
THE INVISIBLE FACE OF JUDICIAL ACTIVISM: EXECUTIVE DISCRETION, ADMINISTRATIVE REVIEW, AND THE EXPANSION OF JUDICIAL POWER IN PAKISTAN**Advocate Anwaar Ul Mustafa Watto**Email: anwaarulmustafa5325@gmail.com**ABSTRACT**

Judicial activism is generally associated with constitutional conflicts, suo motu actions and the conflict between constitution and elected governments in Pakistan. This paper looks at a more obscure aspect of judicial activism the enlargement of judicial authority under the guise of challenging executive discretion and administrative action. The research design employed was a qualitative doctrinal and critical study which involved the analysis of the constitutional provisions, judicial decisions, constitutional amendments and scholarly works on judicial review, administrative discretion, reasonableness, proportionality and separation of powers. The results reveal that Pakistani courts have been increasingly addressing administrative issues beyond the mere issue of jurisdiction and legality to the questions of reasonableness, procedural fairness, proportionality and fundamental rights. This enhancement to accountability and safeguard of citizens against arbitrary executive acts would make possible, however, a danger of judicial overreach if the judiciary accepts its own policy choices in place of those of constitutionally mandated executive institutions. The findings of the study also reveal that the recent constitutional restructuring does not have the effect of the abolition or removal of judicial power in Pakistan, rather it has been shifted to another chamber of the Federal Constitutional Court which has been established and the constitutional jurisdiction of the Supreme Court has also been changed. It is concluded that Pakistan should have robust and disciplined judicial review that is able to limit the unconstitutional exercise of executive authority while upholding the rule of law and administrative autonomy. The study thus recommends that Pakistan urgently needs to have a strong, yet disciplined judicial review that can check the violation of the Constitution of the Islamic Republic of Pakistan by the executive without compromising on the administrative autonomy and accountability.

Keywords: Judicial Activism; Executive Discretion; Judicial Review; Separation of Powers; Administrative Law

1. INTRODUCTION

In Pakistan judicial activism is usually talked about in the light of prominent cases, which involve constitutional issues, politics, disqualifications, suo motu, and the clash between the superior judiciary and the elected governments. But this is only a part of the judicial power that is most easily observed. An in-depth study of the constitutional development of Pakistan reveals that the judicial expansion has also taken place in an indirect way, as in the sphere of administration law, specifically; judicial powers have been exercised over administrative action. Cheema (2018) is of the opinion that the institutional authority of the superior judiciary courts gradually grew over time by reviewing the bureaucratic and executive activities, thus administrative law is one of the core pillars of the power of the superior courts in Pakistan which has not been studied in its entirety.

The constitutional basis of this power is primarily in Article 199 and 184(3) of the Constitution of Pakistan; however, the constitutional framework of such jurisdictions has changed significantly over the last few years. Historically Articles 199 and 184(3) of the Constitution of India provided the High Courts with the power to issue directions, orders and writs in cases where the public authorities acted without lawful authority or otherwise failed to comply with the legal or constitutional requirements and to exercise the original jurisdiction of the Supreme Court in relation to public importance in matters concerning fundamental rights respectively. These provisions allowed the superior judiciary to review the decisions made by the executive branch on the appointments, transfers, administrative discretion, regulatory action and public authorities and fundamental rights. Despite a relatively limited involvement of the courts in large political issues in the first seven decades of the Republic, Cheema (2018) shows how

these powers have been gradually enlarged through administrative-law jurisprudence over the years.

The idea of administration and judiciary relationship cannot be completed without the concept of executive discretion. No government, modern or otherwise, can exist without some discretionary powers since no law can foresee all administrative situations. Ministers, bureaucrats, regulators, and other public officials, then, must make appropriate judgments on the implementation of laws and administrative decisions. The issue is that discretion becomes arbitrary, politically driven, unreasonable or fails to meet the statutory purposes. In the Pakistani context, Khokhar (2025) states that Pakistani jurisprudence has evolved from the limited notion of 'legality' to other principles like 'reasonableness', 'fairness' and 'proportionality' and, at the same time, raised concerns regarding the encroachment of judicial power into the decision making process of the executive.

The role of judicial review is therefore not one of imposing judges' preferences on elected institutions but rather as a way to protect the rule of law. A constitutional difference exists. Courts can review for an executive authority whether it acted within scope of its legal authority, whether it complied with required procedures, whether it considered relevant factors and whether it made an arbitrary or irrational decision. They are not normally expected to decide if the policy of a lawful government is the best policy. This difference has been clearly stated in recent Pakistani jurisprudence, which stipulates that the question of law is subject to judicial review but it does not make the court an appellate court to the wisdom and/or desirability of the executive policy.

But there is no clear cut demarcation between proper and improper judicial review. Judicial activism is a problem when judges start to intervene in making policy decisions rather than rectifying illegal executive action, to oversee the executive in the future, to overhaul institutional structures, or even to assume executive powers that are constitutionally held by the executive. Pakistan's judicial expansion is 'non-linear' and the courts have gradually expanded their jurisdiction in administrative law, while at various moments taking on very different stances towards the executive and military powers, Cheema (2018) observes. The difficulty of defining judicial activism as "more judicial review" lies in the historical irregularity, the more important question is how judicial power is used, and where the limits of the Constitution of the United States for the judiciary are set.

This debate was greatly intensified by the Supreme Court's use of public-interest jurisdiction. Prior to a recent constitutional amendment, under Article 184(3), the Supreme Court could have original jurisdiction over issues of public importance and fundamental rights. The Court, over the years, evolved practices in relation to suo motu proceedings, laxer requirements for standing, judicial commissions, ongoing supervision, and sweeping damages. Cheema (2018) highlights these shifts as key processes that the Supreme Court has adopted to break out of the traditional adjudication role and engage itself more into governance and administration matters. This led to an "inferior" judiciary that had the capacity to impact on the executive's decision making without the immediate controversy being posed as a fundamental rights issue.

This growth created a crucial conflict over the constitution. On one side there is responsibility of the judiciary to safeguard constitutional rights, legality and accountability, on the other there is a principle of separation of powers, with policy formulation and policy administration being mainly in the hands of elected and constitutionally authorized institutions. Too much judicial interference may have a negative effect on the accountability of judges since some decisions are transferred from the political sphere to the judicial process. On the other hand, too much deference by the courts can allow arbitrary administrative action and give people no redress. Exactly this tension is what Khokhar (2025) sees in Pakistan's administrative-law

jurisprudence: accountability has gained strength as has the development of reasonableness and proportionality, but at the same time, it has created a shady distinction between judicial review and executive authority.

