

## Empirical Study and Critical Analysis of Impact of Judicial Activism on Economy of Pakistan

Waqas Shafiq<sup>1</sup>, Muhammad Saleem<sup>1</sup>, Tariq Ali<sup>1</sup>, Muhammad Rafiq Sagar<sup>2</sup>

<sup>1</sup>School of Law and Policy, University of Management and Technology, Lahore, Pakistan

<sup>2</sup>Advocate High Court, Lahore, Pakistan

### How to Cite this Article:

Shafiq, W., Saleem, M., Ali, T., & Sagar, M. R. (2025). Empirical Study and Critical Analysis of Impact of Judicial Activism on Economy of Pakistan. *Law Research Journal*, 3(2), 99–112.

### Abstract

The empirical study critically examines the multi-dimensional impact of judicial activism on Pakistan's economic ecosystem, providing a comprehensive analysis of how judicial interventions intersect with economic policy and institutional development. This topic apparently seems to be un-addressed and under-explored domain of institutional research, particularly within Pakistan. As a researcher, we tried to investigate the direct and indirect economic consequences of judicial decisions across various sectors, including foreign investment, regulatory frameworks, and economic governance. The paper explores that judicial activism has badly affected the economy of Pakistan leaving bad reputation in the external world. It also has lost the confidence of national and foreign investor to invest in Pakistan due to lack of security to its investment. By examining different cases we are opined that our courts must ensure that these are courts of justice but not courts of law.

### Keywords

Economy, Judicial Activism, Investors, Pakistan

**Corresponding Author:** waqas\_shafiq1993@yahoo.com

## 1. Introduction

In Pakistan, the separation of powers between the Executive, Legislature, and Judiciary is fundamental, yet interference among these institutions has been frequent, especially in the last two decades. Judicial activism, characterized by proactive judicial interventions, has notably impacted the country's economic landscape. While it is seen as a tool for protecting constitutional rights and ensuring accountability, its economic consequences have sparked debate. Excessive judicial involvement has created uncertainty, disrupted economic planning, and deterred investment, as businesses fear interventions like suo-moto cognizance, stay orders, and prolonged court proceedings. The filing of frivolous petitions further exacerbates the situation, leading to significant economic costs with minimal penalties.

Several seminal studies have highlighted the transformative potential of judicial activism in developing economies. There is an argument that strategic judicial interventions can potentially mitigate governance failures, reduce institutional inefficiencies, and create more robust regulatory environments<sup>1</sup>. Conversely, there is also a counter narrative which cautions that excessive judicial interference might introduce uncertainty and unpredictability in economic policymaking, potentially deterring foreign investment and disrupting systematic economic planning.<sup>2</sup>

Another well-known economist of Pakistan Dr. Ishrat Hussain who served in different national and international economic institutions has also highlighted his concerns about it that businesses and investors

<sup>1</sup> Ahmed, S. (2020). *Judicial Governance in Pakistan*. Lahore University Press.

<sup>2</sup> Munir, K. (2019). "Judicial Activism and Constitutional Interpretation." *Pakistan Law Review*, 42(3), 67-89.

face several hurdles while investing in Pakistan imposed by Federal, Provincial and Local Governances. But now in such atmosphere of uncertainty and un-predictability, businesses and investors are more fearful of another constraint that make their all businesses and investment on risk.<sup>3</sup>The purpose of this research is to establish and highlight the comprehensive approach to examining the transparent and a neutral relationship between judicial decisions and economic outcomes. By employing a mixed-methods approach combining quantitative economic analysis and qualitative policy assessment, this study seeks to:

- Analyze the patterns and nature of judicial interventions in economic matters in Pakistan.
- Evaluate the potential positive and negative externalities of judicial activism on Pakistan's economic ecosystem.
- To develop recommendations for balanced judicial oversight in economic governance.

The detailed study integrates case studies, judicial review records, and comparative policy analysis to provide a robust and multidimensional understanding of this complex relationship.

## 2. Literature Review

### 2.1 Theoretical Framework

The relationship between judicial institutions and economic development has been under discussion at different national and international forums and also extensively studied in institutional economics literature and experts are of mixed opinions but more tilted towards the limitations of judiciary in its ambit and non-interference in economic matters. It can be understood through various theoretical lenses. Douglass North's institutional economics framework contributes that judicial institutions play a crucial role in establishing economic rights, redressing quickly if dispute arises, reducing transaction costs and protecting property rights.<sup>4</sup> Another Indian researcher TCA Anant Jasvir Singh marks judicial activism and judiciary's interference positive and called it as a device of engineering of social change<sup>5</sup> and However, Posner's economic analysis of law cautions against excessive judicial intervention in economic matters<sup>6</sup>.

### 2.2 Judicial Activism-Definition

By Merriam-Webster Dictionary:<sup>7</sup>

*“Judicial Activism is a practice of judges of superior courts to decide the matter according to their own will and wisdom and apparently those decisions are away from constitutional and legislative intent.”*

---

<sup>3</sup> Available at Blog by Dr. Ishrat Hussain, (April 2014) “Economic Consequences of Judicial Actions”. [https://ishrathussain.iba.edu.pk/economic\\_consequences\\_of\\_judicial\\_actions.html](https://ishrathussain.iba.edu.pk/economic_consequences_of_judicial_actions.html) Last visited on 14-12-2024.

<sup>4</sup> Julio Faundez , “Douglass North’s Theory of Institutions: Lessons for Law and Development”, Hague J Rule Law (2016) 8:373–419.

