**Culling Judicial Activism**

[Asif Mahmood](https://dailytimes.com.pk/writer/asif-mahmood/)

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The legislature and the judiciary are on bad terms only to plunge the country into a new abyss. One wonders if there could be a more chivalric way to celebrate the Golden Jubilee of the Constitution.

Legislatures, in an unprecedented act of defiance, refuse to abide by the Court verdict and the Court, throwing down the gauntlet to the legislature, strikes down the enactment of the Parliament. Worst still is that bile is being spewed in the name of democracy and constitutionalism.

No one has weighed what the ultimate outcome will be. Schism is simmering. Gloves are off and there is a downright failure in keeping a level head. Never before has it been so disconcerting. Nobody bothers that things are being reduced to ridiculous. 75 years on, we are still not done. We are twisting ourselves into knots.

Among many qualms about our constitutional acumen has been judicial activism. It ranges a wide spectrum from the doctrine of necessity to striking down the legislation of the parliament; from authorizing dictators to amend the constitution to rewriting it on the pretext of interpretation; from Samosas to Chapli kabab; from Orange Train to Steel Mills and from Atiqa Odho to RekoDiq.

Judicial activism has hampered the doctrine of tracheotomy of power.

This judicial activism has been critiqued on multiple grounds, it being a one-man show, its procedure being flawed, and it eviscerating the efficacy of legislative organs. It rewrites the constitution on the pretext of interpretation, that it embowels the doctrine of tracheotomy of power, that it fossilizes the administrative system, that the judiciary becomes executive, an appellate court starts functioning as a trial court and last but not least, that its economic cost is too high.

Under Article 184(3) the power was given to the Supreme Court but it has been and is being exercised only by the Chief Justice. Article 176 defines Supreme Court as “Chief Justice and other judges”. The power doesn’t rest with the Chief Justice; it rests with the Supreme Court. So how can it be an exclusive domain of the Chief Justice?

The same point has been discussed in a recent judgment of a two-member bench of the Supreme Court that “the court cannot be dependent on the solitary decision of one man, the Chief Justice, but must be regulated through a rule-based system….. The power of doing a one-man show is not only anachronistic, outdated and obsolete but also antithetical to good governance and incompatible with modern democratic norms. One-man show leads to the concentration of power in the hands of one individual, making the system more susceptible to the abuse of power”.

There has also been considerable debate as to how this will be determined whether or not an issue at hand is a matter of public importance as provided under Article 184(3). Bench formation is yet another conundrum that decides the fate of the case even before the hearing.

The Supreme Court (Practice and Procedure) Bill 2023 is an answer to the demand long held by the legal, civil and legislative circles. Moreover, it was also in conformity with the verdict of the Supreme Court. It regulated the procedure of supermoto. Instead of letting the CJP has his way; the bill authorized a three-member committee, comprising the CJP and the two senior-most judges of the SC to decide whether or not to take up a matter and whether or not a matter is a matter of public importance. But the Supreme Court through an unprecedented anticipatory injunction prevented it from taking effect till further order.

Despite that the judicial review has its own merits, overshadowing the legislature through judicial activism shall only worsen the crisis we are grappling with.

This extraneous judicial activism has also been critiqued on the ground that if the Constitutionality of any law is challenged, the courts should try to reconcile that law with the Constitution instead of striking it down as a whole. There is no telling how to resolve this quandary and between legislation and its judicial review, now lies too big a gulf to bridge.

Judicial activism has hampered the doctrine of tracheotomy of power. With directions to the State Bank for fund release, the Supreme Court has assumed administrative powers. It would have been much better if the Supreme Court had not directly ordered the State Bank.

The cost of judicial activism on the economic front is troubling. The penalties accrued on Pakistan in only four cases i.e., Karky, Reko Diq, PIA and Pakistan steel Mills are around 10 trillion Rupees. This is a mess of our own making.

It has also become a challenge for foreign investors to invest in a country grappling with judicial activism. The orange train can serve as a fine example to have a case study.

Niceties apart, matters cannot be left to the discretion to decide. History speaks volumes of the fact that the unbridled powers of Suomoto have done no good to the country. Unrestrained powers must be wrapped up if we don’t want the country to sink to new depths. A nation-state cannot afford any single institution wielding greater powers than the others.

*The writer is a lawyer and teaches law at Quaid-i-Azam University, Islamabad. He tweets @m\_asifmahmood*