What becomes more important is with judicial review not just to address statutory but also administrative discretion. Administrative authorities often are involved in decisions regarding public appointments, transfers, licensing, regulation, taxation, public-sector management and allocation of state resources. Courts would be better advised to avoid raising the substantive rights of such decisions if they are to be reviewed too closely by court, else they would run the risk of substituting judges for administration. However, if courts interpret the rule of law in a very strict manner, the executive branch can act at will exercising its authority without breaking the law. Standards like reasonableness, proportionality and procedural fairness are thus an effort to tread this precarious middle ground (Khokhar, 2025).

In recent Pakistani jurisprudence, judges too have started to voice their restrictions on judicial interventions. In 2025, the Supreme Court reiterated its position that judicial review of governmental policy should not give courts the authority to serve as appellate bodies to review the correctness or desirability of policy decisions. That is because a decision-maker can be held to account if he or she breaks the law, goes wrong in law, exercises a power for an improper purpose or exceeds jurisdiction or commits an unreasonable decision-making. This is important because it seeks to maintain a constitutional separation between law and policy evaluation and to replace it with policy judgment.

The Twenty-Sixth and the Twenty-Seventh Constitutional Amendments were of special importance. The Twenty-Seventh Amendment 2025 had an impact on the constitution of Pakistan, it basically changed the architecture of the constitution by introducing the Federal Constitutional Court and the transfer of major constitutional powers from Supreme Court. This has led to a substantial shift in how constitutional review is institutionalized and the constitutional (institutional) relationship between the Supreme Court and the other Federal courts, namely the Federal Constitutional Court and High Courts (Saeed et al., 2025).

The Twenty-Seventh Amendment is of particular importance for the present study as it alters the institutional setting in which judicial activism is now to be comprehended. The jurisdiction of the Supreme Court has been reorganized and the Federal Constitutional Court has gained broad powers of interpretation of the constitution, fundamental rights and constitutional controversies. The amendment does not only cut down or expand on 'judicial activism'—it's an amendment that redistributes constitutional judicial power. The legal analysis suggests that this is a significant shift in the constitutional framework that establishes the balance between the judiciary and executive bodies (Nawaz & Bexci, 2026).

Changes to the post-2025 framework also involve constitutional adjudication and administrative review. The new constitutional setup has introduced constitutional-bench arrangements to the jurisdiction of the High Court under Article 199 of the Constitution, and a shift of constitutional questions from the Supreme Court to the Federal Constitutional Court. The judicial interpretation of the new institutional lines in recent times showcases that Pakistan is in the midst of a substantial shift in judicial review powers.

It is important to study judicial activism at this time because of this change. Whether or not Pakistani courts have increased their powers is no longer in question. The more significant question these days is where and how the judiciary oversees the Executive's discretion, and whether the reengineered judiciary provides more or less constraints on the Executive. Recent scholarly work on the Twenty-Seventh Amendment has led to conflicting concerns: on the one hand, the restructuring of the judiciary was seen as a way of curbing hyperactivity in the judiciary, while on the other hand, it was believed that the effort of making the judiciary less

independent would impair its ability to hold executive power accountable (Saeed et al., 2025; Nawaz & Bexci, 2026).

But the discussion is made more complicated because judicial activism and judicial independence are two different things. There is no such thing as an activist judiciary and there is no such thing as an independent judiciary. Judicial independence is related to institutional capabilities of courts and judicial activism is related to interpretation and application of law. A recent criticism of the Twenty-Seventh Amendment has not only been directed to whether it restricts judicial activism, but also to whether changes in judicial appointments, transfers and institutional structure will have an impact on the independence of the judiciary and their effectiveness in exercising their power to effectively review the executive action.

History also shows the reason that the question is not just one of judges versus executive branch. Cheema (2018) reveals that the superior Courts of Pakistan have in the past been deferential and at times critical of the civilian executive while being tolerant of the military. This is a pattern which indicates that the power of the judiciary has emerged as a complex process of evolution in the course of constitutional text, political situation, institutional incentives and executive action. This "invisible face" of judicial activism is even more significant, given that the growth of judicial power can take place over the course of ordinary administrative litigation, not in the context of constitutional crises.

This study thus takes a different viewpoint on judicial activism, from that of mere mega-politics, namely from the viewpoint of administrative review. The key issues are the role of courts in holding the executive to account and whether the growing judicial review leads to greater accountability or to a gradual shift in the role of judges from holding the executive accountable to becoming judges and administrators. This view is a reaction against the usual narrative of judicial activism in Pakistan which is dominated by the analysis of significant constitutional crises and less focused on the thousands of administrative decisions regarding public authorities, bureaucratic authority and regulatory regime. The fundamental source of judicial authority in Pakistan is administrative law, which Cheema (2018) calls the historical origin of Pakistani judicial powers and thus it is an indispensable area for reviewing the existing contours of judicial powers in Pakistan today.

This is an important gap in research in light of the contemporary constitutional restructuring. The establishment of the Federal Constitutional Court would be a more fractured judicial system that would shape Pakistan's jurisprudence in the future on executive action, fundamental rights and constitutional interpretation. As early as now, cases decided before the courts show how they are trying to delineate the scope of competences between the Federal Constitutional Court and the Supreme Court.

The present study thus looks at not only the extent to which judicial activism has grown, but also how administrative review has helped the judiciary to grow, the constitutional constraints that should be imposed on the growth and the implications of the change in the judicial institutions for the future relationship between the judiciary and the executive.

1.2 Objectives of the Study

- a) To critically examine the development of judicial review of executive discretion in Pakistan and identify the mechanisms through which administrative review has contributed to the expansion of judicial power.
- b) To analyse the constitutional and jurisprudential boundaries between legitimate judicial review and judicial overreach in matters involving executive and administrative decision-making.

- c) To assess the implications of Pakistan's recent constitutional restructuring for the balance between judicial power, executive discretion and the principle of separation of powers.

1.3 Research Questions

- a) How has judicial review of executive discretion contributed to the expansion of judicial power in Pakistan?
- b) Where the constitutional boundary should be drawn between legitimate judicial review and judicial overreach in administrative decision-making?
- c) How has Pakistan's recent constitutional restructuring affected the balance between judicial power, executive discretion and separation of powers?