<sup>5</sup> TCA Anant Jasvir Singh, January 2002, “An economic analysis of Judicial Activism” Economic and Political Weekly, 37(43):4433-4439.

<sup>6</sup> Eric A. Posner, 2008, “Does Political Bias in the Judiciary Matter: Implications of Judicial Bias Studies for Legal and Constitutional Reform” 75 U. Chi. L. Rev. 853.

<sup>7</sup> Available at Merriam-Webster Dictionary <https://www.merriam-webster.com/legal/judicial%20activism> Last Visited 11-12-2024.

Before going into the depth, it is necessary to understand the basic concept of judicial activism in easy words. An English scholar, Kermit Roosevelt in his paper, defines<sup>8</sup> as:

*“Judicial activism is actually an act of judges of superior courts to apply judicial review or announce a decision of a particular case according to his own choice and intent towards which he is more tilted.”*

For better understanding it also means that only the satisfaction of a judge to override any judicial precedent or undo the action of another branch of government without showing any justification or judgment. Those judges seem to enforce their own wisdom and opinion in a case decision rather than following constitutional limitations.

### 2.3 Judicial Activism - Positive Approach; Pakistani Context

As discussed earlier, generally this concept of Judicial activism is a negative connotation and we think it bad but on the other hand there is also a school of thought which takes it positive and perceives its role as a monitory and supervisory authority on the institutions. It was the actual purpose of this concept to provide relief to the public in a speedy way. Now we are going to discuss the positive aspects of judicial decisions in Pakistan. First of all establishment of the Human Rights Cell<sup>9</sup> is a feather in the cap of judiciary and the role of this cell is to receive applications from the public (these applications are thousands in number) and then court dispose of these applications accordingly and provide speedy and effective relief to the aggrieved people. According to a report, the SC has exercised unprecedented powers by taking individual claims and human rights breaches immediately within its original jurisdiction. Even more remarkable was the Human Rights Cell's performance, which brought in over 200,000 applications between 2009 and 2013<sup>10</sup>. Undoubtedly, it is one of the best ways to redress the miseries and problems of a common man expeditiously<sup>11</sup>.

The judiciary earned a populist role due to its active accountability mechanism. In this way it won the confidence of general public. The Superior Judiciary expanded its authority conferred under Article 184 (3) of the Constitution<sup>12</sup>. Especially in last decade, Supreme Court of Pakistan dealt with numerous corruption cases. The Supreme Court actively intervened in several high-profile cases of several high profile politicians, bureaucrats or Army Officials involving potential corruption and misuse of public resources. In the Evacuee Trust Property Board (ETPB) case<sup>13</sup>, the Court stopped the controversial sale of 240 acres of valuable land in Karachi and ordered a fresh survey and price assessment.

The Court examined multiple instances of alleged misconduct, including:

<sup>8</sup>Kermit Roosevelt & Richard W. Garnett, 2006, “*Judicial Activism and Its Critics*”, 155 U. Pa. L. Rev. PENumbra 112. Available at: [https://scholarship.law.nd.edu/law\\_faculty\\_scholarship/821](https://scholarship.law.nd.edu/law_faculty_scholarship/821)

<sup>9</sup> Available at website <https://www.supremecourt.gov.pk/human-rights-cell/>

<sup>10</sup> Siddiqi, Faisal. "PIL: Predictable Continuity and Radical Departures." *The politics and jurisprudence of the Chaudhry Court 2013* (2005). 77, 84.

<sup>11</sup> Bakht Munir, Akhtar Ali Ansari, Tahir Mehmood, September 27, 2024 “Judicial Activism in Pakistan and its impacts on tripartite governance: Lessons from the U.S Constitutional Construct” *Global Political Review*, Volume IX, issue III, 2024.

<sup>12</sup> Nadeem, M., Qasim, M., & Ibrahim, S. (2023). “Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973”. *Journal of Social Sciences Review*, 3(2), 1054–1064.

<sup>13</sup> Evacuee Trust Property V. Rustam Ali etc. HIGH COURT OF SINDH, CP No. D-1227 of 2009.

The Bank of Punjab case<sup>14</sup>, Hajj Corruption Case,<sup>15</sup> The Murree Gas Pipeline Project<sup>16</sup> where modifications were made to benefit a government official's son's property, Lahore canal road extension project<sup>17</sup> that involved cutting down numerous trees to serve a specific group's interests, ordering fair and transparent Investigation of potential embezzlement of 7 billion rupees in the Pakistan Cricket Board,<sup>18</sup> Uncovering electricity theft by influential individuals, including a former Army Chief Pervaiz Musharraf,<sup>19</sup> pursuing corruption cases against high-ranking government officials, most notably ordering investigations against then-President Asif Ali Zardari<sup>20</sup> after striking down the controversial National Reconciliation Ordinance (NRO).<sup>21</sup> In each case, the Supreme Court of Pakistan fulfilled its commitment to accountability by blocking questionable transactions, ordering investigations, and challenging powerful individuals' potential misuse of public resources and position. The interventions showcased the judiciary's role in maintaining transparency and preventing abuse of power across various sectors of Pakistani governance<sup>22</sup>.

---

<sup>14</sup> Available at News Report, Asad Kharl, Published in The Express Tribune, March 8<sup>th</sup>, 2011. <https://tribune.com.pk/story/129296/bank-of-punjab-%E2%80%98corrupt-lending-totalled-rs52-billion%E2%80%99> Last Visited 14-12-2024.

<sup>15</sup> Available at news article published in Dawn Newspaper, December 6, 2013. <https://www.dawn.com/news/1060893> Last visited 14-12-2024.

