[**Courting disaster**](https://www.dawn.com/news/1702121/courting-disaster)

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The writer is a poet. His latest publication is a collection of satire essays titled Rindana.

THOUGH part of the triumvirate, at least under democratic norms, the courts usually escape the scrutiny that their counterparts, ie the executive and the legislature, are subjected to. Courts come under the limelight when they sit on judgement in high-stakes public interest litigation and matters about celebrities, or when they are possessed with an insuppressible urge for activism.

No Latin term has of late become as much a part of the daily language as ‘suo motu’. When it is not the honourable chief justices themselves, it is some politician or an activist who calls upon them to exercise their power and take up a case without anybody having to file it.

This raises a plethora of issues, including the elected representatives’ dereliction of duty by not thrashing out issues of public import in parliament, as well as the entire judicial process involving the lower rungs of the court system being circumvented.

**Read:** [*The suo motu question*](https://www.dawn.com/news/1688038)

It has been observed that while deciding on such matters, the learned benches hardly call upon specialists to help them with subjects they know little about. The amicus curiae is almost always a lawyer, equally uninitiated in the matter. Yet they endeavour to decide the price of CNG and sugar for 200 million-plus people.

Whether it is the [privatisation of the Pakistan Steel Mills](https://www.dawn.com/news/1605583) or exploration of Balochistan’s mineral resources by a foreign company under a legal contract, such matters are often decided by the honourable members of the judiciary who have little knowledge of these highly specialised fields.

As mentioned earlier, the courts cannot be held solely responsible for this situation. If the other organs of the government played their part and made sure that competent and independent regulators are held accountable, and the polity is not polarised to the extent that no bipartisan effort can be mounted to reach minimum consensus on national priorities in parliament, such matters would hardly ever end up in the courts.

Specialists are hardly called upon to help the bench.

If we broaden our scope of discussion to include two countries we are most obsessed with — the US and India — it is amazing how much of what goes on in their courts fails to attract any attention over here. While we are besotted with other genres of entertainment there — Hollywood, Bollywood — the recent pronouncements of their respective supreme courts have hardly been mentioned in our public discourse.

Why should we care about what the superior judiciary in another country does, some may ask. We should, because there may be a method to all this madness and if we can spot it maybe we can do something about the forces that game the system to their benefit, which persistently remains opposite to the public interest.

Many see it as beginning at the provincial courts’ level. Who becomes an ad hoc judge, who gets confirmed after two years, who is removed as advocate general, who gets labelled as ‘independent-minded’ or is ‘exiled’ to the superior judiciary — these are matters that are often perceived to deviate from a set course. At the end, all that changes is the regime and despite the same evidence, the same investigators, the same lawyers, and the same adjudicators, a different outcome is witnessed.

Yousuf Raza Gilani was [sent home](https://www.dawn.com/news/727782) as a prime minister for not writing a letter to the Swiss authorities to reopen a case against his political boss. Nawaz Sharif was [shown the door](https://www.dawn.com/news/1348191) for not declaring his work permit in a foreign land. The PTI has so far managed to drag the [illegal funding case](https://www.dawn.com/news/1634903).

**Read:** [*Why transparency in judicial appointments is critical*](https://www.dawn.com/news/1667980)

The provincial and Islamabad high courts serve as the nurseries for the apex judiciary; who gets elevated and when is not just happenstance.

Too much is at stake even when supreme courts restrict themselves to their originally envisaged role in most constitutions, ie ‘interpret the law’. In most places, the higher judiciary is flexing its muscles and jumping into the political fray, literally rewriting the law. American women’s rights over their reproductive systems in the Roe vs Wade [verdict](https://www.dawn.com/news/1696482/us-supreme-court-overturns-landmark-ruling-on-abortion-rights) and the ruling against gun control legislation by the US supreme court are some recent examples of conservative vs liberal political activism by the courts.

We in Pakistan have an edge over the Americans as our judges retire after reaching the age of superannuation. American supreme court justices do not retire. Short of dying with their robes on, only mental incapacity to perform their duties can curtail their lordships’ tenure.

Unless, of course, they are impeached for inappropriate behaviour. However, we have one more issue to settle. While the International Cricket Council has decreed that ‘batter’ instead of ‘batsman’ be used as a more inclusive term, we still go about talking of ‘brother judges’ to refer to the bench. Now that we finally have a ‘sister’ on the bench, let’s put an end to this ‘brotherhood’.

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