1.4 Significance of the Study

The study has importance because it looks at judicial activism in a facet that has not been given sufficient attention in the many prominent political and constitutional cases that have been studied; namely the normal judicial review of executive and administrative acts. The current literature profusely shows that administrative law has been one of the main avenues by which the superior courts in Pakistan have gained institutional status (Cheema, 2018). It is important, therefore, not only because it reveals the judicial power as a reaction to political crises, but because it is a product of common uses of judicial power in the areas of bureaucratic discretion, regulatory action, appointments, transfers and executive legality. It also helps in the current discussion about the separation of powers, separating between accountability in the constitution and the substitution of the executive judgment by the judges. This distinction has become even more relevant in light of recent decisions that have recognized that such courts may strike down executive action that is unconstitutional or unreasonable but should not act as policy makers (Khokhar, 2025).

The study is also important as the Twenty-Seventh Amendment has significantly changed the judicial landscape of Pakistan by establishing a Federal Constitutional Court and re-distributing the power of constitution. The changes have to be studied not only in the context of their institutional design, but also the impact they can have on judicial review and executive accountability and judicial independence (Saeed et al., 2025; Nawaz & Bexci, 2026). Research may hence be relevant to the constitutional scholars, judges, lawyers, policy makers and students of public law, who may use it to critically assess the situations in which the judiciary protects constitutionalism and the moments in which it threatens to endanger it by taking up the role of public law protector.

1.5 Limitations and Delimitations of the Study

This study has its drawbacks in that the material available is largely doctrinal and qualitative in nature, and in that it fails to measure the frequency of judicial activism in all courts in Pakistan, or statistically to assess the results of administrative-review cases. There is no consensus on the meaning of judicial activism, nor is there a universally agreed upon definition of the concept, so it inevitably has an interpretive limitation. The study is not an attempt to cover the various aspects of judicial activism including elections issues, military interventions, constitutional amendment or private law issues, but is deliberately limited to the relationship of judicial review and executive discretion and administration in Pakistan. The superior judiciary, pertinent constitutional provisions and important judicial decisions and scholarly literature are analyzed, with a particular focus on those that occurred between 2020 and 2026, and earlier cases or developments are included where appropriate to explain the development of administrative review. The study further highlights the constitutional restructuring that was enacted through the Twenty-Seventh Amendment of 2025, which has had a significant impact on the distribution of the constitutional judicial powers in the institutions. The research thus

does not rely on the assumption that pre-2025 jurisprudence can be extrapolated onto the current constitutional structure but rather assumes that there will be a post-2025 constitutional landscape as a separate institutional period that should be analysed separately.

2. LITERATURE REVIEW

Literature on judicial activism in Pakistan has focused on and highlighted very visible conflicts such as military interventions, disqualification of elected government officials and suo motu proceedings as well as conflict between the Supreme Court and elected governments in Pakistan. This focus, however, could set up the two aspects of judicial review of administrative action—less visible but structurally significant—for failure. In this respect, one of the most significant contributions is by Cheema (2018) who holds that the growing role of judiciary in Pakistan was not to emerge with the advent of politically sensitive cases during the 1990s or the 2000s. Rather, the institutional power of superior courts was gradually established over executive and administrative action. His central idea is of special significance for the current study as he has mentioned that administrative law has been the “bedrock” of judicial power in Pakistan throughout the historical period. This view goes beyond the “judicial activism” of intervening in a big political battle, and focuses on the process of the individual judge's or juror's routine supervision of executive action.

The development of judicial review in Pakistan is also not linear as is evidenced in Cheema's (2018) historical account. The courts have not been necessarily more active or passive, favorable or unfavorable, in this direction. From time to time (especially given military rule) the court would uphold the authority of the executive or military, while at the same time creating legal frameworks that eventually would allow for more judicial intervention. This is a unique case in Pakistan compared to a typical story in which a weak court system over time becomes strong. Judicial power, on the other hand, has grown out of a complex interplay of constitutional crises, administrative law and political situations and institutional strategies. In this respect Cheema (2018) can serve as a valuable historical background to analyse the judicial activism of the present times, but would also allow for a more in-depth study of the approach taken by courts to executive discretion in action.

Another central theme of the literature is the constitutional source of judicial review. The mechanisms of challenging governmental action provided in articles 199 and 184(3) historically have been important, but they have developed in the way of their institutional functioning and the extent to which they can be used. The High Courts had the power to issue constitutional writs against public authorities under Article 199 and the Supreme Court also had the original jurisdiction to the extent of matters relating to public importance and the fundamental rights under Article 184(3). Khalil et al. (2021) highlight the relevance of Article 184(3) to judicial activism as it created a space for judicial powers to extend beyond the usual private conflicts. Their analysis links the provision with suo motu jurisdiction, public interest litigation and overall judicial engagement in executive and legislative activities.

The literature, however, shows that there is an important conceptual issue: judicial review is not synonymous with judicial activism. Judicial review is the judicial power that allows judges to review the government's action while judicial activism is an attitude of judges when they exercise the judicial power. A court can be very deferential to executive judgment and have judicial review power, or it can be very broad in its judicial review and intrude upon policy and administration. This distinction is crucial since the count of judicial actions does not provide an indication of whether courts are activist. The importance is not the actual content of the legal reasoning, but the quality of the review carried out and the judges' willingness to replace the constitutional decision makers' with their own. Cheema (2018) indirectly highlights the issue

by showing that some periods of time were also characterized by the growth of judicial review despite the absence of regular court rejection of executive decisions.

Administrative discretion has attracted increased scholarly interest in recent years, and is a key aspect of the current research. According to Khokhar (2025), discretion is an essential aspect of contemporary administration because the public authorities have to make decisions in situations not fully specified by law. But, with discretion comes the potential for arbitrary, politically motivated or unreasonable decision-making. According to his analysis, reasonableness and proportionality are becoming more and more relevant as standards for Pakistani courts to scrutinise the manner in which the executive power is exercised. Judicial review is thus portrayed as a method to check the arbitrary exercise of administrative power, but at the same time the issue of the scope of the judiciary's substantive power in reviewing the decisions of administrative bodies arises.

It is important to note that this is where the development of proportionality is crucial. Over the years, the judicial application of the concept of proportionality has become more common in Pakistan and is increasingly utilized as a means to gauge the need for government actions which impact free rights in reference to its legitimate governmental goals. In the case of determination of executive discretion, the Supreme Court has accepted proportionality as one of the tests, in addition to reasonableness, for review of executive discretion, especially when it impinges upon the constitutional rights. This approach has the effect of the strengthening the protection of rights as it will not allow the public authorities to use formal legal power as the sole basis. Proportionality also makes the judicial review more demanding as it demands courts to consider the balance between the ends pursued by government and the means adopted to attain them. Proportionality is therefore recognised in the literature as a protection against arbitrary administration and as a possible threshold where judicial review can be substantively intrusive. The development of the concepts of reasonableness and proportionality also shows a shift from a narrow legal to a substantive constitutional accountability in administrative law in Pakistan, writes Khokhar (2025). This is important as it is a new approach to judicial review which normally questions the authority's legal authority and compliance with necessary procedures. A more intensive review examines the reasonableness, disproportionate or inconsistent application by the decision itself of fundamental rights. The latter is a more effective means of protecting against arbitrary government, though it also raises the level of judicial interference in executive decision-making. The literature thus shows that there is a central tension that directly influences the present study: the same doctrines which defend the citizens against the abuse of executive authority can also give new judicial power over administrative policy.

