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JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

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ABSTRACT

Judicial review is the power of the superior courts to examine the legality of administrative actions taken by government departments and public officials. Administrative action refers to the decisions, orders and functions performed by the executive in implementing laws and public policies, which directly affect the rights and liberties of citizens. Since administrative authorities enjoy wide discretionary powers, there is always a danger of misuse, arbitrariness and violation of fundamental rights. Judicial review serves as a constitutional check to ensure that such authorities act within the limits of law, follow fair procedure and observe the principles of natural justice. The courts do not interfere in the merits or wisdom of administrative policy, but only examine whether the action was legal, reasonable and procedurally proper. The main grounds of review include illegality, irrationality, procedural impropriety, mala fide and excess of jurisdiction. In Pakistan, this power is exercised by the High Courts under Article 199 of the Constitution through various writs. Through judicial review, courts can declare an unlawful action void, quash it or direct the authority to act according to law. Thus, judicial review protects citizens from abuse of power and maintains the supremacy of the Constitution. In this way, it upholds the rule of law, accountability and good governance in the state.

INTRODUCTION

According to Mathew C. Stephenson, in *A Signalling Theory of Hard Look Judicial Review*, Judicial Review in American public law "entrusts judges with considerable power to review the decisions of other government actors." He further explains that, although Judicial Review may involve the resolution of "abstract questions of law," it more frequently requires the "implicit or explicit evaluation of a government decision-maker's empirical or predictive judgments." Judicial Review, therefore, refers to the authority of the judiciary to scrutinize the actions and decisions of government actors. This scrutiny may extend to questions of law, but more often it involves the review of decisions made by administrative agencies. Akin to any institutional mechanism, Judicial Review entails certain costs; however, these costs are accompanied by corresponding benefits. Consequently, Judicial Review remains a significant tool for ensuring accountability and oversight within the administrative state.

This supervisory power is neither cost-free nor unconditionally beneficial. Judicial Review generates both advantages and disadvantages, and an appreciation of this duality is essential to evaluating its appropriate role in administrative governance. Cass R. Sunstein highlights this trade-off by identifying a number of benefits associated with Judicial Review, while also acknowledging the social costs that may accompany them. One of the primary benefits of Judicial Review is the promotion of legality. By ensuring that administrative action conforms to

established legal standards, Judicial Review enhances transparency, accountability, and procedural fairness. However, Sunstein argues that the pursuit of legality may, in certain circumstances, come into tension with broader social welfare objectives. He illustrates this point through the example of prohibitions on carcinogenic food additives. Although such prohibitions may be legally justified, they can increase production costs, create substitute risks, and ultimately produce harms that outweigh their intended benefits. In these situations, a strict judicial emphasis on legality may inadvertently diminish social welfare rather than advance it.

Furthermore, a significant benefit of Judicial Review lies in the judiciary's ability to curb excessive intervention by administrative agencies in the marketplace. Through judicial oversight, courts can prevent agencies from imposing regulations that are unjustified, arbitrary, or unduly burdensome. This function serves as an important safeguard against regulatory overreach and helps maintain a balance between governmental authority and economic freedom. However, this benefit does not serve without its costs; judicial intervention may result in the imposition of sanctions for pollution and other regulatory violations, thereby creating significant financial burdens for administrative agencies and, indirectly, for the public. Ergo, while judicial vigilance plays a crucial role in protecting against regulatory excess, it may also contribute to increased social and economic costs.

Judicial Review can be a potent tool for equity; allowing courts to support affirmative measures that protect minority rights and promote economic redistribution. In some cases, judicial intervention can even compel administrative agencies to adopt policies that foster development and fairness. Judicial intervention can also protect rights where democratic institutions fail; assumes particular importance where political processes systematically disadvantage minorities, as courts may provide remedies unavailable through ordinary representative institutions. However, if exercised without regard for practical constraints, these interventions can create inefficiencies and distortions that ultimately defeat their original purpose.

Moreover, Judicial Review enhances the judiciary's own legitimacy by asserting its constitutional function; the branch reinforces public trust. Yet, greater judicial autonomy can also produce decisions that appear arbitrary or disconnected from democratic accountability, thereby creating its own set of legitimacy concerns. This concern has been described by Alexander Bickel as the "counter-majoritarian difficulty," whereby unelected judges may invalidate decisions made by democratically accountable institutions, creating tension between constitutionalism and democratic governance. A final principle addresses statutory interpretation amid evolving social, economic, and legal landscapes. Statutes that once aligned with prevailing norms may become inconsistent with new developments in fact, policy, and societal values. Therefore, judicial interpretation cannot simply ask what a statute meant at its enactment; courts must recognize that changing circumstances demand an adaptive understanding. This principle is critical, as it acknowledges that law is not static, and that interpretation must remain responsive to contemporary realities.

