



Exploring the Nexus between Judicial Activism and Good Governance: A Comparative Analysis

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Abstract

This paper aims to investigate the intricate relationship between judicial activism and good governance through a comparative analysis. Judicial activism refers to the active role of the judiciary in shaping public policy and influencing social change. On the other hand, good governance encompasses principles such as transparency, accountability, and the effective delivery of public services. Understanding how judicial activism impacts good governance is crucial for assessing the overall health and functioning of a democratic society. The study employs a comparative approach, examining the experiences of different countries and their judicial systems. By analyzing case studies and judicial decisions from various jurisdictions, the paper seeks to identify patterns and trends regarding the effects of judicial activism on good governance. The analysis will consider both positive and negative outcomes, examining instances where judicial activism has either enhanced or hindered good governance principles. The research will explore the potential benefits of judicial activism in promoting good governance, such as the protection of fundamental rights, checks and balances on the executive branch, and the advancement of social justice. Conversely, it will also investigate the potential risks associated with excessive judicial activism, including potential infringement on the separation of powers, judicial overreach, and erosion of democratic processes. Additionally, the paper will examine the factors that contribute to a conducive environment for judicial activism to flourish, such as an independent judiciary, a robust legal framework, and public trust in the judiciary. It will also consider the role of public opinion, civil society, and political dynamics in shaping the relationship between judicial activism and good governance. By conducting a comparative analysis, this study aims to provide a comprehensive understanding of the nexus between judicial activism and good governance. The findings will contribute to the ongoing discourse on the role of the judiciary in democratic societies and inform policymakers, legal practitioners, and scholars about the potential implications of judicial activism on the overall governance framework.

Keywords: Judicial activism, good governance, comparative analysis, democracy, separation of powers, accountability, transparency, and social justice.

1. Introduction

The connection between the executive & judicial branches of government is necessary for any democratic arrangement. In most democratic countries, including the United States, these two systems work independently but are designed to deliver checks and balances on each other's powers.

It appears that judicial activism is a universal phenomenon. Since these are exclusively the purview of the executive arm of government, courts' involvement in several spheres of policymaking and governance is coming under closer examination on a global scale. In the 1954 case *Brown v. Board of Education*, the US ordered the government to desegregate schools. In *Roe v. Wade*, the US Supreme Court declared abortion to be legal. Later, in 2000, the same court rendered a decision in *Bush v. Gore*, a case involving elections involving the nominees of two major political parties. George W. Bush was elected president as a consequence of the majority of judges in Florida choosing to forgo further vote recounts.

The US Supreme Court ruled in *Citizens United v. Federal Election Commission* (2010) that Congress' restrictions on economic, political, and transparency activities were unconstitutional restrictions on the right to free expression. 2013's *Hollingsworth v. Perry*, decided by Judge Vaughan R. Walker, overturned a California's state legislature passed an amendment to prevent same-sex unions. Similar to the US, Canada's Supreme Court included the Charter of Rights and ruled that some governmental activities were illegal. In The Supreme Court ruled in *Chaoulli v. Quebec* that the ban on private health insurance was unconstitutional and contested the Canada's universal health care philosophy.

The government's reduction in refugee health care was deemed illegal and cruel and unusual treatment by the Supreme Court on July Fourth, 2014. Invoking the Charter of Rights, the Supreme Court of Canada invalidated Canada's prostitution laws in 2013 on the grounds that they endangered prostitutes' safety and life. The Ontario Court of Appeal deemed the required minimum jail terms for crimes involving firearms to be "cruel" and "disproportionate" in 2012. The Pakistani Prime Minister was declared ineligible to take office by the Supreme Court of Pakistan. Pakistan's Peshawar High Court ruled that drone attacks on terrorists are against the law and violate public international law.

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It even specified a military plan of attack to destroy them. It instructed the Pakistani government and army to target them. In Italy, the Superior Court had looked into the allegations of corruption against the lawmakers and had removed them from office.

It is therefore evident that the judicial branch of the branch has either been actively involved in concerns of public policy and governance or that these issues have been imposed upon the judges for resolution. The courts in jurisdictions all across the world have transitioned from one between two extremes. Finding a healthy balance between judicial activism and restraint seems to be important.