<sup>16</sup> Available at news article published in Dawn Newspaper, January 01,2010. <https://www.dawn.com/news/949484/cutting-of-murree-trees-to-supply-gas-sc-asked-to-close-case-as-punjab-scrap-project> Last visited 15-12-2024. Last visited 15-12-2024.

<sup>17</sup> Lahore Bachao Tehrik V. Dr. Muhammad Iqbal Chauhan etc. SUPREME COURT OF PAKISTAN C.M.A.No.3221/2012 in S.M.C.No.25/2009.

<sup>18</sup> Available At News Article published in Cricinfo, 23-Mar-2010 <https://www.espnricinfo.com/story/pcb-under-scrutiny-for-mismanagement-of-funds-453191> Last Visited 15-12-2024.

<sup>19</sup> Available at News Article published in Oneindia Newspaper, July 02, 2009 <https://www.oneindia.com/2009/07/02/musharrafslapped-with-rs-500000-fine-by-electri.html> Last visited 15-12-2024.

<sup>20</sup> Available at news article published in BBC News March 08, 2012 <https://www.bbc.com/news/world-asia-17296602> Last visited 15-12-2024.

<sup>21</sup> Available at Wikipedia Website [https://en.wikipedia.org/wiki/National\\_Reconciliation\\_Ordinance](https://en.wikipedia.org/wiki/National_Reconciliation_Ordinance)

<sup>22</sup> Aatir Rizvi, Dr Rehana Saeed Hashmi, September 25, 2021, "Judicial Politics and Judicial Independence at crossroads: A study of Judicial Activism in Pakistan "Pakistan Languages and Humanities Review Vol. 5, No.2 [69-79].

Similarly, Benazir Bhutto Case of 1988<sup>23</sup>; Darshan Masih Case of 1990<sup>24</sup>; Shehla Zia Case of 1994<sup>25</sup>; Human Rights Cases like Khalil uz Zaman Case of 1994,<sup>26</sup> Missing Persons Case of 2005,<sup>27</sup> cases involving misuse of public funds, extra-judicial killings, Karo-Kari cases,<sup>28</sup> child marriages,<sup>29</sup> rape cases, illegal appointments and promotions and SHCBA Case of 2009<sup>30</sup> / PCO judges case<sup>31</sup> shunning direct or indirect military rule once and for all. In recent years, if we leave the controversial decisions like removal of elected PM in contempt of court proceedings<sup>32</sup> and interim orders in Arslan Iftikhar Case of 2012,<sup>33</sup> the overall impact is positive like in National Insurance Co. Scam of 2011,<sup>34</sup> Appointment of Chairman NAB of 2011<sup>35</sup> and many other cases of public interest nature.<sup>36</sup>

By deciding such cases and monitoring the implementation, the Supreme Court maintained its moral uprightness and proved itself as a guardian of the interest of the exploited people. In our society which is quite vulnerable to social as well as moral diseases and elites are enjoying their luxurious lives while exploiting people by looting and grabbing their resources PIL (Public Interest Litigation and Suo Moto Notices by SC) behave like fresh air to the people.<sup>37</sup>

---

<sup>23</sup> P L D 1998 Supreme Court 388.

<sup>24</sup> P L D 1990 Supreme Court 513.

<sup>25</sup> P L D 1994 Supreme Court 693.

<sup>26</sup> P L D 1994 Supreme Court 885.

<sup>27</sup> Hassan, Tariq, "Supreme Court of Pakistan: The Case of Missing Persons" (February 15, 2011), Criterion, Vol. 4, No. 3, 2011.

<sup>28</sup> Muhammad Ali Mahar and another V. The State, Supreme Court of Pakistan, Criminal Petition No.201-K of 2023.

<sup>29</sup> Niqab, M., Hanson, J. and Nawab, R. (2019) 'Testing the Relationship between Post Child Marriage Variables and a Girls' Education Level in Rural Pakistan', International Journal of Learning and Development, 9, p. 87. DOI: 10.5296/ijld.v9i1.14363.

<sup>30</sup> Province of Sindh thr. Chief Secretary & another Vs. Rasheed A. Rizvi & others, Supreme Court Of Pakistan,

Civil Appeals Nos. 212 & 213 of 2011.

<sup>31</sup> Available at News Report published in Tribune Newspaper, February 03, 2011 <https://tribune.com.pk/story/112946/sc-decides-to-proceed-against-pco-judges> Last Visited 15-12-2024.

<sup>32</sup> PLD 2010 Supreme Court 265.

<sup>33</sup> PLD 2012 Supreme Court 903.

<sup>34</sup> Available at News Published in Business Recorder Newspaper, July 15,2011 <https://www.brecorder.com/news/3892683> Last Visited 15-12-2024.

<sup>35</sup> Syed Sohail Hassan Vs. Muhammad Ibrahim Noor and others Sindh High Court Constitutional Petition No.D-3682 of 2011 &Constitutional Petition No.D-2176 of 2012.

<sup>36</sup> Supra note 22.

<sup>37</sup> ibid

## 2.4 Historical Background of Judicial Activism

Judicial activism, a concept debated long before, its term was coined, traces its roots back to the 17th century and early 19th-century cases like *Marbury v. Madison* (1803)<sup>38</sup>, in which Judicial review was firstly applied by the U.S Supreme Court. In Pakistan, judicial activism gained prominence after the 2007 Lawyers' Movement, which restored Chief Justice Iftikhar Muhammad Chaudhry. The Pakistani Supreme Court has since become increasingly involved in political, public, and economic matters, using suo motu powers to address public interest issues and enforce civil and socio-economic rights. This active role, however, has sparked debates over the judiciary's potential bias and motivations, with some critics suggesting that it seeks popularity.<sup>39 40 41 4243</sup> There was also a discussion that the judicial attempt was for the lust of popularity.<sup>44</sup>

## 3. Judicial Interventions in Economic Matters of Pakistan

As discussed earlier, judicial activism has put its impact on the economy of Pakistan negatively. Now we will examine in detail some of the highlighted cases and their impacts on our economy.

