights Case No. 1 of 1992 (1993) SCMR 2001.

recommendations for making effective laws for eradicating gang rape cases in Pakistan.

In *Ms. Shehla Zia*⁶⁶, the matter involving the construction of a grid station in a residential area of Islamabad; Chief Justice *Nasim Hassan Shah* while taking cognizance under Article 184(3) extended the meaning of Article 9 of the Constitution relating to 'life' and declared the said construction unlawful for being hazardous for the inhabitants due to emission of electromagnetic waves. Concerned authorities were specifically directed by the court to issue public notices prior to future establishment of grid stations in any residential area. 'The first major legal consequence flowing from this judgment was that the right to quality of life was held to be guaranteed by the Constitution.' (Hassan and Hassan,2009:394) *Al Jihad Trust*⁶⁷ case is another classical example of judicial review wherein the Supreme Court dilated upon the mode of appointment of superior courts' judges by giving an exhaustive judgment. The Court while relying on an earlier case of *Fazlul Quader Chowdhry*⁶⁸ observed that the Constitution 'as an organic whole' ought to be interpreted 'in all multifarious bearings on the life of the citizens' by giving effect to and harmonizing its different provisions.⁶⁹

The case of *Darshan Masih* was also referred in the case of *M. Ismail Qureshi*⁷⁰ wherein the Supreme Court while taking cognizance of the matter of cancellation of admission of students without notice observed that Article 184(3) was a special provision under the Constitution of Pakistan. Further observed that when the Supreme Court is satisfied that the matter involves the enforcement of a fundamental right then the only restriction on the court's power to pass order is that it should be 'appropriate'.⁷¹

Other important cases entertained by the Supreme Court of Pakistan under Article 184(3) inter alia included '*Mian Muhammada Nawaz Sharif*⁷² declaring the dissolution of National Assembly as null and void; Human Rights Cases by *Syed A. Tajawar*⁷³ directing the concerned authorities to formulate uniform provincial policies for keeping the under trial prisoners near to their home districts; *Khalil-uz-Zaman v Supreme Appellate Court*⁷⁴ setting aside death sentence of the accused being unwarranted under the relevant laws and directing all the subordinate courts of Pakistan to exercise utmost care while dealing with cases involving fundamental rights of life and liberty; In *Re Suo Motu Petition*⁷⁵ public hanging as provided by S. 10 of the 'Special Courts for Speedy Trials Act' 1992 was declared void for being in violation of the Art.14 of the Constitution of Pakistan.

⁶⁶ *Ms. Shehla Zia v WAPDA* (1994) PLD SC 693.

⁶⁷ *Al Jihad Trust v Federation of Pakistan* (1996) PLD SC 324.

⁶⁸ See *Fazlul Quader Chowdhry and others v Muhammad Abdul Haque* (1963) PLD SC 486.

⁶⁹ *Al Jihad Trust v Federation of Pakistan* (1996) PLD SC 324.

⁷⁰ *M. Ismail Qureshi v M. Awais Qasim and Others* (1993) SCMR 1781.

⁷¹ *M. Ismail Qureshi* at p.1784.

⁷² *Mian Muhammada Nawaz Sharif v President of Pakistan*(1993) PLD SC 473

⁷³ Human Rights Cases (1994) SCMR 1525.

⁷⁴ *Khalil-uz-Zaman v Supreme Appellate Court* (1994) PLD SC 885.

⁷⁵ *Suo Motu Case* (1994) SCMR 1028.

Among many important cases the 'missing persons cases'⁷⁶ representing worst forms of human rights violations in Pakistan were taken up by the Supreme Court of Pakistan in 2005 and thereafter a number of similar cases were filed and adjudicated upon. It was the force of Supreme Court's directions that many of missing persons were recovered between 2005 to 2012. However, due to lack of political will and proper legislation for making the concerned accountable, the issue still persists. However, it should not be assumed that the Supreme Court of Pakistan entertained each and every case brought before it under Article 184(3). In a number of cases the court refused to exercise judicial review where the matter did not fall within the purview of public importance and enforcement of fundamental rights.⁷⁷

It is also noticeable that from 1947 to 2007 the Supreme Court did not become overly active to assume jurisdiction under Art 184(3) whenever the military tried to overturn civilian government and introduced its own dictatorship. Most of the cases were decided on applications under Article 184(3) by the Supreme Court and not under *suo moto* exercise of power.