The study examines the possibilities of achieving this balance through supporting selective court involvement, but it also highlights that the type, form, and means of such intervention depend on the particular political, social, and economic circumstances of the nation. The Supreme Court of Pakistan (SCP) is used as a case study in the research to facilitate discussion. The remainder of the essay is broken up into four sections. The approach utilized for this article is covered in the first section. The second section analyzes the current literature. The third section provides a historical overview of Pakistani judicial activism. Critical examination and discussion of judicial activity and restraint are presented in the fourth section. Conclusions are made in the final section.

Here's a brief overview of the executive and judicial relationship:

1.1. Separation of Powers

The principle of separation of powers ensures that the executive, legislative, and judicial branches of government are separate and achieve different functions. The executive branch, headed by the president or prime minister, is responsible for implementing and enforcing laws, while the judiciary interprets and applies the law.

1.2. Appointment of Judges

In many countries, including the United States, judges are typically appointed by the executive branch, either directly or indirectly. The process of judicial appointments can vary, but it is usually subject to approval by the legislative branch. The appointment of judges by the executive ensures that they are independent and impartial in their decision-making.

1.3. Judicial Review

One of the most crucial aspects of the executive-judicial relationship is judicial review. Judicial review allows the judiciary to review the constitutionality of laws and actions taken by the executive branch. If a court determines that a law or action is unconstitutional, it can declare it null and void, thereby providing a check on the executive's power.

1.4. Enforcement of Judicial Decisions

While the judiciary can declare laws and executive actions unconstitutional, it relies on the executive branch to enforce its decisions. The executive branch is responsible for implementing court orders and ensuring compliance with judicial rulings. This aspect of the relationship underscores the importance of cooperation and respect between the branches.

1.5. Legislative Role

The legislative branch also plays a role in the executive-judicial relationship. It can pass laws that impact the judiciary, such as establishing or modifying the jurisdiction of courts. Additionally, the legislature has the power to impeach judges or initiate constitutional amendments that may affect the judiciary's structure or powers.

1.6. Checks and Balances

The executive and judicial branches provide checks and balances on each other's powers. The judiciary can strike down executive actions that it deems unconstitutional, ensuring that the executive does not exceed its authority. At the same time, the executive branch can influence the judiciary through appointments, shaping the composition of the courts and potentially impacting their future decisions.

Overall, the executive and judicial branches of government have a complex relationship characterized by separation of powers, checks, and balances, and the important role of judicial review. This relationship is crucial for upholding the rule of law and ensuring that no single branch of government becomes too powerful.

2. Literature Review

This involves systematically searching and reviewing existing published works, such as books, articles, and scholarly papers, to gather relevant information on a specific topic. The literature search strategy includes defining search keywords, selecting appropriate databases, and applying inclusion and exclusion criteria to identify relevant literature. The term "judicial activism" does not originate with the practice. In 1947, the phrase "judicial activism" was first used. It was mentioned twice in judicial rulings during the 1950s, and its frequency increased substantially in the 1960s, when it was mentioned fourteen times. However, the number of judicial opinions using the phrase "judicial activist" and incidents of judicial activism significantly increased throughout the 1990s, totaling 262. At the same time, there were 3815 occurrences of mention in legal academia, which includes law journals and review papers (Soomro & Masudi, 2023).

In contrast to other eras, modern judges are more likely to accuse their colleagues of judicial activism. Contrary to popular belief, the meaning of the phrase has become less clear as a result of aspects of judicial activism have been studied, as well as its effects on Pakistan's sociopolitical environment. But earlier research hasn't really compared the times of Chief Justices Chaudhry and Nisar side by side. In their investigation of Supreme Court rulings from 2008 to 2013, Kishwar Munir and Iram Khalid (2020) raised issues with the judiciary's proactive approach and its impact on the democratic process. Waseem (2012) noted the broadening judicial review's application to subjects other than constitutional problems. While this was going on, Sajjad Ahmad Jatoti et al. (2022) carried out a case study on the rulings of Chief Justice Saqib Nisar, highlighting the effects of extreme judicial activism on Pakistan's democracy. Abdul Rasheed (2020) concentrated on the part Chief Justice Saqib Nisar played in influencing the discourse, particularly his use of suo-motu authority.