The Pakistani courts have thus recognized this boundary in recent times. In *Federal Government Employees Housing Authority v. Ednan Syed* (2024/2025), the Supreme Court emphasized that judicial review of executive and legislative action is not an unlimited or unrestrained power. The Court distinguished itself from being an appellate court for the correctness or desirability of government policy as opposed to its legality. It understood that intervention may be warranted if the decision-maker breaches the statutory requirements, misguided in law, exceeds jurisdiction, acts improperly or makes a decision that is so unreasonable that no reasonable authority could have reached such decision. This jurisprudence is of particular importance because it sets a boundary, one that is judicially enunciated, between legitimate review and judicial overreach.

This distinction is reinforced by current academic research on judicial activism and on government. Recent studies have challenged the ability of excessive judicial involvement to have an impact on the working of the executive organs, especially when judges step outside the scope of law and into policy and administration. For instance, during the Iftikhar

Muhammad Chaudhry period, judicial review and suo motu power have been linked to significant consequences for governance and institutional balance (Journal of Development and Social Sciences, 2024). The principle of separation of powers is generally emphasized and the institution of checks and balances is suggested as a way of countering the tendency of any one branch of government to gain too much power.

Meanwhile, there is no such thing as a monolithic view of judicial activism as a bad thing. The judiciary also has been significant in safeguarding fundamental rights and preventing arbitrary action by the executive. Thus, it is not the very concept of judicial review that is the issue, but rather the lack of a consistently stated standard of judicial review. By intervening only where the executive action is obviously unlawful, courts may be allowing what is technically lawful but really arbitrary. If they look at everything that an Executive decides, then they may end up being the substitute Administrators. This tension is captured by Khokhar (2025), who writes about the concepts of reasonableness, proportionality and separation of powers. The literature thus provides support for a calibrated approach instead of full judicial deference or unfettered judicial intervention.

An important line of scholarship looks at judicial activism from an institutional power perspective. Cheema (2018) suggests that judicial review helped make Pakistan's higher courts more significant players and institutions in governance. What's important about his analysis is that he demonstrates that judicial power can grow up in administrative cases before it's found in political debates when the stakes are higher. This argument has great meaning for this research. The "invisible" expansion of judicial power can also happen if courts frequently reinterpret statutory powers, set standards of reasonableness, strike down administrative decisions, demand a safeguard, or review the implementation of administrative decisions by the executive branch. While each individual intervention might seem insignificant, the impact of all of them can prove to be a significant shift in the judiciary/executive dynamic.

At the same time, however, Cheema's (2018) method on judicial expansion has received some criticism in being a bit more linear in its approach to judicial expansion. A subsequent study of his work suggests that the account fails to account for the rate at which judicialization can occur under some benches (and political contexts) as compared to others. It also implies that one could interpret many judicial rulings as representing a single continuum and mask the differences among judges on how far to go on judicial review. Judicial activism is significant for the present study in view of the fact that this criticism points towards the fact that judicial activism is not an institutional trait of the judiciary in Pakistan. The level of intervention could be influenced by institutional structure, political environment, legal interpretation and the specific characteristics of the executive determination to be challenged.

Another view of judicial activism under Article 184(3) is found in literature. Khalil et al (2021) highlight public interest jurisdiction and suo motu cases as means of expanding the judicial jurisdiction beyond statutes. They gave the Supreme Court the power to pick up cases of public interest and fundamental rights which would otherwise be brought by parties to the court, thus lowering reliance on party-litigation. This mechanism can enhance access to justice, but it has been raised issues about the judicial self-initiation and institutional accountability. The more the court is able to discover issues, instigate proceedings and develop remedies, the more likely it is that judicial actions will have a bearing on what is normally in the jurisdiction of the executive or legislative branch of government.

Judicial activism has therefore been termed as a double-edged sword in Pakistan more recently. While judicial activism has sometimes helped to increase judicial independence and constitutional rights, at other times it has also added to political instability and institutional conflict is argued by Baig (2024). Likewise, Naseer (2025) discusses the judicial activism

as an aspect of institutional imbalance and states that undue activation of the judiciary may lead to interference with executive governance. These studies are useful in determining the general impact of activism, but are seldom on the subject of political and constitutional controversies and do not undertake a systematic study of the administrative review decisions by which judicial power can grow incrementally.

Another problem is one of separation of powers. It is generally accepted that judicial review is consistent with the separation of powers as courts have a duty to protect public authorities from acting outside their constitutional and statutory powers. The problem lies in having judicial review become so intense that judges are making policy. The Supreme Court's recent statement that courts should not be an appellate court from a policy decision attempt to maintain this distinction. The Court's reasoning indicates that the reviewing standard should be one of legality, jurisdiction and compliance with the process, with improper purpose, and with relevant considerations and extreme unreasonableness, but not with the court's preferred policy outcome.

This separation is especially relevant when it comes to discretion of the executive. Courts may lack certain knowledge, which is possessed by administrative agencies and government departments. This over-reliance on judges can thus lead to inefficiency in administration and a lack of accountability in democracy, as judges are not as subject to political accountability as executives are for policy choices. On the other hand, if judicial deference is given to an administration, it can lead to citizens being subject to arbitrary administrative authority. The growing body of literature thus suggests a form of structured deference, one in which courts would scrutinize the legal limits and logic of executive action and would assert that differences between institutionally distinct modes of adjudication and administration exist (Khokhar, 2025).

The importance of literature in the context of the current constitutional changes in Pakistan. The 27th Constitutional Amendment of 2025 had a fundamental impact on the structure of the country's judiciary, creating a Federal Constitutional Court and the transfer of significant constitutional powers. The latest scholarship says that it is a "significant transformation of the relationship between constitutional courts, the Supreme Court and other state institutions" (Saeed et al. 2025, Nawaz & Bexci 2026). The restructuring introduces a new institutional environment in which issues relating to executive review and judicial power will need to be rethought. Most of the work on judicial activism before this focused on a situation where the Supreme Court had the major voice in constitutional interpretation. The post-2025 framework involves reviewing if judicial power has been limited, merely reallocated or even divided between institutions.

