



IMAGES OF JUDICIAL ACTIVISM IN PAKISTAN: THE REPRESENTATION OF SUPERIOR JUDICIARY IN NATIONAL ENGLISH DAILIES

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Abstract

When judges set new precedents and interpret the law while applying their judicious mind, it is considered as judicial activism. The judiciary in Pakistan was active and bold after its restoration. Mainstream media gave full coverage to their steps taken for the public good. Leading English newspapers had their own view point regarding the role of judiciary. The current study has examined the framing of judicial activism by the English dailies, which created a particular image of judiciary among the masses. The op-ed pages reflect the policy of newspaper organization and the writer. These pages are mainly examined to probe the role of print media in framing the issues. The questions and hypotheses are analyzed to know whether judicial activism is good for the best interest of the public. The census method is applied to collect the data. The coding sheet is designed with different frames and slants and the data collected in the research is analyzed through SPSS version 22.

Keywords

Foreign Aid, Fiscal Policy, Fiscal Behavior, Revenue, Government Expenditure, Public Borrowing.

1. Introduction

According to 19th-century German theologian and writer David Strauss, judicial activism can be defined as actions like overturning laws as unconstitutional, overturning judicial precedent and ruling against a preferred interpretation of the constitution. There are two perspectives about judicial activism. Judiciary should remain in its limits and must not interfere in the affairs of executive. The other one is that the judiciary is responsible for providing justice and where the rights of masses denied by the executive, it will have to interfere in it. According to the advocates of first principle, the role of judiciary is to provide justice not to ensure effective governance in the state. At the same time there is a perception that judicial activism is the

outcome of incompetency of government and bad governance by the administration.

In Pakistan, judiciary started taking bold decisions soon after its restoration back in 2009 against the higher authorities of different organizations and in the matters of highly public interests. Although, judiciary in Pakistan took some courageous decisions, but it also gave the message that there is rule of law in Pakistani society and no one is considered as above the law. Supreme Court of Pakistan has used its powers of *suomoto* and judicial review. This relatively new approach of dealing with matters related to public policy in Pakistan has received a divided response from the media, civil society and politicians. Supporters of judicial restraint believe that these actions are against the scheme of

separation of power. On the other hand, advocates of judicial activism believe that poor governance and incompetency of government create such circumstances in which judiciary jumps into affairs of executive. It creates an atmosphere of accountability with the help of democratic government and vocal media (Faisal, 2013).

The expansion within fundamental rights under the constitution of Pakistan had expanded the number of public interest litigations and mainly the trend of taking *suomoto* actions has gained popularity among the masses. It has covered almost all types of important matters including, political, social, economic and even matters related to the foreign relations of Pakistan. The superior court has decided number of cases under its jurisdiction of *suomoto* within last ten years after the restoration of judiciary including the issues like price hiking of commodities, law and order in metropolitan city Karachi, the investigation of crimes and most importantly the disqualification of an elected Prime Minister. The practice of *suomoto* as a routine matter raises serious concerns regarding the constitutional powers of executive and the effectiveness of its agreements with other states (M. Raheem, 2014). Judicial activism has strengthened the belief of supremacy of constitution. For the first time, media and civil society realized that any military takeover would no longer find the judicial support. The problem of judicial activism lies in judges' personal views on matters related to the public policies. This has resulted unease and some political parties believe that it is interference into the affairs of executive (Faisal, 2013).

2. Framework

Theory applicable to the subject is framing and the concept of framing is related to the agenda setting. It focuses not on what to think but what to think about. It goes into essence of the subject rather than discussing only the topic. According to the concept of framing, media focuses on certain events and gives them its own direction and meaning. Goffman (1974)

describes for the first time the concept of framing that was actually given by Gregory Bateson in 1972. He believed that people interpret the events which they view according to their own basic framework and understanding.

2. Method

The present study applies the content analyses to evaluate the slants and frames of print media in regards to the judicial activism. Area of study is Pakistan as the op-ed pages of English newspapers is the same from all the cities' bureaus. The print versions from Lahore and mainly the web versions for the archives have been studied.