Judicial Activism A New Dimension After 2009

Judicial review assumed the shape of judicial activism in Pakistan when the incumbent Chief Justice Iftikhar Muhammad Chaudhry regained his power in September 2009⁷⁸. The judiciary emerged as a unified institution having separate identity as an independent organ of the State. The Chief Justice started taking up matters of public importance and human rights more frequently and promptly as compared to pre-restoration scenario from Nov 3rd 2007 to 2009 when there had been few verdicts on these matters. A large number of constitutional petitions and *suo moto* actions involving misuse of public funds, loss to the national exchequer, extra-judicial killings, rape cases, missing persons issues, *karo kari* cases, child marriages, private jails, police torture cases, illegal appointments, illegal promotions, illegal constructions, controversial allotments of state-land on throw away prices, written off bank loans, and matters pertaining to conservation of environment were taken up and decided under Article 184(3).

A separate Human Rights Cell was established by the incumbent Chief Justice for dealing with the cases of human rights violations in Pakistan. The Cell functions under the direct supervision of the incumbent Chief Justice of Pakistan in order to expeditiously process the complaints from public.⁷⁹ Relief is provided to the aggrieved persons without going through the traditional protracted litigation process prevalent otherwise in Pakistan. Just in a span of about thirteen months

⁷⁶ H.R.C.No.965 (2005) and similar hundreds of petitions available at www.supremecourt.gov.pk.

⁷⁷ See for instance *Noor Muhammad v Fedearation*, 1989) SCMR 523. *Ali Gul Khan v Lahore High Court* (1991) SCMR 445. *Court and State Life Insurance v Federal Government of Pakistan* (1994) SCMR 1341.

⁷⁸ The *de jure* Chief Justice *Iftikhar Muhammad Chaudhry* and many other superior courts' judges were made dysfunctional on 3rd November 2007 by the then Chief Executive of Pakistan General Pervez Musharaf for refusing to take fresh oath under the Oath of Judges Order 2007 and Provisional Constitutional Order 2007.

⁷⁹ See < <http://www.supremecourt.gov.pk/web/page.asp?id=337> >

from 01.01.2011 to 29.02.12 the Supreme Court of Pakistan received 54935 cases of human rights violation and public policy and decided 53082 cases.⁸⁰

The prominent case that proved to be a catalyst of changing the past hackneyed jurisprudence of Pakistan was the *Sindh High Court Bar Association*⁸¹ known more by its sobriquet the 'PCO Judges'⁸² case in the legal fraternity. In contrast to Chief Justice *Muhammad Munir's* scheme of assessing militarised government's extra-constitutional powers', the incumbent Chief Justice Iftikhar Muhammad Chaudhry offered more sound and rational interpretation of the same. The Supreme Court frankly admitted in the judgment that in the past it had been wrongly justifying extra-constitutional interventions.⁸³ It further observed indomitably that 'the military rule, direct or indirect, is to be shunned once and for all.'⁸⁴ Military received another setback when a seventeen member bench headed by Chief Justice *Iftikhar Muhammad Chaudhry* declared the 'National Reconciliation Ordinance' 2007 'unconstitutional and void *ab initio* [...] a black law created and prolonged by the corrupt and malevolent hands of a military dictator.'⁸⁵ This exercise of judicial review by the apex court after 2009 shaped a new jurisprudence in Pakistan that was not tainted with extra-constitutional influences and interruptions rather more blatant and bold.

The decision of Supreme Court also gave hardihood to the Parliamentarians to incorporate a solid amendment in the Constitution of Pakistan 1973 for condemning unlawful practice of overthrowing elected governments by military dictators and non-state actors. On 19th April 2010, the President of Pakistan approved eighteenth amendment to the Constitution whereby *inter alia* Article 6 was amended to the effect that

Any person who abrogates or subverts or suspends or holds in abeyance, or attempts or conspires to abrogate or subvert or suspend or hold in abeyance, the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason.⁸⁶

It was further incorporated in the same Article 6 that the Supreme Court and High Courts shall not validate an act of high treason in future.⁸⁷ A certain practice adopted for a long time becomes custom through subsequent legitimisation so the

⁸⁰ Data Collected from the Human Rights Cell of the Supreme Court of Pakistan.

⁸¹ *Sindh High Court Bar Association v Federation of Pakistan* . (2009) PLD SC 879.