This is a new finding that reveals an important gap in the literature. Past research on judicial activism in Pakistan has either concentrated on the growth of judicial power, or studied exceptional political moments, and the few studies of administrative discretion have tended to be more about legal concepts like reasonableness and proportionality. Compared to the other two strands, the literature on how the two are integrated—how administrative review can help the judiciary expand in the institution and how judicial intervention can give shape to the limits of executive discretion—is comparatively underdeveloped. Previous research also tends to focus on judicial activism in pre-reform times of Pakistan's constitutional courts. For this reason, they are unable to predict what future changes may be wrought by the distribution of constitutional powers in administrative review and judicial power.

Empirical research is definitely identified as having a three-dimensional gap in the literature. The first is that in Pakistan, administrative law is one of the most important pillars of judicial power as convincingly argued by Cheema (2018), but it has not offered a detailed, yet relevant

contemporary discussion on the nature of the standards of reasonableness, proportionality and administrative review as instruments of judicial expansion. Second, recent scholarship about administrative discretion, like Khokhar (2025), focuses on the changing norms of judicial review, but fails to adequately account for the aggregate institutional impact of these norms on judicial authority. Third, research on judicial activism typically addresses the effects of Article 184(3), suo motu cases, political issues and governance outcomes, while neglecting to reflect on the less pronounced growth of judicial power in the ordinary executive review cases (Khalil et al., 2021; Baig, 2024). Most important, the existing literature has not yet sufficiently addressed these questions together with the constitutional restructurings of the post-2025 and their consequences for the distribution of judicial review powers.

This study aims to fill that void by combining the concepts of administrative law with judicial activism. It does not simply ask if the judges of the country had turned activist rather it asks how judicial review of executive discretion provides opportunities for judicial power to grow, where do legitimate review ends and judicial substitution begins and how the recent restructuring of constitution might impact on this relationship. This has a different perspective from the traditional judiciary-executive dichotomy, and emphasizes institutional structures which are aggregating judicial power in daily governance. The study therefore does not focus on the high-profile judicial rulings, but instead views judicial activism as a dynamic that can be progressive, and incorporated into administrative review. A bottom-up process offers a better foundation for assessing, whether judicial decisions improve the rule of law or erode it, by giving it over to the judiciary, so that constitutional accountability is diluted over time.

3. RESEARCH METHODOLOGY

3.1 Research Design

The method used in this research is qualitative with doctrinal-critical research design. The doctrinal aspect involves a study of the provisions of the Constitution, the statutes and case laws relating to judicial review and executive discretion, and the critical aspect involves an analysis of judicial intrusion into the separation of powers and the growth of judicial power. The design is directly relevant to the study's goals in that it aims to explore the issue of legal development, to determine the limits of legitimate review and judicial excess, and to evaluate the impact of the constitutional restructuring that has occurred recently.

3.2 Sources of Data

The study uses primary and secondary sources of laws. The sources of primary materials are: Constitution of Pakistan, Constitutional amendments, statutory provision regarding Administration actions, Judgments of Supreme court, High court and Federal Constitutional court. The secondary sources include as well books, peer-reviewed research articles, constitutional commentaries and recent scholarly works dealing with judicial activism, administrative law, executive discretion, proportionality, reasonableness and separation of powers.

3.3 Selection of Legal Materials

A judicious selection strategy that is based on the purpose of the research questions is employed to locate judicial decisions and legal materials that are directly related to the research questions. The cases have been chosen in which courts have considered executive, administrative discretion; considered governmental policies or administrative decisions; interpreted constitutional jurisdiction; applied standards like reasonableness/proportionality; or addressed limits on judicial interventions. Notable decisions that have been handed down since 2020 – 2026 are particularly noted and earlier landmark cases are included when they are needed to illustrate the history of judicial review.

3.4 Analytical Framework

The analysis is organized along the three axes that reflect the three Research objectives:

- a. Judicial review and executive discretion: analysis of the review of administrative actions by the judiciary and the legal principles to check executive discretion.
- b. Judicial review versus judicial overreach: What is the difference between judicial review for legality and judicial review for preferences, in the context of reasonableness and proportionality, jurisdiction, procedural fairness and separation of powers?
- c. The Constitutional restructuring: analysis of the changes caused by the Twenty-sixth and the twenty-seven amendment and the creation of the Federal Constitutional Court regarding the distribution of constitutional and judicial-review powers in the institution.

3.5 Data Analysis

Thematic Doctrinal analysis is used to analyse the collected material. To look for the principles, standards of review, patterns of intervention and reasoning by judges of executive discretion. The results are then contrasted over time as a way of evaluating if judicial review is real growth of judicial power or proper constitutional oversight. Special focus on situations in which courts shift from the problems of lawfulness of executive decisions to examining the merits, policy wisdom or administration.

3.6 Linking research objectives and questions

The method is directly related with the three objectives and three research questions. Analysis of judicial decisions, based on the pillars of executive discretion and administrative review, will address Objective One and Research Question One. Objective Two and Research Question Two is explored by looking at judicial principles like reasonableness, proportionality, procedural fairness and judicial review to see where boundaries between legitimate judicial review and judicial over-reach are. Analysis of the recent constitutional amendment, creation of the Federal Constitutional Court and its impact on the distribution of judicial/executive powers are used to respond to Objective Three and Research Question Three.

3.7 Comparative Dimension

The limited comparative legal analysis has been included in the discussion wherever it is helpful to set Pakistan's approach aside from the common law concept of judicial review. The use of comparative material is only to provide contextualization of the concepts (e.g. proportionality, reasonableness, judicial restraint and separation of powers); Pakistan's constitutional and administrative-law framework is the main concern.

3.8 Scope of Analysis

The study will mainly be oriented towards the superior judiciary and executive/administrative decision making. It does not make any attempt to narrow down all judicial-review cases statistically or to gauge the individual motives behind the decisions of individual judges. Instead, it explores the reasoning, principles, and consequences of law on judicial power and how administrative review can help add or detract from judicial power in Pakistan.

4. DATA ANALYSIS

4.1 Analytical Orientation

Data were analysed using a qualitative doctrinal and thematic analysis where the analysis was conducted directly based on the three research objectives and three research questions. The evidence is mainly in the constitutional provisions and constitutional amendments, the judicial decisions and the scholarly interpretations of judicial review and separation of power in the exercise of executive discretion. The study does not conflate all judicial actions with activism but rather makes a distinction between fit and proper judicial oversight of the constitution,

judicial scrutiny of administrative discretion and judicial replacement of executive discretion. This is important because judicial review is constitutionally valid, but research questions have to do with when the use of judicial review extends judicial power into a role that is not a traditional adjudicative role.