In his analysis of the Bangladeshi Supreme Court's contribution to good governance, Md. Awal Hossain Mollah (2008) identified four different strategies by which the top court helps the government's apparatus respond quickly to the needs and expectations of the people. The assurance of fundamental rights and equitable treatment for all citizens, legal review and scrutiny of laws, legal activism and the guarantee of open transparency, the preservation of justice principles and indigenous rights, remedial legal provisions, judicial oversight, and the exercise of advisory jurisdiction are among the various strategies that are outlined under separate headings. While recognizing the judiciary's crucial and successful role in promoting uniformity, Mollah emphasized the significance of judicial independence and governmental respect for court judgments.

The main focus of Mollah's analysis was the idea of good governance, which includes elements like transparency, corruption, and involvement. This research will especially focus on the Supreme Court of Pakistan (SCP) and the institutionalization process in Pakistan, while covering many aspects of governance.

Democracy and the eradication of corruption have been emphasized by academics like Bollen (1993), Munck and Verkuilen (2002), Knack (2006), and Sampford et al. (2006) as essential components of good governance. They contend that a competent and impartial judiciary must actively participate in order for these goals to be achieved. All governmental institutions must act within the boundaries established by the constitution in order for democratic ideals to work effectively. As the constitutional protectors, the highest courts are responsible for ensuring this prerequisite.

A vibrant, independent judiciary plays a crucial role in institutionalization, as highlighted by additional studies by Andrews and Montinola (2004), Barro (1997, 2000), Joireman (2001, 2004), and Rigobon and Rodrick (2005). These studies also used rule of law data sets to facilitate their investigations into institutionalization. The impact of judicial activism on governance in the setting of authoritarian and hybrid regimes, such those that prevailed in Pakistan between 2005 and 2013, has not been thoroughly addressed by these studies, despite the fact that they have shed light on a variety of aspects of judicial politics and activity.

Since the country's inception, the judiciary in Pakistan has continually taken an interest in political issues. Examples include the dissolution of the first constituent assembly by Ghulam Muhammad in 1954 and the abrogation of the Pakistani Constitution by General Ayub Khan in 1958, which was subsequently upheld by the Pakistani Federal Court. The Supreme Court of Pakistan declared General Yahya Khan's abrogation of the Pakistani Constitution in 1962 to be invalid in 1969, even though the court had already disregarded General Yahya's conduct at the time of its ruling.

2.1. Case Study

Case studies involve in-depth examination and analysis of a specific individual, group, or organization. Researchers collect qualitative and/or quantitative data through interviews, observations, and document analysis to gain a comprehensive understanding of the case.

2.2. Qualitative Research

This approach aims to explore and understand phenomena through non-numerical data, such as interviews, focus groups, observations, and textual analysis. Researchers often employ techniques like thematic analysis or grounded theory to derive meaningful insights from the collected data. Analyze selected cases.

3. Research Methodology

Literature search strategy and selection criteria determine the methodology that best suits your research objectives. Quantitative approaches were adopted which include analyzing judicial decisions or using indices on good governance. Qualitative methods, such as case studies or interviews with legal experts, can offer in-depth insights into the dynamics between judicial activism and good governance.

4. Analysis, Results and Discussion

This section analyzes the barriers which create hindrance in good governance based on executive, legislative, and judicial systems.

4.1. International Good Governance Based on Executive, Legislative and Judicial Systems

In international good governance, the executive and judicial branches play crucial roles in ensuring accountability, transparency, and the rule of law. While the specific responsibilities and powers may vary across countries, the general functions of these branches contribute to the overall framework of good governance. The executive branch, typically headed by the head of state or government, is responsible for formulating policies and programs to address various issues and meet the needs of society. This involves setting priorities, allocating resources, and developing strategies for effective governance. The executive branch is responsible for implementing laws and policies approved by the legislature. This includes enforcing regulations, overseeing government agencies, and ensuring that public services are delivered efficiently and effectively.

The executive branch is responsible for managing the day-to-day operations of the government. It includes functions such as budgeting, personnel management, and public service delivery. Good governance requires the executive branch to promote transparency, meritocracy, and accountability in public administration.