Leading English Newspapers of Pakistan namely the News, the Nation and Daily Dawn were studied, as they have mass circulation and readership in all over the country. Later the Dawn was dropped as their online archives were not updated. The researcher has taken the whole tenure of Iftikhar Muhammad Ch. from 2009 to 2013. Archives of all English daily newspapers are easily available and the content of newspapers has covered all the perspectives of topic. Op-ed pages of selected English newspapers are taken and census technique has been used. Op-ed pages reflect the true policy and agenda of the newspaper organization. It also reflects the mindset of the writer of the story that is why; these pages are taken for this study to explore a particular framing of the press. Headlines and intro of the stories are the recording units. Each news report, features, editorials, column, article and letter to the editor having any sort of content pertain to judicial activism is from contextual units.

4. Findings

From March 2009 to October 2013, there were 476 stories published in leading English newspapers of Pakistan regarding judiciary, judicial activism and the personality of former Chief Justice of Pakistan Iftikhar Muhammad Chaudhary.

Table 1. Frequency Table of Statistics

		Newspaper Name	Length of Story
N	Valid	476	476
	Missing	0	0

Out of 476 news stories, 209 were published in The News that makes 43.9 percent of total percentage, 267 news stories published in The Nation which makes 56.1 percent of the total stories.

Table 2. Frequency Table of Newspapers

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	The News	209	43.9	43.9	43.9
	The Nation	267	56.1	56.1	100.0
	Total	476	100.0	100.0	

Out of 476 news stories, the length of 83 is between 200 to 500 words that makes 17.4 percent of the total stories, the length of 168 stories is 500 to 750 words that makes 35.3 percent, 56 stories have length of 750 to 1000 words which is 11.8 percent, while 169 stories have length of more than 1000 words which is 35.5 percent.

Table 3. Frequency Table of Length of Stories

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	200-500	83	17.4	17.4	17.4
	500-750	168	35.3	35.3	52.7
	750-1000	56	11.8	11.8	64.5
	1000 plus	169	35.5	35.5	100.0
	Total	476	100.0	100.0	

285 out of 476 stories were consisting of editorials published in both newspapers that is 59.9 percent of the news stories, while 191 news stories were either articles or columns which becomes 40.1 percent.

Table 4. Frequency Table of Credit Line

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Editorial	285	59.9	59.9	59.9
	Article/Column	191	40.1	40.1	100.0
	Total	476	100.0	100.0	

Out of 476 stories, 455 were about the ruling against certain political parties and figures, while 21 stories did not discuss this variable. Particularly, 410 stories talked about the personality of Iftikhar Muhammad Choudhary and in 66 news stories he was not discussed. 438 stories discussed the role of judiciary about taking action for public interest and 38 stories missed this variable. 180 stories were about the *suomoto* actions of judiciary and 296 stories did not touch this variable. About the interference of judiciary into executive's affairs, 445 stories were covered and 31 news stories did not discuss this variable. Regarding the clash between judiciary, executive and legislature, 458 stories were studied and 18 news items did not talk about this variable.

Out of 476 news stories 146 news stories believe that ruling against certain political parties and political personalities is a positive step that makes 30.7 percent of total news stories. 64 news items criticize the role of judiciary regarding ruling against certain political parties and persons, which is 13.4 percent of the news stories. 245 news stories remain neutral while discussing the role of judiciary regarding ruling against certain political parties that makes 51.5 percent. 21 news stories did not touch this issue which is 4.4 percent. The chart clearly states that superior judiciary was not biased against certain political parties or figures. 51.5 percent news stories state that judiciary was neutral. The data proves that judiciary crossed its

defined parameters while ruling against certain political parties and figures. At the same time, the content of the newspapers justified the role of judiciary as incompetency of corrupt rulers forced the judiciary to meddle into the political affairs. 208 news stories show that the former Chief Justice of Pakistan Iftikhar Muhammad Choudhary was a positive person, that makes 43.7 percent, 64 news stories criticized the personality of Iftikhar Ch. which is 13.4 percent. 138 news stories remained neutral while discussing the personality of former Chief Justice of Pakistan which is 29 percent of the total stories. 66 news items did not talk about the personality of Iftikhar Muhammad Choudhary that makes 13.9 percent of the total stories. The leading English newspapers of Pakistan covered the personal life of former Chief Justice of Pakistan. The newspapers highlighted the clash of power between the three pillars of the state, the ideal role of judiciary and the theory of separation of power. The bold and active role of judiciary was also highlighted by the newspapers in which the power of *suomoto* actions was discussed in order to provide justice to the humanity. He was labeled as the hero and darling of the masses during his office, because he became popular by taking bold decisions against the big guns. His personal life was called into question, when his own son was found involved in malpractices and misusing of his name for financial gains.