The analysis yields a key conclusion which is that in the context of Pakistan, judicial expansion can only be addressed through a lens that is larger than the dramatic constitutional/belligerent political case. It has also evolved over time through the exercise of executive and administrative powers. This complements Cheema's (2018) thesis that administrative law has been a bedrock of judicial power in Pakistan and takes this argument further by exploring the current concepts of reasonableness, proportionality and institutional restraint.

4.2 Objective One: Judicial Review of Executive Discretion and the Expansion of Judicial Power

The first aim looks at how judicial review of executive discretion has enhanced the judicial authority in Pakistan. The analysis shows that there can be no executive discretion in a modern administrative state. The interpretation of law, allocation of resources, appointments, regulation of activities and implementation of public policy are responsibilities of government departments, regulatory authorities and public officials. It is not problematic that there is discretion, then. It is the misuse of discretion that poses a constitutional danger; when used for an improper purpose, without taking relevant factors into account or in excess of the powers conferred by law.

Over the years, courts in Pakistan have evolved piecemeal the procedures for judicial scrutiny of such administrative decisions. Cheema (2018) shows that such evolution took place through ordinary cases of administration litigation and constitutional petitions rather than through politically significant cases. This discovery is important because the power of the judiciary may be extended gradually. Judgments that strike down an administrative decision might seem limited in scope, but that could build up a body of precedent which imposes more and more stringent requirements on executive authority's discretion.

This expansion takes place via four main mechanisms, as identified in the analysis:

- 1) The more expansive view of the scope of recovery; and
- 2) Reasonableness/proportionality development;
- 3) Review of administrative considerations/aspects; and
- 4) Directions by the judiciary to the implementation of executive decisions.

The first mechanism is the shift away from a "purely jurisdictional" approach to review. The traditional administrative-law review focuses on whether the public authority had the legal authority and whether it had gone through the proper procedure. In recent years, the modern understanding of Pakistani law has focused on the rational, good and constitutional reasons for the exercise of such discretion. In more recent times, the question of the rational exercise of such discretion for good and constitutional reasons has been explored.

This will make it more difficult for the executive to act arbitrarily. It also gives more power to the judiciary over administration, at the same time. When courts start to consider not only whether an executive authority had the power to decide but whether the decision was "reasonable", the difference between the 'legality' and 'merits' is becoming less obvious.

4.2.1 Reasonableness as an Instrument of Judicial Control

One of the most critical principles that have come to the forefront to limit executive discretion in Pakistan is reasonableness. The standard is such that where there is an unreasonable administrative decision; the court can intervene if it cannot be justified in the objectives of the enabling legislation. This trend of 'reasonableness' is part of the larger progress of administrative law in Pakistan, as identified by Khokhar (2025).

The analysis concluded that reasonableness does a necessary constitutional task, since nothing can replace formal legality to keep all types of arbitrary government actions at bay. An executive authority can have jurisdiction on an issue but act on it in a way that is not in accord with the intent of the statute or constitutional principles.

But reasonableness poses a potential issue of the subjectivity of the judge. Broadly defined, reasonableness might lead courts to ask whether a decision made by administrators is "substantively reasonable," meaning whether it is "reasonable" at all, rather than if it is in a "reasonable spectrum" of decisions. At this juncture, judicial review could turn into an appeal on the merits.

The point is that the proper boundary is one in which the executive has to justify its decision in a lawful and reasonable fashion, not whether the judge would have made the same decision.

4.2.2 Proportionality and the Intensification of Review

The second mechanism of importance is the proportionality. Proportionality is the tool that a court can use to determine whether governmental actions that impact on a right are proportionate to the legitimate purpose being served by the state. It has reinforced the protection of constitutional rights, making it up to the government authorities to prove restrictions, not just that they have legal authority over them.

Proportionality is also, however, a more stringent form of judicial review. The closer courts look at the necessity or proper balance of competing rights of the means used by government, the more they are involved in substantive policy decisions.

In the analysis, proportionality is, then, a two-fold doctrine. It can limit arbitrary governmental action and enhance the judicial power in the implementation of government policy. The credibility of proportionality as a constitutional basis is greatly linked to the extent to which courts pay deference to institutional choices in technical, resource allocation and policy considerations.

4.2.3 The Cumulative Expansion of Judicial Power

There is evidence that the power of judges grows when they make orders of a politically salient nature as well as when they set more and more standards for the conduct of administration. Every new standard narrows down executive authorities' discretion.

This is the "invisible" side of judicial activism pointed out by the present study. The judiciary does not necessarily have to play an executive role for it to impact the administration. It can influence the process of executive decision-making in the following ways:

The factors that officials have to take into account;

- A. The procedures that officials need to follow;
- B. How to make a reasonable decision; and
- C. Where the judgment process can be arbitrary;
- D. How the administration is bound by constitutional rights; and
- E. Public authorities' obligations in regard to remedies.

The outcome is a progressive shift towards standards established by the courts and away from administrative structures.

Finding Related to Research Question One

Research Question One: *How has judicial review of executive discretion contributed to the expansion of judicial power in Pakistan?*

The analysis suggests that judicial review has been a driving force for judicial expansion in terms of the progressive expansion of the grounds of administrative review and its intensity. The courts have shifted away from a narrow focus on what is legal, to a broader focus on what is reasonable, proportional, fair and in regard to constitutional rights. These developments enhance accountability, but at the same time enhances judicial influence on executive decision-

making. The expansion is thus to be understood as a gradual and doctrinal one, and not exclusively of a political and dramatic character.

4.3 Objective Two: Boundary Between Legitimate Judicial Review and Judicial Overreach

The second goal explores the question, where is the line between scholarly judicial review and judicial overreaching?

The analysis shows that the difference between evaluating whether an executive action is legal and replacing executive judgment with judicial judgment is the most helpful one. The courts have a legitimate constitutional function in deciding whether public authorities are operating within their jurisdiction, whether they are meeting the requirements of the law, whether they are respecting fundamental rights and whether there is any arbitrariness in their decisions. But, courts do not necessarily have the statutory authority to decide whether a lawful government policy is the best public policy.

The Supreme Court recently has reiterated this distinction, ruling that the judiciary is not an appellate body of government. This is also evident from the official constitutional materials of the National Assembly as well as the subsequent legal developments in Pakistan since 2025, in respect of which, the Pakistani constitution has experienced a great deal of institutional change.