The executive branch represents the country in international affairs. It formulates foreign policies, negotiates treaties, and participates in international organizations. Promoting good governance internationally involves engaging in diplomatic efforts, promoting human rights, and advocating for transparency and accountability on the global stage.

The judicial branch ensures that laws are interpreted and applied fairly and impartially. It acts as a check on the executive and legislative branches, ensuring that their actions are in accordance with the constitution and laws of the land. Upholding the rule of law is essential for good governance as it guarantees legal certainty and protects citizens' rights.

Adjudication and Dispute Resolution: The judicial branch is responsible for resolving disputes and administering justice. It hears and decides cases, both civil and criminal, based on the evidence and legal principles. A fair and efficient judicial system is vital for good governance, as it provides access to justice, protects individual rights, and ensures accountability.

In many countries, the judicial branch has the power of judicial review, which allows it to review the constitutionality of laws and actions taken by the government. This power acts as a safeguard against abuses of power, ensuring that laws and policies conform to the Constitution and protect citizens' rights.

The judiciary plays a crucial role in protecting and promoting human rights. It ensures that individuals are treated fairly and equitably and that their fundamental rights are upheld. By safeguarding human rights, the judiciary contributes to good governance by fostering a just and inclusive society.

The executive branch formulates policies, implements laws, and manages public administration, while the judicial branch upholds the rule of law, resolves disputes, and protects rights. Their effective collaboration and independence are essential for promoting good governance internationally.

4.2. Executive & Judicial Relationship for Pakistani Good Governance

Pakistan has a parliamentary democratic system with three branches of government: the executive, legislative, and judicial branches. The executive branch is responsible for implementing and enforcing laws, while the judicial branch is responsible for interpreting and applying laws.

In the past, Pakistan has experienced periods of tension and conflicts between the executive and judicial branches. These conflicts have often revolved around issues of power, accountability, and constitutional matters. One significant event in Pakistan's recent history was the judicial crisis in 2007 when President Pervez Musharraf attempted to remove the then-Chief Justice Iftikhar Muhammad Chaudhry. This move sparked nationwide protests and eventually led to Musharraf's resignation.

Another notable conflict between the executive and judicial branches occurred in 2012 when the Supreme Court of Pakistan convicted then-Prime Minister Yousaf Raza Gillani for contempt of court. This incident further strained the relationship between the judiciary and the executive.

It is important to note that the dynamics between the executive and judicial branches can vary depending on the political climate and the individuals holding key positions within these branches. The relationship between these branches is essential for maintaining a balance of power and upholding the rule of law in any democratic system.

4.3. How Pakistan is Achieving Good Governance

Good governance is a fundamental pillar for the development and stability of any nation. In Pakistan, the journey toward establishing effective governance practices has been marked by various challenges and setbacks. However, recent years have perceived notable progress, indicating a growing commitment to development transparency, accountability, and participatory decision-making. This article explores the steps made by Pakistan in achieving good governance and highlights the key factors driving this positive change.

4.3.1. Establishment of Democratic Institutions

Pakistan's democratic institutions have played an essential role in encouraging good governance. The country has seen successive democratic evolutions, which have contributed to institutional stability and the empowerment of demoted

voices. The consolidation of democratic processes, including fair and transparent elections, an independent judiciary, and an exciting civil society, has adopted a more inclusive and participating governance framework.

4.3.2. Anti-Corruption Measures

Corruption has been a central focus of good governance reforms in Pakistan. The establishment of the National Accountability Bureau (NAB) has played an important role in investigating and prosecuting corruption cases, ensuring greater accountability among public officials. The introduction of severe anti-corruption laws and the implementation of e-governance systems have modernized administrative procedures, minimizing opportunities for corruption and promoting transparency.

4.3.3. Delegation of Power to Local Governments

Delegation of power to local governments has been a vital step towards increasing citizen contribution and service distribution. Pakistan's 18th constitutional amendment granted greater autonomy to provinces, empowering them to address local issues more successfully. The establishment of selected local governments has further decentralized decision-making, leading to improved accountability and responsiveness to community needs.