While judicial activism offers distinct advantages, scholars have also formulated theories to justify *judicial deference* to administrative agencies. For instance, a theory endorsed by Cass R. Sunstein posits that Congress intentionally empowers the judiciary, thereby lending democratic legitimacy to Judicial Review. In practice, however, the judiciary is often the institution least invested in the substantive outcomes of agency decisions, with judges typically viewing these matters as the purview of the legislature rather than the courts. Under this framework, agencies function as extensions of Parliament that implement democratically sanctioned policies; consequently, judicial restraint becomes both appropriate and necessary.

Conversely, the second theory argues for an opposite approach: agencies should be independent of both the courts and Parliament. This perspective holds that because administrative bodies possess specialized expertise and operate outside of partisan political pressures, neither legislative nor judicial institutions should interfere with them. Ultimately, this viewpoint frames deference as a

necessary shield to protect the technocratic competence and neutrality of these agencies.

Despite their competing rationales, both theories ultimately converge on the conclusion that the judiciary should defer to administrative agencies. However, the *Hard Look Review* doctrine introduces a vital counterbalance, permitting courts to scrutinize agency decisions more closely when circumstances demand it. While critics argue that such heightened scrutiny risks encroaching upon agency independence, supporters counter that hard look review is essential to maintain checks and balances, thereby ensuring that agencies remain accountable and do not act arbitrarily.

Courts have reclaimed their authority over administrative agencies in four principal ways, each serving as a distinct model for *hard look review*. The first method requires agencies to provide thorough explanations for their decisions, ensuring these choices align with the theories of agency expertise and legislative intent. However, this requirement exposes a significant blind spot; courts rarely acknowledge their own limitations. Judges are not technocratic experts, and it remains unrealistic to expect them to fully grasp the intricate technical nuances underlying complex agency decisions.

Under the second model, courts demand proof that the agency has considered input from all relevant stakeholders. While judges stop short of demanding substantive justifications, acknowledging their own lack of technical expertise, they still insist that stakeholder concerns be addressed. However, this expectation is highly problematic; agencies regularly deal with a massive, diverse range of interested parties, making it logistically impossible to satisfy everyone. In fact, even when dealing with only a handful of stakeholders, expecting unanimous satisfaction is simply unrealistic.

Third, courts insist on consistency, requiring agencies to treat similar cases alike to ensure that no discriminatory or arbitrary distinctions arise in their decision-making. Through this mandate for rational, even-handed action, the judiciary reinforces accountability and instills institutional discipline within administrative processes.

Although courts expect agencies to issue similar decisions in similar cases, they often overlook how subtle differences in circumstances can justify divergent outcomes. Furthermore, decisions rendered at different times may reflect changed conditions, making variation entirely reasonable. Finally, courts prohibit arbitrariness, reserving the authority to reverse any agency decision deemed irrational, unsupported, or lacking a coherent evidence-based justification. Yet, the judiciary frequently fails to recognize that what appears to be arbitrariness may actually reflect a valid rationale grounded in specialized expertise or evolving circumstances; reversing such decisions can introduce further complications, undermining effective governance rather than improving it. While the judiciary's authority to police agencies originates primarily from Congress, which defines the scope of oversight and empowers courts to exercise control, it also draws from constitutional and common-law traditions that historically vested courts with supervisory power. In the contemporary regulatory state, however, this expansive judicial authority has, at times, compromised agency effectiveness and autonomy.

Another pillar of justification for judicial authority rests on the perceived disconnect between congressional intent and agency behavior, positioning courts as necessary intermediaries to ensure fidelity to legislative purpose. However, this rationale invites criticism. Agencies, equipped with specialized expertise and deep institutional knowledge, may be fully capable of operating independently without constant judicial intervention. While checks and balances are undeniably essential, they need not be so intrusive as to demand exhaustive explanations for every decision or to permit continual judicial interference. Ultimately, excessive oversight risks weakening the very institutions designed to implement complex regulatory policies.

In *A Costly Signalling Theory of Hard Look Review*, Matthew C. Stephenson highlights a central dilemma faced by courts: they are unwilling to relinquish their authority over government officials, yet equally hesitant to accept the judgments of expert agencies. While proponents of "hard look" review contend that rigorous judicial scrutiny can coexist with, and even

complement, expert decision-making, critics question whether judicial rationality can genuinely align with the distinct rationality of policymaking. This skepticism stems from the highly technical, predictive, and context-specific judgments that administrative agencies must routinely create.