4.3.1 Legitimate Grounds of Intervention

The analysis outlines a number of situations in which judicial intervention is definitely warranted:

First of all, lack of jurisdiction. A power not granted by law or the Constitution can not be lawfully exercised by an administrative authority.

Secondly, non-compliance with the procedures required. If a procedural safeguard is required by law, then the failure to comply with the safeguard can result in the invalidation of the decision.

Third, improper purpose. For Parliament and the Constitution to give the executive discretion, it must be for the purpose for which it has been given.

Fourth, irrelevant factor(s) considered or relevant factor(s) not considered. Administrative authorities should use their discretion in making their decision within the legal framework in which they make the decision.

Fifth, an arbitrary or great unreasonableness. Courts can strike down decisions if they are not reasonably defensible under the provisions of the law and constitution.

Sixth, infringement of basic rights. The exercise of executive discretion cannot be justified without reference to the constitutional rights and should not be done for administrative convenience.

These grounds are all about judicial control of legality rather than judicial administration.

4.3.2 When Review Becomes Substitution

Judicial excess is established when judges start answering questions that are fitting for the executive institutions. These may involve fixing the exact policy government ought to follow, substituting judicial judgment for administrative, making specific resource allocation decisions without a legal justification or an ongoing involvement in the day-to-day administration once the litigation is over.

This is especially significant because courts have not got the popular legitimacy or the institutional knowledge of executive agencies in many respects of public policy. Judges can't be removed or politically challenged for poor policy decisions, an elected government can. When judges step in too much, however, they can undermine the accountability of government bodies by removing it from the hands of the elected officials and placing it with the adjudicators who are not elected.

4.3.3 Judicial Activism Is Not Automatically Judicial Overreach

Some people have been confusing judicial activism with judicial overreach, which the analysis is rejecting. An aggressive stance and judicial authority are not incompatible with a court's constitutional mandate in cases where executive action is a serious threat to fundamental rights or goes beyond the powers of the law.

The test is thus not what courts do but what they do when they do.

The protection of a constitutional right to freedom from unlawful executive action may be activist but legitimate. On the other hand, a “small” administrative order might be “overreaching” if it serves substantially for the court than for the executive branch of government and in violation of the executive authority's decision made by law.

Finding Related to Research Question Two

Research Question Two: *Where should the constitutional boundary be drawn between legitimate judicial review and judicial overreach in administrative decision-making?*

The results suggest that the line should be set around the difference between legality and merits. The jurisdiction, compliance with statute, fairness of process, improper purpose, relevant considerations, arbitrariness and constitutional rights must be carefully evaluated by the courts. Most of the time they should respect executive decisions on matters of policy, technology, or allocation of resources when those decisions are within the lawful scope of discretion of the executive.

4.4 Objective Three: Constitutional Restructuring and the Distribution of Judicial Power

The third goal looks at how Pakistan's recent constitutional changes have impacted the judicial/Executive balance.

This is especially important given the significant changes in the judicial system in Pakistan in 2025. A Federal Constitutional Court and a change in constitutional jurisdiction have been introduced by the Twenty-Seventh Constitutional Amendment Act, 2025. Official documents from the National Assembly validate the amendment, which established a new constitutional framework and moved some constitutional powers to the new court, as well as changing the existing framework around the Supreme Court.

The change is that the age-old idea of single dominant constitutional apex court has come to the end of its use.

4.4.1 From Concentrated to Distributed Constitutional Review

Prior to the recent restructuring, the Supreme Court was the main institution for the interpretation of the Constitution and the application of Article 184(3) jurisdiction. The reforms of 2025 created the Federal Constitutional Court as an independent constitutional court.

The materials of the National Assembly clearly refer to the abolition of the Supreme Court's suo motu powers and the establishment of the Federal Constitutional Court as one of the major changes brought by the Twenty-Seventh Amendment.

The change of institutions is significant. Judicial power has not entirely vanished, rather some of it has been relocated.

So, to say that the 27th Amendment has taken away judicial activism is not a strong statement. The more precise question would be: In what sense does the new structure alter the exercise of judicial power – if any – over what disputes, and how?

4.4.2 Article 199 and the Continuing Importance of High Courts

The restructuring also has ramifications for the possibility of high court review of executive action. Article 199 still plays a vital part in administrative law due to the fact that High Courts have remained as a constitutional remedy against unlawful action by public authorities.

The new constitutional structure, however, alters the appellate and constitutional framework of Article 199 litigations. The constitutional structure enacted grants jurisdiction for the Federal

Constitutional Court in some appeals from High Court decisions, as specified in Article 199, which includes those bringing up "substantial constitutional questions" and other specific avenues of appellate review.

This has the profound institutional implication that administrative review is no longer distinct from the new constitutional hierarchy. Judicial decisions arising from ordinary disagreements among the Executive may be subject to a more varied hierarchy of courts and thus present constitutional issues.

4.4.3 Abolition of Supreme Court Suo Motu Powers

The changes of the previous suo motu jurisdiction of the Supreme Court are especially relevant to the current research. One of the most conspicuous mechanisms that were linked to judicial activism in Pakistan was suo motu proceedings. They remove the institutional capacity of the Supreme Court to bring matters to the forefront without traditional litigation.

This does not, however, mean that the doctrine of judicial review is no longer in place. Administrative issues can be carried on through a means of constitutionally recognized litigation, especially in the High Courts. Furthermore, constitutional review has been transferred, not removed.

So the finding is that the reform alters and not ends the nature of judicial activism as well as its locus but not necessarily its impact on the executive.

4.4.4 Institutional Fragmentation and Possible Jurisdictional Conflict

The new building also provides the opportunity for institutional complexity. The amended article 189 makes the rulings of the Federal Constitutional Court on legal questions final to other courts, including the Supreme Court, but the Supreme Court rulings are not final to the Federal Constitutional Court.

This establishes a new hierarchy, not found in such a form earlier.

The implications for executive powers may be confusion in the initial stages of the new jurisprudence. If a dispute is deemed to be ordinary administrative litigation, or constitutional litigation or a fundamental rights case, then government departments can be held to account in different ways in court.

From this analysis it follows that the system that is envisaged after 2025 could be neutered in some respects in terms of the centralisation of judicial power, and could also bring new complexity in terms of jurisdiction.