4.3.4. Digital Revolution and E-Governance

Pakistan has contained digital transformation to improve government efficiency and accessibility. Initiatives such as the establishment of the Pakistan Citizen's Portal, e-Khidmat Centers, and online complaint mechanisms have increased citizen appointments and reduced bureaucratic hurdles. E-governance systems have efficient public service delivery, reduced corruption risks, and fostered transparency in government procedures.

4.3.5. Ensuring Rule of Law

An independent judicial system is important for maintenance to rule of law. Pakistan has taken notable stages to strengthen its judiciary, ensuring equal access to justice and defensive specific rights. Judicial reforms, such as the introduction of alternative dispute resolution mechanisms, have accelerated case resolution and better public trust in the legal system.

4.3.6. Human Rights and Gender Equality

The promotion of human rights and gender equality is vital for ensuring inclusive governance. Pakistan has made significant strides in this area, with legislation enacted to protect marginalized communities and promote gender equality. Measures such as the criminalization of honor killings and the introduction of laws to address domestic violence have highlighted the commitment to upholding human rights.

4.4. Advantages of Executive & Judicial Relationship for Good Governance

The executive and judicial branches play distinct but interconnected roles in the governance of a country. The relationship between these branches is crucial for ensuring good governance. Here are some advantages of a strong and balanced executive-judicial relationship:

4.4.1-Separation of powers: The executive and judicial branches represent two of the three branches of government in a separation of powers system. This division of powers prevents the concentration of authority in a single entity, promoting checks and balances and preventing abuse of power.

4.4.2-Rule of law: The judiciary ensures that laws are interpreted and applied fairly and impartially. A strong executive-judicial relationship reinforces the principle of the rule of law, which is fundamental for good governance. The executive implements policies and laws, while the judiciary ensures their constitutionality and legality.

4.4.3-Judicial review: The power of judicial review allows the courts to review the constitutionality and legality of executive actions and laws. This power acts as a safeguard against potential executive overreach and ensures that the executive operates within the boundaries set by the Constitution.

4.4.4-Protection of fundamental rights: The judiciary protects individual rights and liberties by adjudicating cases involving civil rights, human rights, and constitutional matters. A robust executive-judicial relationship ensures that the executive does not infringe upon these rights and provides a mechanism for individuals to seek legal redress in case of violations.

4.4.5-Accountability and transparency: The executive is held accountable through legal and constitutional mechanisms. The judiciary plays a vital role in this process by reviewing executive decisions and actions, promoting transparency, and ensuring that the executive operates in accordance with the law.

4.4.6-Consistency and stability: The judiciary provides consistency and stability in the interpretation and application of laws. This helps maintain predictability and legal certainty in governance. The executive and judiciary working in harmony can create a stable and reliable legal framework that fosters economic development, attracts investment, and promotes social cohesion.

4.4.7-Public confidence: A well-functioning executive-judicial relationship enhances public confidence in the governance system. When people perceive that both branches are working independently, impartially, and in the interest of justice, it fosters trust in the government and its institutions.

4.4.8-Policy refinement: Judicial decisions can provide insights and guidance to the executive in refining policies and legislation. By analyzing legal issues and addressing constitutional questions, the judiciary can contribute to the improvement and development of public policies, ensuring they are aligned with constitutional principles.

In summary, a healthy and balanced relationship between the executive and judicial branches is essential for good governance. It upholds the rule of law, protects individual rights, ensures accountability, and promotes stability and public confidence in the governance system.

5. Results and Discussion

Disadvantages Role of Executive & Judicial Relationship for Good Governance.

The relationship between the executive and judicial branches of government plays a crucial role in ensuring good governance. However, like any system, it has its disadvantages and challenges. Here are some of the potential disadvantages of the executive-judicial relationship for good governance:

5.1-Separation of powers concerns: The executive and judicial branches are meant to be separate and independent of each other to maintain checks and balances. However, conflicts may arise when one branch oversteps its boundaries or encroaches on the powers of the other. This can lead to power struggles and undermine the principle of separation of powers, potentially hindering good governance.

5.2-Political influence: The executive branch is responsible for implementing government policies, and its decisions are often influenced by political considerations. In some cases, this influence can extend to the judiciary, leading to concerns about the independence and impartiality of the judiciary. When political pressure or influence compromises the judiciary's autonomy, the decisions made may not always be in the best interest of good governance.