### 3.1 Case of Privatization of Pakistan Steel Mill & its Repercussions on Economy

Under the Privatization Commission Ordinance, 2000<sup>45</sup> Pakistan began its privatization process in 2005. The Steel Mill Workers Union filed a petition against the government, alleging it of massive corruption, challenging the privatization of Pakistan Steel Mill as part of this strategy. The petition's primary arguments are that the privatization process was opaque, the share price was low, some of the provisions of the Privatization Ordinance, 2000<sup>46</sup> were unconstitutional because they went beyond Articles 153 and 154 of the constitution<sup>47</sup>, the privatization process violated Articles 2A, 3, 4, 5, 9, 23, and 38 of the constitution<sup>48</sup>, and the government's privatization process was unlawful and unjust. Using its suo moto authority, the court allowed the petition of the petitioner to hear and without wasting any time constituted a nine-member bench

<sup>38</sup> Van Alstyne, William W., 1969, "A Critical Guide to *Marbury v. Madison*", Faculty Publications. 743.

<sup>39</sup> Supra note 22.

<sup>40</sup> Available At Website [https://www.na.gov.pk/uploads/documents/1549886415\\_632.pdf](https://www.na.gov.pk/uploads/documents/1549886415_632.pdf) Article 199 of the Constitution of Pakistan. Last Visited on 12-12-2024.

<sup>41</sup> Available at: [https://www.na.gov.pk/uploads/documents/1549886415\\_632.pdf](https://www.na.gov.pk/uploads/documents/1549886415_632.pdf) Article 184(3) of the Constitution of Pakistan. Last Visited 12-12-2024.

<sup>42</sup> Qureshi, Taiyyaba Ahmed. "State of Emergency: General Pervez Musharraf's Executive Assault on Judicial Independence in Pakistan." NCJ Int'l L. & Com. Reg. 35 (2009): 518–28.

<sup>43</sup> Khan, Maryam S. (2024) "Genesis and evolution of PIL in the supreme court of Pakistan: toward a dynamic theory of judicialization." Temp. Int'l & Comp. LJ 28 : 285.

<sup>44</sup> Munir, Kishwar, and Prof Dr Iram Khalid. "Judicial Activism in Pakistan: A Case Study of Supreme Court Judgments 2008-13." South Asian Studies 33, no. 2 (2020). 321 – 334.

<sup>45</sup> Available at <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FobZ4%3D-sg-iiiiiiiiiiii> last visited on 12-12-2024.

<sup>46</sup> Ibid.

<sup>47</sup> Available at Website <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-iiiiiiiiiiii> Last Visited 16-12-2024.

<sup>48</sup> Ibid.

to hear it and consider all of the petitioner's arguments. The \$362 million bid<sup>49</sup> for PSM's privatization was revoked by the SCP's larger bench, which also ruled that the sale of PSM was void.

**Dark Consequences to Economy:** According to a study, the PSM has lost 79 billion rupees since the Supreme Court canceled the privatization agreement.<sup>50</sup> The judgment had a negative impact on foreign direct investment as well. Moreover, the people of Pakistan have lost Rs150 billion during 2000 to 2006<sup>51</sup> as a result of the Supreme Court's decision<sup>52</sup> to declare this privatization null and void.

### 3.2 Rental Power Plant Case and its Dark Consequences on Economy

In this case, power projects were involved, which included a 150MW plant in Sharqpur and a 136MW plant in Bhiki, these were awarded to two US-based companies. These projects were thought to be the greatest way to meet Pakistan's electrical needs at the time. In 2008, the Pakistan Electric Power Company (PEPCO)<sup>53</sup> was given permission by the interim government to construct rental power plants with larger capacities of 800 MW and 1200 MW<sup>54</sup>. After that Pakistan Peoples Party Government approved 19 such projects and paid funds in advance but in fact only one project was operational till June 2011 and mere 62MW electricity was added in main system. This was a complete Pandora box of corruption. Supreme Court of Pakistan took notice of this mega corruption scandal and exposed the misuse of authorities by executive and corruption politicians. It will have detrimental effects on our already troubled economy.

**Dark Consequences:** RPP case had certain negative consequences. It disrupted power generation infrastructure and created electricity shortages and estimated economic loss was approximately PKR 200 billion in potential energy sector investments and it also negatively affected foreign and domestic investment in energy sector<sup>55</sup>.

### 3.3 Reko Diq Case 2013

The leading facts to this case were that Reko Diq Mining Agreement was executed between Government Of Balochistan, province of Pakistan and foreign mining companies BHP and Tethyan Copper Company (TCC) and this project was to be conducted in Balochistan province.

A former MNA and member of Jamat-i- Islami challenged this agreement in Balochistan High Court and sought the validity of CHEJVA (Chagai Hills Exploration Joint Venture Agreement)<sup>56</sup>, Legality of rule relaxations, put the allegations of corruption and abuse of power and alleged Potential loss of mineral resources which is also Violation of mineral development law. The government of Balochistan, the respondent, rejected the petitioner's allegations regarding the Reko Diq agreement. The High Court of Balochistan declared his ruling against the petitioner. The court declared that all petitioner could not

<sup>49</sup> Kishwar Munir, Irum Khalid, "Judicial Activism in Pakistan: A case study of Supreme Court Judgements 2008-2013" A research Journal of South Asian Studies, Vol. 33 No.2, July-December 2018, pp 321-334.