⁸² A number of superior courts judges took fresh oaths under the Provisional Constitutional Order of 2007 brought about during General Musharaf's regime. The said Order 2007 was declared unconstitutional in the *Sindh High Court Bar Association's* Case and the judges who took oaths under the same had to lose their services.

⁸³ *Sindh High Court Bar Association v Federation of Pakistan* . (2009) PLD SC 879.

⁸⁴ *Sindh High Court Bar Association v Federation of Pakistan* . (2009) PLD SC 879.

⁸⁵ See *Dr Mobashir Hassan v Federation of Pakistan*. (2010) PLD 265. The National Reconciliation Ordinance was promulgated in 2007 during the tenure of President General Pervez Musharaf. Its validity was challenged and the Supreme Court of Pakistan declared the Ordinance to be ultra vires of the Constitution of Pakistan as the same was promulgated as a result of deal between General Pervez Musharaf and Benazir Bhutto for achieving political purposes.

⁸⁶ The Constitution of Pakistan. Article 6(1).

⁸⁷ The Constitution of Pakistan. Article 6(2A).

Military practice of overthrowing the Constitution was taken as a valid custom in Pakistan by the Supreme Court prior to 2009. Military, which had been maintaining and preserving its dominance in Pakistan since independence made no attempt to intervene even when there was a possibility of an imminent coup in December 2011.⁸⁸

Similarly, the Supreme Court's decision in *Asghar Khan's Case*⁸⁹ decided in 2012 was against military's perception that the apex court would ever decide against it. The case was initially registered as a Human Rights case in 1996 upon a letter dated 16.06.1996 written by Air Marshal (Retired) *Muhammad Asghar Khan*, a former Chief of Air Staff to the then Chief Justice *Sajjad Ali Shah*. The letter was written in the backdrop of 1990 General Elections in Pakistan in consequence of which *Mian Muhammad Nawaz Sharif* became the Prime Minister of Pakistan. The letter alleged that General (Retired) Mirza Aslam Beg a former Chief of the Army Staff in connivance with Lieutenant General (Retired) *Assad Durrani*, the then Director General of the Inter Services Intelligence Directorate, had withdrawn Rs. 15 Crores from *Mehran* Bank before elections for the purpose of distributing among various people.⁹⁰ The case kept pending in shelves till 2012 when it was finally taken up by the extant Chief Justice of Pakistan. A three member Bench comprising of CJ *Iftikhar Muhammad Chaudhry*, Justice *Jawwad.S. Khawaja* and Justice *Khilji Arif Hussain* to the utter dismay of Military ruled that 1990 elections were rigged and a special Political Cell of Inter Services Intelligence played its major role.⁹¹

In contrast to its past practice of acquiescing to military and civilian extra-constitutional moves, the Supreme Court of Pakistan in the recent years emerged as a bulwark against the same. Irrespective of many controversial decisions including the removal of an elected Prime Minister of Pakistan in contempt of court

⁸⁸ Suo Moto Case No 4 of 2010. (2012) PLD SC 553. Mr. Yousaf Raza Gillani the Ex-Prime Minister of Pakistan was facing charge of contempt of court in the Supreme Court of Pakistan for non-compliance of Court's direction in the case of *Dr. Mobashar Hassan v Federation* popularly known as NRO case; to write a letter to the Swiss authorities for opening graft cases against President Asif Ali Zardari.

⁸⁹ A Human Rights case was registered in the Supreme Court of Pakistan under Article 184(3) of the Constitution on a letter written by Air Marshal (Retd) Muhammad Asghar Khan in 1996 alleging therein the distribution of funds from national exchequer to a group of politicians through involvement of General (R) Mirza Aslam Beg, former Chief of Army Staff, Lt. Gen. (R) Asad Durrani, Ex-DG, ISI and Mr. Yunus Habib, Ex-Chief Mehran Bank Limited to defeat the Pakistan Peoples Party in the election of 1990. http://www.supremecourt.gov.pk/web/user_files/File/H.R.C.19of1996%5BAsgarKhanCase%5DDetailedReasons.pdf (accessed on Dec 6, 2012)

⁹⁰ Air Marshall (Ret) Muhammad Asghar Khan V General (Ret) Muhammad Aslam Beg. (1996) HRC 19. Available online on http://www.supremecourt.gov.pk/web/user_files/File/H.R.C.19of1996%5BAsgarKhanCase%5DDetailedReasons.pdf