Operating from a costly signaling perspective, Stephenson argues that the judicial demand for detailed agency explanations is often futile. Critics of this approach argue that agencies may generate extensive and sophisticated explanations without necessarily improving the substantive quality of their decisions, thereby satisfying judicial expectations while leaving underlying policy flaws unaddressed. His theory rests on the premise that courts lack the necessary technical expertise to meaningfully evaluate such complex information, thereby rendering this requirement ineffective despite its foundational role in hard-look review. This theory rests on two foundational assumptions: first, that a positive correlation exists between the benefits of the reviewing court's preferred policy and the government's proposed policy; and second, that the court can infer the quality of the government's decision based on the resources invested in producing its explanation. Consequently, the court's informational disadvantage is mitigated by the thoroughness of these governmental explanations, even though the judiciary typically lacks the capacity to assess their underlying technical soundness. A primary critique of this approach is that courts rarely possess greater knowledge than the agencies themselves, which make inherently more informed decisions as domain experts. Thus, when the government provides detailed explanations, courts tend to approve policies based on the assumed positive alignment of judicial preferences and agency decisions, rather than a genuine comprehension of the substantive rationale.

Courts interpreting their mandate often treat the authority to invalidate "arbitrary" agency action as a license to evaluate administrative regulations on the merits. While this approach facilitates judicial oversight, it simultaneously raises profound questions regarding institutional legitimacy and competence. Under this framework, reviewing courts are instructed to conduct a "searching and careful" inquiry to determine whether an agency considered all relevant factors and avoided clear errors of judgment. Typically, courts preface their analysis by stating that their role is strictly limited to assessing reasonableness; however, usually at the request of aggrieved parties, they proceed to examine the underlying evidence and arguments animating controversial decisions. Ultimately, despite this intensive scrutiny, significant agency regulations often survive this "hard look" review. Yet, as both Matthew C. Stephenson and Cass R. Sunstein emphasize, courts often lack the deep technical understanding required to truly comprehend the logic behind complex agency. As a result, intense judicial scrutiny can end up being more symbolic than substantive. In his paper *Law and Courts*, Tamir Moustafa illustrates this expanding judicial landscape, providing concrete examples of how the judiciary has successfully gained autonomy and broadened its mandate over time. Ultimately, although Judicial Review is designed to strike a fine balance between oversight and technical expertise, its actual success is consistently bottlenecked by the court's own informational limitations.

Courts serve to resolve disputes arising between federal and provincial governments. Concurrently, when members of the public wish to challenge the decisions of local authorities, they can seek redress through administrative courts, which are specifically empowered to review such governmental actions.

Within authoritarian regimes, defining the boundaries of the ruling coalition's power remains a constant struggle. This analysis closely reflects Selectorate Theory, which posits that political leaders maintain power by securing the support of a relatively small winning coalition whose loyalty is essential to regime survival. The elite, or the winning coalition, also referred to as the "essentials" within the selectorate framework, comprise those individuals whose support is absolutely crucial for leaders to establish and maintain political legitimacy. Consequently, it is reasonable to assert that the judiciary constitutes a vital part of these essentials, as authoritarian leaders cannot secure institutional legitimacy without its compliance. Additionally, judicial reform is critical to fostering a functional market economy and a competitive investment climate, granting courts autonomy through fair

appointment processes serves to inspire investor confidence and encourage greater capital inflows.

Paradoxically, empowering the courts can hinder political liberalization and further concentrate control in the hands of dictators. Regimes often grant authority to the judiciary simply to project a false respect for the rule of law. This strategy allows the Supreme Court to serve as a tool for the regime, providing vital legal cover to legitimize the rulers' consolidation of power. Consequently, judicial institutions in authoritarian systems may function less as constraints upon executive authority and more as instruments for legitimizing governmental action under the appearance of legality.

Courts have carved out a highly significant role for themselves by handling environmental litigation. By taking on these high-stakes cases, the judiciary has successfully bolstered its legitimacy in the eyes of environmental activists and powerful stakeholders across both the public and private sectors.

Globally, courts never operate entirely free of political constraints, as judges invariably face limits on the boundaries of legal claims, particularly within authoritarian contexts. Rather than directly infringing upon judicial autonomy, authoritarian rulers frequently contain judicial activism through four distinct strategies: providing incentives for judicial self-restraint, engineering fragmented judicial systems, constraining access to justice, and incapacitating judicial support networks. Under this framework, the greater the deference courts exhibit toward executive power, the more autonomy the regime tends to grant. Furthermore, authoritarian regimes routinely maintain parallel judicial systems to handle sensitive political matters, allowing rulers to effectively sideline threats. Consequently, ordinary courts that comply with core regime interests are frequently rewarded with enhanced institutional autonomy and discretion. This dynamic establishes a calculated equilibrium where judicial authority exists but operates strictly within parameters favorable to the ruling coalition, thereby preserving a facade of the rule of law while cementing executive control.