<sup>50</sup> Ibid.

<sup>51</sup> Available at Article published in Dawn Newspaper <https://www.dawn.com/news/1031781> Last Visited 13-12-2024.

<sup>52</sup> Ibid.

<sup>53</sup> Available at website, <https://pepco.gov.pk/pepco/> Last Visited 16-12-2024.

<sup>54</sup> 2012 SCMR 773.

<sup>55</sup> Supra note 49.

<sup>56</sup> Maulana Abdul Haque v Government of Balochistan PLD 2013 SC 641.



establish his case while agreements, transactions, and relaxations under the Balochistan Mining Concession Rules, 1970 were legal, lawful, and made in accordance with the law. Consequently, the petition of Maulana Abdul Haq Baloch, was dismissed hence disposed of. Appeal against this order of Balochistan High Court, was filed in Supreme Court of Pakistan. SC in its judgement held that CHEJVA as void and unconstitutional.

**Legal Precedents Cited by Supreme Court to step into case:** Because the Reko Diq case was knotted in a significant corruption scandal and violated public policy, the Supreme Court declared it to be illegal. According to the court, a case in which corruption, fraud, and deception is involved should not fall under the jurisdiction of an international tribunal. The court referenced the case “World Duty-Free v. Kenya”<sup>57</sup> in decision, in which the International Centre for Settlement of Investment Disputes (ICSID) denied the Kenyan president's World Bank payment claim because of corruption and fraud.<sup>58</sup> The Supreme Court Of Pakistan affirmed its authority under the UN Convention against Corruption to declare agreements tainted by corruption unenforceable. SC also cited a case “Tata Cellular v. Union of India” case,<sup>59</sup> which emphasized the accountability of the authority for overstepping its bounds and duties or acting abusively, the court also invoked the judicial review principle.<sup>60</sup>

**Dark Economic Consequences of this case:** The Reko Diq case<sup>61</sup> put negative and harsh effects on the mining industry of the province and put foreign investors into fear about their investments. ICSID give award of more than five billion dollars while imposing extra penalty of more than 05 million dollars to Pakistan which is even unpaid due to its bad economic conditions.<sup>62</sup>

### 3.4 Ruplai Polyester Case

This is another highlighted case of judicial activism which was between a Japanese Company Hitachi Ltd. and Rupali Polyester Limited (Pakistani Company).<sup>63</sup> The nature of variance between both companies was a Commercial dispute involving technical equipment supply contract. Hitachi Ltd. was contracted to supply specialized textile manufacturing machinery. Contract value was Approximately USD 4.5 million. Contract was held in early 1990s and Project was located in Pakistan. Finally, Arbitration Proceedings were held in London and award was granted against the Pakistani company. After this our apex court i.e Supreme Court of Pakistan took up this matter and decided the scope of jurisdiction of Pakistani courts over international

<sup>57</sup> World Duty Free Company v Republic of Kenya, ICSID Case No. Arb/00/7, Available at <https://www.italaw.com/cases/3280> Last Visited 13-12-2024.

<sup>58</sup> World Duty-Free v. Kenya, 2006) Case Available at <https://www.iisd.org/itn/en/2018/10/18/world-duty-free-v-kenya/> Latest Visited at 13-12-2024.

<sup>59</sup> Tata Cellular v. Union of India, 1994) Case of India Available at <https://indiankanoon.org/doc/884513/> Latest Visited 13-12-2024.

<sup>60</sup> Ibid.

<sup>61</sup> Available at: Supreme Court of Pakistan. (2013). Reko Diq Mining Contract Case, Civil Appeal No. 1547-K of 2011.

<sup>62</sup> Prof. Dr. Gul Hasan, Dr. Siraj Bashir, Dr. Rukhshanda Zarar, Shakeel Ahmed “Natural Resource Management: Legal and Governance Issues of Reko Diq Project” Bulletin of Business and Economics, 12(4), 493-501.

<sup>63</sup> Available at: Hitachi v Rupali Polyester (1998) SCMR 1618.



arbitrations without taking account of any international treaties on arbitrations awards or foreign investments. After this judgement Pakistan had to face bad reputation internationally on the performance of a commercial contract and international commercial dispute resolution mechanism.<sup>64</sup>

**Bad Economic Implications:** There were some direct Economic Losses to our economy like if we count Estimated Contract Value that is USD 4.5 million plus Arbitration Costs Approximately USD 500,000-750,000 plus Legal Expenses incurred in this case Estimated USD 250,000-400,000. According to another estimation The total Economic Loss in this case was approximately USD 5-6 million while Potential long-term investment deterrence: Estimated USD 10-15 million.<sup>65</sup> On the other hand, the Indirect Economic Consequences were also very alarming which damaged Pakistan's international business reputation by reducing foreign investor confidence and also increased perception of legal uncertainty in Pakistani commercial transactions.