⁹¹ Air Marshall (Ret) Muhammad Asghar v General (Ret) Muhammad Aslam Beg. (1996) HRC 19. Available online on http://www.supremecourt.gov.pk/web/user_files/File/H.R.C.19of1996%5BAsgarKhanCase%5DDetailedReasons.pdf

proceedings⁹² and interim orders in *Arsalan Iftikhar's* case,⁹³ the overall impact of Supreme Court's verdicts bore emphatic impact on the democratic stability. Supreme Court's verdicts conveyed a strong message to the military as well as the civil bureaucracy that 'no one is above the law'. In an unprecedented move Justice *Chaudhry Ijaz Ahmad* set aside the promotions of a number of bureaucrats including Mrs. *Nargis Sethi* the incumbent Defence secretary from basic pay scale 21 to 22.⁹⁴ The court ruled that the 'object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind'⁹⁵ The judgments in *Hajj Corruption case*⁹⁶, *Bank of Punjab case*⁹⁷, *National Insurance Company Scam*⁹⁸, *New Muree Housing Project*⁹⁹, *Appointment of Chairman National Accountability Bureau*¹⁰⁰, *Joint Venture*

⁹² *Suo Moto Case No 4 of 2010*. (2012) PLD SC 553. Mr. Yousaf Raza Gillani the Ex-Prime Minister of Pakistan was facing charge of contempt of court in the Supreme Court of Pakistan for non-compliance of Court's direction in the case of *Dr. Mobashar Hassan v Federation* popularly known as NRO case; to write a letter to the Swiss authorities for opening graft cases against President Asif Ali Zardari.

⁹³ *Suo Moto Case No.5* (2012). *Suo Moto* action was taken by Chief Justice Iftikhar Muhammad Chaudhry against his own son Mr. Arsalan Iftikhar on the basis of alleged business deal between him and Malik Riaz a business tycoon. The media highlighted the incident and many fingers were pointed out at the impartiality of the Supreme Court. The case is still pending as a commission appointed by the Supreme Court is probing into the veracity of the incident. Also available online on <http://www.supremecourt.gov.pk/web/user_files/File/S.M.C.5of2012dt14-6-2012.pdf> .

⁹⁴ *In Re Tariq Azzizudin and Other* (2010) SCMR 1301. One Tariq Azzizudin from the Foreign Service Group challenged the promotions granted to a number of civil servants/ bureaucrats belonging to different groups of civil services from BPS 21-22. The Supreme Court under its exercise of power of judicial review set aside the promotions for being in violation of relevant service laws and rules.

⁹⁵ *In Re Tariq Azzizudin and Other* (2010) SCMR 1301.

⁹⁶ *Suo Motu case No 24 of 2010* (2011) PLD SC 963. *Suo moto* notice of corruption was taken by the Supreme Court in the Hajj arrangements of 2010 and relief was granted to hundreds of the aggrieved persons by ordering reimbursement of money to them and directing stern action against the accused.

⁹⁷ *Bank of Punjab v Haris Steel Industries* (2010) PLD SC 1109. In this case the accused had taken a financial facility of Rs. 8.6 billion on fake collaterals, bogus documents and fraudulent companies; Supreme Court after taking up the matter ordered confiscation of assets of the accused and recovered a considerable amount of money.

⁹⁸ *Suo Moto Case 18 of 2010* (2011) PLD SC 821. National Insurance Company scam case was taken up by the Supreme Court on a letter written by the Transparency International Pakistan wherein dubious purchases of worth Rs five billion were made by the Company and the Supreme Court recovered the same.

⁹⁹ *Suo Motu Case 10 of 2005* (2010) SCMR 361. *Suo moto* action was taken by the Chief Justice of Pakistan upon a note initiated by one of the judges of the court that the proposed project was a grave environmental threat as the same involved cutting of nearly 4000 trees from Patriata forest; thus likely to create rainfall anomaly and shortage of drinking water for almost half of the population of Rawalpindi and Islamabad.

¹⁰⁰ *Shahid Orakzai v Pakistan through Secretary Law* (2011) PLD SC 365. The appointment of a retired Justice of the Supreme Court namely Deedar Hussain Shah as Chairman National Accountability Bureau by the President of Pakistan on 9.02.11 was declared illegal by the Supreme Court. The Court observed that the said appointment in contravention of relevant accountability laws had adversely affected the fundamental rights of the people of Pakistan 'including their right to life, right to liberty, due process of law, fair trial and access to justice.'