5.3-Delayed justice: The relationship between the executive and judicial branches can sometimes result in delays in the administration of justice. The executive may fail to implement or enforce court decisions promptly, leading to a lack of accountability and eroding public trust in the judicial system. This delay can also hinder good governance by impeding the timely resolution of legal disputes and the protection of citizens' rights.

5.4-Executive dominance: In some cases, the executive branch may exert excessive control or influence over the judiciary, compromising its independence. This can occur through appointments of judges or political interference in the judicial process. When the executive dominates the judiciary, it can undermine the principle of impartiality and hinder good governance by allowing for abuse of power and limited accountability.

5.5-Limited expertise: The executive branch is responsible for formulating policies and implementing them in various areas of governance. However, it may lack the necessary expertise and specialized knowledge to make informed decisions in complex legal matters. This can lead to the executive relying on the judiciary to interpret laws and provide guidance. While this interaction is necessary, it can also result in misunderstandings and conflicts between the two branches, potentially impeding good governance.

It is important to note that these disadvantages are not inherent to the executive-judicial relationship, but rather potential challenges that need to be addressed to ensure effective governance. Efforts to promote transparency, accountability, and the rule of law can help mitigate these disadvantages and foster a healthier relationship between the executive and judicial branches, ultimately contributing to good governance.

6. Recommendations

1-Consider factors such as constitutional frameworks, judicial independence, legal traditions, public perception, and the balance of power among branches of government.

2-Policy Implications: Reflect on the policy implications of your research. Based on your findings, provide recommendations for policymakers, legal practitioners, and civil society organizations on how to strike a balance between judicial activism and good governance. Consider the potential role of judicial reforms or legislative measures.

3-Ethical Considerations: Discuss the ethical considerations associated with judicial activism and its impact on good governance. Examine questions of democratic legitimacy, accountability, and the potential risks of judicial overreach or neglect of governance issues.

7. Conclusion

The executive and judicial branches play crucial roles in maintaining good governance within a democratic system. The relationship between these two branches is characterized by a system of checks and balances, ensuring accountability, fairness, and the protection of individual rights.

Firstly, the executive branch, led by the elected government, is responsible for implementing laws, making policy decisions, and governing the country. It has the power to enforce laws and maintain order. The executive branch plays a significant role in the formulation and execution of policies, as well as the administration of public services. Its primary goal is to ensure effective governance and meet the needs of the citizens.

On the other hand, the judicial branch is responsible for interpreting laws, resolving disputes, and administering justice. It includes courts, judges, and other legal institutions. The judiciary acts as a neutral arbiter in legal matters and ensures the rule of law prevails. Its independence is essential for upholding the principles of justice and safeguarding individual rights.

The relationship between the executive and judicial branches is crucial for several reasons:

7.1- Separation of powers: The separation of powers principle, a cornerstone of democratic governance, ensures that no single branch becomes too powerful. The executive and judicial branches act as checks on each other, preventing any one branch from overstepping its authority. This separation promotes a balance of power and prevents the abuse of power by any branch.

7.2- Constitutional interpretation: The judiciary plays a vital role in interpreting the Constitution and ensuring the executive's actions align with constitutional principles. It has the power to strike down laws or government actions that violate constitutional rights, thereby safeguarding individual liberties and preventing executive overreach.

7.3- Accountability and transparency: The judiciary holds the executive branch accountable for its actions. It can review executive decisions and determine their legality, preventing arbitrary or unconstitutional exercises of power. This review process promotes transparency and ensures that the executive acts in the best interest of the public.

7.4- Dispute resolution: The judicial branch provides a forum for resolving disputes between the government and individuals or between different branches of government. It acts as an impartial mediator and ensures fair outcomes. This function helps maintain stability, resolve conflicts, and prevent political crises.

In summary, the relationship between the executive and judicial branches is crucial for good governance. It ensures the separation of powers, promotes accountability and transparency, upholds constitutional principles, and provides a mechanism for resolving disputes. A well-functioning executive-judicial relationship is vital for maintaining the rule of law, protecting individual rights, and fostering a healthy democracy.

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