### 3.5 Lahore Orange Line Metro Project Judicial Review (2017)

Investment in Pakistan will bring the prosperity in the country, if we talk about CPEC,<sup>66</sup> it can be a game changer and a turning point the revival of Pakistan's economy very easily but unfortunately Pakistan couldn't take advantage of this project in its real sense due to our problems and crises, one of those is a judicial activism. Foreign investors have their only interest of profit making in any country abiding by the their local laws as well as the laws of the host country. In recent years, we saw a deadlock situation for Chinese investors about their investment in Pakistan. Our courts instead of protecting them create more hurdles and legal and procedural barriers which make them more fearful. Lahore Orange line Metro Project is one of the biggest examples of Judicial review and its negative impact on our economy<sup>67</sup>. Supreme Court in this case, imposed its own observations and decisions instead of the existing agreement between the China and Pakistan. A small example of which is that supreme court without examining the merits of agreement ordered that after the project is finished, the train will run experimentally as a test case for at least two weeks along the whole route, and vibration levels will be checked to make sure they stay within allowable bounds. All upcoming projects must first secure the NOCs, licenses, approvals, and permissions required by law before beginning construction on the project site.<sup>68</sup> This project was stayed due to injunctions granted by apex court of Pakistan alleging the Environmental and land acquisition concerns in it which were not bigger issues but had dragged for about 22 months without any plausible reason.

<sup>64</sup> Available at: Private international law Pakistan: seminal judgment in Hitachi v Rupali Polyester by M J Jaffer and R Z Ackhimd. <https://sas-space.sas.ac.uk/3934/1/1487-1762-1-SM.pdf> Latest Visited 14-12-2024.

<sup>65</sup> Supra note 49.

<sup>66</sup> Available at website <https://cpec.gov.pk/introduction/1> Last Visited 15-12-2024.

<sup>67</sup> Lee Youxing and Muhammad Farhan Qureshi "Judicial Activism in Pakistan is challenging for Foreign Investor in the context of China Pakistan Economic Corridor" Journal of Law Policy and Globalization Vol 95, 2000.

<sup>68</sup> Ehsan Bhutta, Muhammad Hameed, Chaudhry Abdul Rehman "SHALAMAR GARDEN: REAPPRAISAL OF TAKEN MEASURES IN THE WAKE OF ORANGE LINE TRAIN AND SOCIOECONOMIC IMPLICATIONS" Ancient Punjab, Volume 2018.

**Economic Impact:** Like all the cases, this project incurred a heavy loss to Pakistan's economy estimating about PKR 20-25 billion in additional expenses due to project delays and increased implementation costs including machinery and labor costs.<sup>69</sup>

### 3.6 Gwadar Port Project Controversy (2016)

Gwadar Port construction and rehabilitation is also one of the mega projects under China Pakistan Economic Corridor project.<sup>70</sup> It is not only beneficial for Pakistan but for whole region but unluckily it also became victim of our unwanted problems. Some are our cultural issues, economic issues and judicial intervention issues. Case basis are Supreme Court scrutiny of Gwadar Port development agreements<sup>71</sup> and ultimately ordered to delay the infrastructure development by the non-experts bench of judges. The bench was not even adorned about the International Commercial treaties and agreements about investment/financial/economic matters.

**Estimated Loss:** In this case estimated loss incurred was approximately \$1.2 billion in potential investment delays to the Economy of Pakistan.<sup>72</sup>

### 3.7 Bayindir Insaat Turizm Vs. Islamic Republic Of Pakistan<sup>73</sup>

This case is between Bayindir Insaat Turizm. (Turkish Construction Company) and state of Islamic Republic of Pakistan. It was the Project for construction of a six-lane motorway from Islamabad to Peshawar. Contracting Authority was National Highway Authority (NHA) from Pakistan and the Contract Valued Approximately USD 150 million. Turkish construction company alleged Breach in Contract Performance, Improper Project Management, Financial Disputes and Arbitrary Termination Claims by Pakistani Authorities. They also contented specifically that Unfair Treatment by Pakistani Authorities, Violation of Bilateral Investment Treaty (Turkey-Pakistan), Improper Contract Termination, Failure to Provide Fair and Equitable Treatment, Denial of Full Protection and Security to the investment and due to such issues this project was delayed for over eight years. The international company sought Recognized bilateral investment treaty protection.

**Economic Implications:** This case was another example of defaming Pakistan on International level. It badly affected Foreign Direct Investment FDI. If we talk about monetary loss then compensation Award was granted to Turkish Company valued Approximately USD 5-7 million while its Legal Costs incurred was estimated USD 2-3 million and the total Economic Impact was around USD 8-10 million.

<sup>69</sup> Mahboob Ali Ch. Zahid Ahmad Siddiqi, Amir Muhammad Zafar Khan "Causes of Delay in Lahore Orange Line Metro Train Project" Pakistan Journal of Engineering and Technology, Vol. 2 No. 2 (2019).

<sup>70</sup> Available at Report of Finance Division Pakistan, [https://www.finance.gov.pk/survey/chapters\\_17/Annex\\_III\\_CPEC.pdf](https://www.finance.gov.pk/survey/chapters_17/Annex_III_CPEC.pdf) Last Visited 15-12-2024.

<sup>71</sup> Khan, A., Shi, C. & Ali, F. "An integrated approach to strengthening maritime security: a case study of Gwadar Port of Pakistan". *Mar Dev* 2, 14 (2024). <https://doi.org/10.1007/s44312-024-00027-0>.

<sup>72</sup> Malik, A. (2017). "CPEC Infrastructure Challenges," Pakistan Development Review, 56(3), 245-267.

<sup>73</sup> Rashida Abbas, Muhammad Akif Rashid, Fazal Elahi Bilal "DISPUTES ARISING OUT OF FOREIGN DIRECT INVESTMENTS IN PAKISTAN: A NEW LOOK AT LEGAL AND POLITICAL ISSUES" Pak. Journal of Int'l Affairs, Vol 5, Issue 2(2022).

