**Balancing Democracy in Pakistan**

[M Umer Rafique](https://dailytimes.com.pk/writer/m-umer-rafique/)

April 11, 2023

A fundamental concept in contemporary democracies is the idea of separation of powers, through which authority is distributed across various branches of government to prevent anybody from having complete control over decision-making. This creates a system of checks and balances that not only encourages accountability and transparency, but also protects individual rights.

The principle of separation of powers is enshrined in Pakistan’s Constitution, which divides the government’s functions into three branches: executive, legislative, and judiciary. The Constitution specifies the exact authorities and functions of each arm of government, ensuring that no one branch interferes with the functions of the other. The executive arm of government is responsible for the implementation of policies and laws and is led by President and Prime Minister. The legislative branch, on the other hand, is in charge of enacting legislation and is made up of the National Assembly, the Senate, and the Provincial Assemblies. Lastly, the judiciary is in charge of interpreting the law and upholding the Constitution. It is made up of the Supreme Court, the High Courts and various subordinate courts.

Nonetheless, notwithstanding the constitutional guarantee of separation of powers in Pakistan, there have been instances of power overlap between the arms of government. For example, in the past, the executive branch has been accused of wielding undue influence over the judiciary, leading to concerns about the court’s impartiality. Similarly, the court has been repeatedly chastised for overstepping its constitutional mandate and interfering in the sphere of the administration.

Critics contend that the judiciary is overstepping its bounds by actively participating in the country’s governance. They believe that the court should only be concerned with interpreting the law, not with policymaking.

Judicial activism, the concept of courts taking an overly active role in interpreting and enforcing laws, has sparked much attention and controversy in Pakistan in recent years. Although the judiciary has always been an important aspect of Pakistan’s governance structure, the current increase in judicial activism has produced a new wave of controversy and public concern. In Pakistan, the judiciary has been playing an active role in the governance of the country, especially since the restoration of the judiciary in 2009. Following the Hon’ Chief Justice Iftikhar Chaudary’s restoration effort by lawyers and political forces in the country, a fresh wave of judicial overreach was evident, with the Apex Court encroaching on the domain of the executive every other day. Although the judiciary has been instrumental in pushing for the rule of law and holding those in power accountable for their actions, while this activism has been well-received by many in Pakistan who see it as a way of curbing corruption and holding those in power accountable, there are those who see the rise of judicial activism in Pakistan as a threat to democracy and the separation of powers. These critics contend that the judiciary is overstepping its bounds by actively participating in the country’s governance and believe that the court should only be concerned with interpreting the law and not with policymaking.

Looking at judicial over-reach from this vantage point, it is clear that, while the judiciary in Pakistan is crucial in ensuring people’s rights and the rule of law, if the judiciary itself weakens the line of separation of powers and extends its powerful hand beyond the scope provided in the constitution, it not only leads to concentration of power in one branch of government but also weakens the already feeble democratic institutions. In the past, instances such as the Suo Moto on claims of corruption in Pakistan Steel Mills and the well-known Reqo Diq Case show that excessive judicial over-reach can have a negative influence on the economy. Another case in point was in 2018 when the Supreme Court took suo moto notice of a price increase in petroleum products and ordered the government to lower the pricing. While the ruling was generally praised by the people, many claimed that it went beyond the judiciary’s constitutional power to intervene in matters of economic policy.

The negative impact of judicial activism and suo moto notices on Pakistan’s political and economic systems is significant. For starters, it may result in a concentration of power in the judiciary, undermining the separation of powers and resulting in a constitutional crisis. As the judiciary assumes the functions of other departments of government, this might have a detrimental impact on the country’s governance structure. Second, excessive judicial activity and the use of suo moto notices, among other things, add to the already massive court backlog. This leads to a delay in justice and, in some situations, the dismissal of cases due to a lack of prompt resolution. This can have a negative influence on the country’s economy since firms and investors may be hesitant to invest in a country where disputes are not resolved in a timely manner. Finally, excessive judicial activism and the use of suo moto notices can undermine trust in the judiciary, since some may perceive it to be politicized or biased. This can lead to a loss of trust in the judiciary and the country’s legal system as a whole, which can harm the country’s political and economic stability.

In the past year, we have seen many instances where due to the political nature of the cases and because of the judiciary’s involvement in the political turmoil the country has been facing, the higher and superior judiciary has been subjected to constant criticism by supporters of one political party or the other. This type of criticism of the judicial system is perilous for the country and can only be avoided by religiously enforcing Lord Hewart’s famous dictum, “Justice must not only be done, but must also be seen to be done,” which can happen only when the courts remain above all controversy. Because the courts lack administrative power to carry out their rulings, they must have the love and support of the people to function with the might and superiority envisaged in the institution’s foundation. As a student of law, I envision this transpiring if the judiciary strikes a better equilibrium between activism and impartial interpretation of the law and if its decisions uphold the principle of checks and balances and do not undermine the constitutional mandate of other branches of government. By doing so, the courts can play a more effective role in advancing Pakistan’s political and economic development, as well as strengthening the country’s legal and democratic systems.

*The writer is a lawyer and can be reached at mumerrafiqawan@gmail.com.*
*He tweets @mumerrafiq.*