Table 5. Frequency Table of Ruling against Certain political Parties/Figures

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	146	30.7	32.1	32.1
	Negative	64	13.4	14.1	46.2
	Neutral	245	51.5	53.8	100.0
	Total	455	95.6	100.0	
Missing	System	21	4.4		
Total		476	100.0		

Table 6. Frequency Table of Portrayal of Iftikhar ch.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	208	43.7	50.7	50.7
	Negative	64	13.4	15.6	66.3
	Neutral	138	29.0	33.7	100.0
	Total	410	86.1	100.0	
Missing	System	66	13.9		
Total		476	100.0		

In 348 news stories, the role of judiciary in taking action for public interest was appreciated which is 73.1 percent, 28 news stories criticized the role of judiciary in taking action for public interest that makes 5.9 percent of the total stories. 62 news items remained neutral while discussing the role of judiciary in taking action for public interest which is 13 percent of the total news stories. 38 news stories 8 percent of the total did not cover this issue. The newspapers gave a special coverage to the judiciary and its

activism. The objective of judiciary is to provide justice to everyone without considering other's political, religious and social affiliations. Judiciary was considered as messiah for the poor and deprived population of the country, there was the only door of justice for the common men, which was of judiciary. The mass media also supported the role of judiciary in the issues related to the public interest. It helped the judiciary in identifying the evils in society.

Table 7. Frequency Table of Taking Action for Public Interest

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	348	73.1	79.5	79.5
	Negative	28	5.9	6.4	85.8
	Neutral	62	13.0	14.2	100.0
	Total	438	92.0	100.0	
Missing	System	38	8.0		
Total		476	100.0		

The exercise of power of *suomoto* action by the judiciary was appreciated in 138 news stories that are 29 percent. 15 news stories, 3.2 percent of the total criticized the judiciary for exercising the power of *suomoto* actions. In 27 news stories, the writers remained neutral while discussing the role judiciary in exercising the power of *suomoto*. 296 stories that make 62.2 percent of the total did not touch this variable. Although, there was not much coverage for the *suomoto* in print media, but most of the content was in favor of exercising this power by the supreme judiciary. It helps in providing the speedy justice to the masses. It also gives the message that there is rule of law in the society and no one is considered as above the law. The interference of judiciary into executive's affairs was appreciated in 78 news stories that make 16.4 percent of the total, 139 stories 29.2 percent criticized the superior judiciary for interfering into executive's affairs. In 228 news stories, the writers remained neutral while talking about the role of judiciary in interfering into executive's affairs, which is 47.9 percent of the total news stories. 31 news stories 6.5 percent of the stories did not discuss this variable. Mass media supported the judiciary while working actively to provide justice, but the interference of judiciary into executive's affair was not appreciated. Press believes

that all the organs of state should work within their defined parameters. Parliament is the law making body, the judiciary is to define the law and executive implements it. The combination of all produces an ideal state.

In 50 news stories, the clash of power between judiciary, executive and legislature was appreciated that is 10.5 percent, in 246 news items the clash of power between the three organs of state is criticized which is 51.7 percent of the total stories. 162 stories remained neutral while commenting on the clash of power between judiciary, executive and legislature that is 34 percent of the total. In 18 news stories the issue was not raised which is 3.8 percent of the total news stories. As the chart explains that there was a clash of power between the judiciary, executive and legislature. The news stories supported this clash or did not appreciate it, but these clearly indicate that there was a clash between three organs of the state during that particular period of time. The leading English press identified that there was a clash of power between judiciary, executive and legislature. It criticized all the pillars of the state for not being in their limits. The press highlighted the issues where state institutions were not working according to the true spirit of the constitution.