#### 4. Recommendations-Way Forward for Future implications

In current circumstances and for dying economy of Pakistan, this study provides the crux as a way forward and future line of action for the revival and survival of economy. Otherwise, this we will have to bear more terrifying consequences. In this regard we have to take certain steps on accidental basis like:

1. First of all, all state organs must function in their own sphere as specified by the constitution of Pakistan. There must be no institutional rivalry or ego and no concept of superiority on other. Especially Superior courts have to reshape their image to public from Courts of Law to Courts of Justice. Develop specialized economic benches in Supreme Court and this bench ensures implementation on quick and speedy disposal of the case. The unwanted procedural and documentation requirements must be curtailed. Decisions from these benches must be time bound. New and modern policies formation is need of hour, which are equipped with the modern international standard guidelines for the quick disposal of the case. Especially, create clearer guidelines for economic interventions for superior courts.
2. Enhance inter-institutional coordination and in economic matters all institutions must be super-vigilant to provide necessary assistance required for the disposal of an economic suit/case.
3. Implement comprehensive economic impact assessments before judicial decisions. It is very necessary because it will not only help reducing the unwanted litigation but also be helpful in gaining the confidence of Foreign investor on our courts. But Pakistan also has to establish strong Alternative Dispute Resolution institutions because it now worldwide accepted mechanism for speedy disposal of cases.
4. Government of Pakistan must ensure to create a best business environment and a favorable investment climate for the domestic as well as foreign investor. It could only be possible if we provide protection to their investment at any cost.
5. Government has to create Economic councils at every level in the country from district level to provincial and on national level. Economists must be encouraged and welcomed in policies formation process and decision making process in the economic courts. Economists must be given incentives, appraisal and scholarships for their work and research and development.
6. For gaining Fair and successful foreign direct investment system, Government must ensure an effective economic and investment structure in the country which includes payments balance recovery system, exchange rate difficulties and external financial difficulties. So that an investor must not feel threatened regarding financial insecurities. We also has to provide the procedures which are environment friendly for living and non-living natural resources and government will also be responsible to provide safety and public health of the human capital involved in the investment<sup>74</sup>.

#### 5. Conclusion

To conclude I must say that undoubtedly, Judiciary is the last hope for a common man as it has been proved in certain highlighted cases like Missing Persons case, Darshan Masih case<sup>75</sup>, Corruption Cases<sup>76</sup> etc. But this fact is also very important that judiciary is a state organ which is subjudice to the Constitution of

---

<sup>74</sup> Supra note 22.

<sup>75</sup> Supra Note 24.

<sup>76</sup> Supra Note 33.

Pakistan<sup>77</sup>. It has to function within its limitations as determined by the constitution. Unfortunately, our institutions are losing confidence of general public these days. Our judiciary has to first lessen the burden of pending cases in the courts and decide those cases without further delay and in justified ways then intervene in any other's institutional affairs. Only then we can inspire the hopeless people and can make the courts of law as courts of justice.

As no one can be a jack of all trades, there is a utmost need of establishing economic benches and equipped them with modern and advanced legal principles and best institutional co-ordination mechanisms. Disposal of economic cases must be speedy and even time bound. Courts priority must include ensuring the protection of investment of a national or foreign investor. Establishment of effective and strong alternative dispute mechanisms<sup>78</sup> are need of the hour for the survival of this dying economy of Pakistan.

## 6. References

- Ahmed, S. (2020). *Judicial governance in Pakistan*. Lahore University Press.
- Anant, T. C. A., & Singh, J. (2002, January). An economic analysis of judicial activism. *Economic and Political Weekly*, 37(43), 4433–4439.
- Bakht, M., Ansari, A. A., & Mehmood, T. (2024). Judicial activism in Pakistan and its impacts on tripartite governance: Lessons from the U.S. constitutional construct. *Global Political Review*, 9(3).
- Bhutta, E., Hameed, M., & Rehman, C. A. (2018). Shalamar Garden: Reappraisal of taken measures in the wake of Orange Line train and socioeconomic implications. *Ancient Punjab*, 2018.
- Ch., M. A., Siddiqi, Z. A., & Khan, A. M. Z. (2019). Causes of delay in Lahore Orange Line metro train project. *Pakistan Journal of Engineering and Technology*, 2(2).
- Dawn News. (2010, January 1). Cutting of Murree trees to supply gas: SC asked to close case as Punjab scraps project. <https://www.dawn.com/news/949484>
- Dawn News. (2013, December 6). [News article]. <https://www.dawn.com/news/1060893>
- Ehsan, B., Muhammad H., & Chaudhry A. R. (2018). Shalamar Garden: Reappraisal of taken measures in the wake of Orange Line Train and socioeconomic implications. *Ancient Punjab*, 2018.
- Evacuee Trust Property v. Rustam Ali, High Court of Sindh, CP No. D-1227 of 2009.
- Faundez, J. (2016). Douglass North's theory of institutions: Lessons for law and development. *Hague Journal on the Rule of Law*, 8, 373–419. <https://doi.org/10.1007/s40803-016-0031-0>
- Finance Division Pakistan. (n.d.). Report on CPEC. [https://www.finance.gov.pk/survey/chapters\\_17/Annex\\_III\\_CPEC.pdf](https://www.finance.gov.pk/survey/chapters_17/Annex_III_CPEC.pdf)
- Hasan, T. (2011). Supreme Court of Pakistan: The case of missing persons. *Criterion*, 4(3).
- Hussain, I. (2014, April). Economic consequences of judicial actions. *Blog by Dr. Ishrat Hussain*. [https://ishrathussain.iba.edu.pk/economic\\_consequences\\_of\\_judicial\\_actions.html](https://ishrathussain.iba.edu.pk/economic_consequences_of_judicial_actions.html)
- ICSID. (n.d.). Services arbitration and other ADR mechanisms. <https://icsid.worldbank.org/services-arbitration-other-adr-mechanisms>
- Khan, M. S. (2024). Genesis and evolution of PIL in the Supreme Court of Pakistan: Toward a dynamic theory of judicialization. *Temple International and Comparative Law Journal*, 28, 285.