*Agreement*¹⁰¹ and *Corruption in Pakistan Steel Mills*¹⁰² reflected a transition in Supreme Court's role from a subservient and meek institution to a sturdy and independent organ of the State.

This is just a small portion of the whole lot that I have mentioned here, where the government functionaries, the security and law enforcement agencies of Pakistan badly failed to dispense justice timely and fairly. The State under Articles 3, 37 and 38 of the Constitution of Pakistan 1973 is bound to eradicate exploitation and social evils from the society and to ensure social justice and economic well-being of the people. Unfortunately, even after 65 years of creation, Pakistan is still at the brink of fragile democratic structure that may collapse anytime. The affirmative of the Supreme Court through judicial activism is the need of the hour, because there is one institution in Pakistan which at least is responsive to the anomalies and plight of downtrodden and poverty stricken segments of the society and curtailing arbitrary exercise of power by the executive and legislative authorities.

Criticizing is easier than remedying. Judges are often criticized as usurpers of executive and legislative authority, however; keeping in view the ground realities of Pakistan it is crystal clear that the whole edifice of legislative and executive framework has been dilapidated by corruption, dishonesty, nepotism and favouritism. This has led to a culture of intolerance, hatred and frustration in the society. The only State organ that enjoys some confidence of the public is the Supreme Court of Pakistan. Had the public sector organizations and institutions performing their functions within their constitutional domain there would have been no need of *suo moto* actions and frequent exercise of judicial review by the Supreme Court which is affecting its own institutional working.

Conclusion

Pakistan is a democratic State where the government is bound to establish and follow the Rule of Law. Corruption and injustices erupt from the distortion of rule of law thus turning the State as predatory and unjust. When a single crime is left to grow with impunity then it gives birth to a thousand new crimes. When the government fails to assert its role to ensure constitutional rights to its citizens then courts are left with no option except to exercise their powers of judicial

¹⁰¹ *Suo Motu Case No 13 of 2009* (2011) PLD SC 619.. Capital Development Authority instead of making fresh advertisement due to lack of parties, entered into agreement with only one party for development of land in Sector E-11 Islamabad. Supreme Court set aside the said agreement and declared the said act to be in violation of Articles 9 and 18 for causing great loss to the public exchequer. Also available <http://www.supremecourt.gov.pk/web/user_files/File/SMC.13-2009.pdf >

¹⁰² *Suo Motu Case No 15 of 2009* (2012) PLD SC 610.Suo motu notice was taken by the Supreme Court under Art.184(3) of the Constitution on the basis of newspaper write up mentioning the details of the corruption and mismanagement in 'Pakistan Steel Mills' in the year 2008-2009; whereby losses of billions of rupees were caused to the public exchequer. Stern action was directed to be taken against the concerned officials of Federal Investigation Agency who failed to conduct proper inquiry and the matter was invested to the National Accountability Bureau to complete investigation positively within three months. Also available <http://www.supremecourt.gov.pk/web/user_files/File/SMC15OF2009.pdf >.

review and activism. It is a famous saying that 'power corrupts and absolute power corrupts absolutely.' If government is left with unrestrictive power to do everything at the whims and wishes of politicians and the mighty, then the ultimate outcome could be anarchy and lawlessness and nothing else.

Supreme Court enjoys ultimate jurisdiction for protecting the rights of citizens and safeguarding the Constitution. Its jurisdiction is not limited to mere procedural technicalities as it enjoys certain inherent powers to do complete justice in any case. I believe that in the present state of affairs in Pakistan the judicial activism on the part of apex court is a good omen for bringing democratic governance on the norms of justice and fair play. Judges are not exercising power of their own rather they are exercising their jurisdiction to adjudicate in accordance with law and constitution. It is within their jurisdictional domain to check the arbitrary exercise of power by any other institution or individual subject to constitutional restraints. Activism on the part of judges in the present state of affairs in Pakistan is the result of political weaknesses and lack of political will to improve the system. This judicial activism was necessary in the present prevalent culture of Pakistan; else a military dictator with all his vested interests would again have risen to usurp power for decades to come. Judicial activism though preponderantly exercised currently in Pakistan is somehow leading towards transformation of the traditional mindset of abuse of power by the government functionaries, military, bureaucracy and influential non-governmental authorities. I would like to conclude by quoting the words of *Lord Denning* who said:

“Who is to control the exercise of power? Only the judges. Someone must be trusted. Let it be judges.”

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