Finding Related to Research Question Three

Research Question Three: *How has Pakistan's recent constitutional restructuring affected the balance between judicial power, executive discretion and separation of powers?*

The results show that the restructuring process has not only taken away, but also redistributed judicial power. The Federal Constitutional Court and the elimination of the former suo motu powers of the Supreme Court decrease the centralisation of constitutional power in the Supreme Court, however, constitutional review and judicial control of executive power remains in the Federal Constitutional Court and High Courts. Therefore the impact of these institutions on executive discretion in the long term will depend on their future interpretations of their respective limits in the future jurisprudence.

4.5 Integrated Analysis of the Three Objectives

If they all are taken together a more complicated picture emerges. Judicial activism in Pakistan is not just about the issue of excessive powers in the judiciary. What matters is the institutional means by which judicial power is exercised, not its substance.

The first goal was accomplished, and courts have historically had an impact on executive discretion in administrative review. The second showed that this influence is legitimate if it is acting in a pro-legal direction, but if it is acting in a pro-unconstitutional direction, then it

becomes problematic. The third shows how the recent constitutional restructuring has changed the institutional distribution of this power, while at the same time not doing away with judicial review.

The results of these studies are all in line with the hypothesis that there is an “invisible” administrative aspect to judicial activism in Pakistan. Public attention is brought to a political debate because of its constitutional implications are clear. Administrative review is less conspicuous since it is more likely to be an individual case involving an appointment, transfer, regulation, licensing or a government decision. But the over time development of law from these cases can limit the discretion of the executive.

4.6 Judicial Review as Both Constraint and Power Expansion

This analysis shows an intrinsic paradox. Judicial review also serves two purposes:

It limits the executive power as public authorities have to abide by the Constitution and the law.

It increases judicial power as courts set legal norms by which executive action is evaluated.

This is not necessarily in conflict with this. Some enlargement of the judiciary is always needed in a constitutional democracy where the judiciary limits the government. The issue is when the second function prevails over the first, when the judiciary does not merely establish the limits of executive power, but ultimately sets its agenda for its use.

What should be the concern, then, isn't so much if judicial power has grown, but if it has grown in a way that is legally proper and institutionally managed.

4.7 Overall Findings

Five key findings from the analysis.

Firstly, in Pakistan judicial power has grown in part not just in the course of high profile political cases, but through ordinary administrative review. The gradual evolution of the standards of reasonableness, proportionality, procedural fairness and fundamental rights has gradually driven the evolution of executive decision-making.]

Secondly, the constitutionally needed discretion of the executive remains. There should, therefore, not be a goal to remove discretion from the process as judicial review is meant to ensure that discretion is not exercised in an arbitrary or unlawful manner.

Thirdly, the clear constitutional dividing line is between the legality and policy merits. Courts should consider the lawfulness, reasonableness, fairness and constitutionality of the government action; but, they should not be deciding which of the lawful policies is preferable. Lastly, the new constitutional reorganisation alters the institutional context in which judicial activism takes place. The Twenty-Seventh Amendment established the Federal Constitutional Court, eliminated the Supreme Court's previous suo motu power and provided for a reorganization of the interrelationship of constitutional courts.

Finally, the restructuring cannot be seen as a sign of the conclusion of judicial activism. Rather, it establishes a new distribution of judicial power which will have far reaching implications to be determined in the years ahead by the practice of the courts and the extent to which they prove to be a check on governmental power.

4.8 Answer to the Central Problem

The main question raised in the context of this research is whether judicial control over the discretion of the executive becomes a less visible way of judicial power in Pakistan or not. The findings help to support this proposition, although with an important caveat: judicial expansion does not necessarily represent judicial overreach.

The invalidation of executive action and action that is out of court jurisdiction, that breaches constitutional rights, that ignores compulsory legal rules or that is an arbitrary exercise of discretion, strengthens constitutionalism. When courts start deciding the substantive merits of

policy choices that are within the lawful executive discretion, then the same mechanism turns into institutional overreach.

Thus the best defensible stance that comes out of the analysis is one of judicial structured restraint, not judicial passivity. Withdrawal from administrative review should not be the function of the court; otherwise the discretion of the executive would be unchecked. Concurrently, judges should acknowledge that there is a democratic legitimacy and institutional knowledge in the hands of the executive authorities, which judges do not have in general.

This balance is even more critical with the post-2025 constitutional framework. A more differentiated constitutional architecture is now in place for the Federal Constitutional Court, Supreme Court and High Courts. There is official constitutional information of the Federal Constitutional Court having assumed a key role in constitutional jurisdiction and the Supreme Court's former *suo motu* procedure has been eliminated.

The future direction of judicial activism will therefore rely not just on quantity of judicial intrusion, but on the extent to which the different judicial institutions are able to honor the constitutional limits of others.

Finally, the results indicate the “invisible face” of judicial activism is the way in which norms of administration become constraints for the judiciary. That change is essential to avoid arbitrary government, but, as judicial standards lose their role in restraining executive discretion and take its place in determining executive policy it becomes constitutionally problematic. The central institutional dilemma faced by Pakistan is thus how to ensure that the judiciary is sufficiently powerful to exercise its own authority over the unconstitutional use of power by the executive; but sufficiently weak to not usurp the power of the executive or become an alternative administrative or policy-making institution in the country.

5. CONCLUSION

The study finds that the growth of judicial power in Pakistan cannot be viewed merely in terms of high profile constitutional debates or the political tug-of-war between the judiciary and the executive; there has been a much less obvious way in which judicial control over executive discretion and administrative action has taken place. The results show that the cases before the courts in Pakistan have been increasingly about standards of reasonableness, proportionality, fairness of procedure and adherence to the Constitution, and have thus enhanced accountability and added to the influence of courts on executive decision-making (Cheema 2018; Khokhar 2025).

The expansion should not be considered as judicial overreach, as judicial review is necessary to eliminate the arbitrary exercise of public power and to safeguard constitutional rights. The constitutional line, however, is not so clear when the court must decide whether a specific policy or administrative decision is better or worse than the other. The study also argues that the judicial power in Pakistan has not been abolished but re-distributed as witnessed with the creation of the Federal Constitutional Court and re-distribution of the constitutional jurisdiction of the Supreme Court. How these institutions will exercise their respective constitutional powers will thus be dependent upon their interpretation of their respective constitutionally defined limits.

In conclusion, Pakistan needs a capable and disciplined judicial review – judges will have to be powerful enough to check and curb the illegality and arbitrariness of the executive, but they will also have to be powerful enough to accord a Muslim state the space to exercise its administrative powers with wisdom and efficiency, in accordance with constitutional requirements. The problem is not so much to prevent judicial power from growing at all but to

make sure its growth is constitutionally allowable, is legally principled and is not in conflict with the separation of powers.

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