<sup>77</sup> Available at Wikipedia Website [https://en.wikipedia.org/wiki/Constitution\\_of\\_Pakistan](https://en.wikipedia.org/wiki/Constitution_of_Pakistan) , Last Visited 15-12-2024.

<sup>78</sup> Available at Website <https://icsid.worldbank.org/services-arbitration-other-adr-mechanisms> .

- Khan, A., Shi, C., & Ali, F. (2024). An integrated approach to strengthening maritime security: A case study of Gwadar Port of Pakistan. *Maritime Development*, 2(14). <https://doi.org/10.1007/s44312-024-00027-0>
- Lahore Bachao Tehrik v. Dr. Muhammad Iqbal Chauhan, Supreme Court of Pakistan, C.M.A. No. 3221/2012 in S.M.C. No. 25/2009.
- Lee, Y., & Qureshi, M. F. (2000). Judicial activism in Pakistan is challenging for foreign investors in the context of China Pakistan Economic Corridor. *Journal of Law Policy and Globalization*, 95.
- Maulana Abdul Haque v. Government of Balochistan, PLD 2013 SC 641.
- Malik, A. (2017). CPEC infrastructure challenges. *Pakistan Development Review*, 56(3), 245–267.
- Munir, K. (2019). Judicial activism and constitutional interpretation. *Pakistan Law Review*, 42(3), 67–89.
- Munir, K., & Khalid, I. (2018). Judicial activism in Pakistan: A case study of Supreme Court judgements 2008–2013. *South Asian Studies*, 33(2), 321–334.
- Nadeem, M., Qasim, M., & Ibrahim, S. (2023). Original jurisdiction of the Supreme Court of Pakistan: Article 184(3) of the Constitution of Pakistan, 1973. *Journal of Social Sciences Review*, 3(2), 1054–1064.
- Niqab, M., Hanson, J., & Nawab, R. (2019). Testing the relationship between post-child marriage variables and a girl's education level in rural Pakistan. *International Journal of Learning and Development*, 9(1), 87. <https://doi.org/10.5296/ijld.v9i1.14363>
- OneIndia. (2009, July 2). Musharraf slapped with Rs 500,000 fine by electric tribunal. <https://www.oneindia.com/2009/07/02/musharrafslapped-with-rs-500000-fine-by-electri.html>
- Pakistan Code. (n.d.). Various laws and constitutional provisions. <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FobZ4%3D-sg-jjjjjjjjjjjj>
- Posner, E. A. (2008). Does political bias in the judiciary matter? Implications of judicial bias studies for legal and constitutional reform. *University of Chicago Law Review*, 75, 853–882.
- Province of Sindh through Chief Secretary & another v. Rasheed A. Rizvi & others, Supreme Court of Pakistan, Civil Appeals Nos. 212 & 213 of 2011.
- Qureshi, T. A. (2009). State of emergency: General Pervez Musharraf's executive assault on judicial independence in Pakistan. *North Carolina Journal of International Law and Commercial Regulation*, 35, 518–528.
- Rashida Abbas, M. A. R., & Bilal, F. E. (2022). Disputes arising out of foreign direct investments in Pakistan: A new look at legal and political issues. *Pakistan Journal of International Affairs*, 5(2).
- Reko Diq Mining Contract Case, Civil Appeal No. 1547-K of 2011. Supreme Court of Pakistan. (2013).
- Roosevelt, K., & Garnett, R. W. (2006). Judicial activism and its critics. *University of Pennsylvania Law Review PENnumbra*, 155, 112. [https://scholarship.law.nd.edu/law\\_faculty\\_scholarship/821](https://scholarship.law.nd.edu/law_faculty_scholarship/821)
- Siddiqi, F. (2013). PIL: Predictable continuity and radical departures. In *The politics and jurisprudence of the Chaudhry Court* (pp. 77, 84).
- Supreme Court of Pakistan. (n.d.). Human rights cell. <https://www.supremecourt.gov.pk/human-rights-cell/>
- Syed Sohail Hassan v. Muhammad Ibrahim Noor and others, Sindh High Court, Constitutional Petition Nos. D-3682 of 2011 & D-2176 of 2012.
- Tata Cellular v. Union of India, 1994. Retrieved from <https://indiankanoon.org/doc/884513/>

The Express Tribune. (2011, March 8). Bank of Punjab: Corrupt lending totalled Rs52 billion.  
<https://tribune.com.pk/story/129296/bank-of-punjab-%E2%80%98corrupt-lending-totalled-rs52-billion%E2%80%99>

The Express Tribune. (2011, February 3). SC decides to proceed against PCO judges.  
<https://tribune.com.pk/story/112946/sc-decides-to-proceed-against-pco-judges>

World Duty Free Company v. Republic of Kenya, ICSID Case No. Arb/00/7. (n.d.). Retrieved from  
<https://www.italaw.com/cases/3280>

World Duty-Free v. Kenya. (2006). Retrieved from <https://www.iisd.org/itn/en/2018/10/18/world-duty-free-v-kenya/>