Table 8. Frequency Table of SuoMoto Actions

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	138	29.0	76.7	76.7
	Negative	15	3.2	8.3	85.0
	Neutral	27	5.7	15.0	100.0
	Total	180	37.8	100.0	
Missing	System	296	62.2		
Total		476	100.0		

Table 9. Frequency Table of Interference of Judiciary into Executive's Affairs

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	78	16.4	17.5	17.5
	Negative	139	29.2	31.2	48.8
	Neutral	228	47.9	51.2	100.0
	Total	445	93.5	100.0	
Missing	System	31	6.5		
Total		476	100.0		

Table 10. Frequency Table of Clash of Power between judiciary, Executive & Legislature

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	50	10.5	10.9	10.9
	Negative	246	51.7	53.7	64.6
	Neutral	162	34.0	35.4	100.0
	Total	458	96.2	100.0	
Missing	System	18	3.8		
Total		476	100.0		

5. Discussion

As per the statistics, the superior judiciary was neutral. It solely believed in the rule of law and it worked purely for the administration of justice. A judge is purely judged through his judicious mind and his decisions, not from his personal characters. The superior judiciary in Pakistan has power of taking *suomoto* actions; the newspapers appreciated the exercise of this power but did not give much attention to this variable. Lawyers believe that judicial activism is a positive and good thing, if it is governed by the rules and principles made by the constitution of Islamic Republic of Pakistan. Although, there was a clash of power between judiciary, executive and legislature, but the active and bold role of judiciary for public good is also appreciated. People believe that the

justice is to be provided at any cost. The clash of these three organs of state led to the conviction of an elected Prime Minister, but when the executive authority refuses to follow the law, it has to pay the price. The interference of judiciary even in executive's affairs for the administration of justice was supported by the leading English press. The restoration of independent judiciary was not in the favor of corrupt political personalities. That is why; there was a clash between judiciary and executive. The judiciary believes that no one is above the law and everybody is equal before the eye of law. The justice is to be provided to everyone at any cost, if the executive is not playing its due role, then judiciary has to interfere. It is the constitutional power of judiciary to interfere in the matters where the matter of

public interest is involved. There were some reservations regarding the role of superior judiciary when it acts as a trial court. It is further suggested that the superior judiciary should make such laws where the lower courts should play the ideal role, because the justice starts from the bottom not from the top.

Different news organizations have their different view point and policy, but overall the role of judiciary was considered positive. Judicial activism is known as overturning the laws and judicial precedents, while in the case of Pakistani judiciary; it did not rule against the precedents, it set new precedents while taking bold decisions. There are defined limits of judiciary, but at the same time it is responsible for providing justice and the justice sometimes demands active and bold decisions as well. The courageous decisions of the judiciary also give a positive message of rule of law. The constitution of Pakistan is based on Islamic ideology and laws given by the first Islamic state. That is why; everyone is answerable for his acts, so bold decisions of judiciary are according to the injunctions of Islam. The head of the state and the head of the government are to serve the common citizens; they are not the superior to other fellow human beings. The concept of immunity is in conflict with the principles set by Quran and Sunnah.

The superior judiciary set a precedent that the court orders are binding on every authority in the state. The laws are enacted by the legislature, protected by the judiciary and effectively enforced by the executive. A pillar of the state that is responsible to protect the law has to interfere when there is violation of law. Press is considered as the fourth pillar of the state, it played its responsible role. When the judiciary was playing the positive role, press supported it and became the advocate of truth, justice and rule of law. Media organizations stood with judiciary, initially when there was movement for the restoration of judiciary, and once again when judiciary actively

performed its due role. The information provided by the press was relied and the judiciary and took actions bravely whenever there was violation of fundamental rights and there was question of public importance.

6.Recommendations:

Following are some recommendations after this study:

1. Superior judiciary acts when there is violation of law, but it does not play the role of a trial court, it should create such laws and policies where the trial court should apply judicious mind to decide the cases.
2. The organs of the state have to remain in their defined limits, the coordination and assistance of all the organs with one another helps in running the smooth business of the state.
3. The press has to support the judiciary in order to provide justice to everyone without any discrimination.
4. Judicial activism is a positive thing, but it should be used to protect the law, it should not be guided by the personal whims of the judges.
5. The press is to play its role for the protection of public interest and it should act impartially.
6. There should be difference of opinion amongst the press, but only for the constructive purposes not for the destructive agendas.
7. The judiciary should be free from any political, regional and linguistic biases and prejudices.
8. The judiciary has the power to interfere into executive's affairs, but it should not be the norm of the judiciary.
9. If there is a clash of power between three organs of the state, the media should highlight it and should point out the weaknesses in the system.

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