The presence of an established judicial system within a state facilitates access to justice, thereby enhancing both the autonomy of the judiciary and the political legitimacy of the regime. Within this context, authoritarian regimes face three systemic challenges that the legal and administrative framework must address: the problem of coordination among government actors, which the law mitigates by defining clear scopes of authority and reducing potential institutional conflicts. Second, the challenge of social control, where administrative agencies, rather than formal judiciary, are primarily tasked with overseeing compliance and executing regulations. Lastly, it is the principal-agent problem, wherein the central government (the principal) seeks to monitor and manage administrative agents to ensure strict alignment with its core policies and objectives, ultimately balancing executive authority, bureaucratic accountability, and effective governance within an authoritarian framework.

This problem arises because an agent's specialized knowledge creates an informational asymmetry over the principal, which the agent can exploit to pursue objectives or strategies contrary to the principal's intent. Various institutional mechanisms can address this misalignment, with administrative litigation serving as a primary corrective method. Through this adjudicative process, bureaucratic agents are held accountable for instances of "agency slack" exposed by citizen grievances. In this structure, courts operate at a secondary level, overseeing the rulers themselves rather than exercising direct control over the agents, thereby ensuring a comprehensive system of accountability and reinforcing essential checks and balances within the administrative framework.

Principal-agent problems can be tackled in three main ways, starting with internalization and ideology. The goal of this first strategy is to convince the agent to completely adopt the principal's own preferences as their own. When an agent internalizes these goals, the constant need for oversight and enforcement naturally drops. Authoritarian regimes are particularly fond of this method because they have the power to drill a unified, coherent ideology into their officials that matches the regime's goals. On the flip side, democracies usually steer clear of this tactic. Because democratic systems are built on a commitment to pluralism, it is structurally impossible for them to manufacture or enforce a single, sweeping ideology across such a diverse

landscape of actors and interests. In reality, even the most controlling authoritarian regimes find it difficult to directly observe whether an agent has truly internalized their ideology. Because of this, large-scale governance systems must look at other tools.

This brings us to the second mechanism, Hierarchy and Second-Party Supervision. This system operates on a straightforward carrot-and-stick model, rewarding loyal agents and punishing disloyal ones through promotions, career advancement, or forced retirement. By doing so, it hands bureaucrats a clear personal incentive to keep their performance perfectly aligned with the principal's goals. Without a doubt, maintaining this kind of hierarchical control requires constant monitoring. To manage this, regimes often set up specialized oversight agents whose sole responsibility is to track compliance and ensure that everyday bureaucrats stick to the script.

A ruler's political time horizon changes everything; maintaining hierarchical control is much easier for leaders who expect to stay in power for a long time than for those facing short horizons. Bureaucrats know this and can weaponize their informational advantage to stall. By intentionally creating delays and dragging their feet, they can strategically wait out the current administration, hoping a new political principal will take office before they ever have to implement or respond to difficult directives. This calculated foot-dragging completely derails the control efforts of short-term rulers.

Judicial control and third-party supervision utilize judicially protected administrative procedures, including notice requirements, the right to hearing, and a statement of reasons, as a vital mechanism to rein in agency costs. By putting these legal procedures in place, rulers cleverly outsource the job of monitoring to their own constituents. When citizens encounter bureaucratic failures, they can file lawsuits to flag these issues directly for the government. This public-driven litigation ensures a high level of accountability and acts as a constant check against agency slack.

Having experienced alternating periods of authoritarian rule and democratic governance, Pakistan offers a varied context for the Judicial Review of administrative agencies. Prior to the adoption of the 1962 Constitution, the High Courts exercised writ jurisdiction—initially conferred by Section 223A of the Government of India Act, 1935, and subsequently maintained under Article 170 of the 1956 Constitution of Pakistan. This jurisdiction enabled the courts to issue traditional English writs, including *mandamus*, *prohibition*, *certiorari*, and *quo warranto*, thereby overseeing administrative functions and securing the legal accountability of state authorities. When the 1962 Constitution ushered in a presidential system, it also brought a major legal milestone: the explicit codification of Judicial Review under Article 98. This constitutional legacy remains alive today; Article 199 of the current 1973 Constitution mirrors Article 98 of the 1962 charter, preserving its core language and substance without any major changes.

The history of Judicial Review traces back to the landmark case *Marbury v. Madison*. The case concerned the appointment of "Midnight Judges," appointed during the final days of Federalist President John Adams' administration. Several commissions were signed and sealed but remained undelivered when Adams' term ended. The new President, Thomas Jefferson, refused to honor these appointments, prompting legal action. The Supreme Court held that while the petitioner was entitled to the commissions, the law granting the Court the power to issue the writ was unconstitutional. This decision established the principle of Judicial Review and has since served as a foundational precedent in most Judicial Review cases, affirming the judiciary's authority to invalidate unconstitutional laws. The enduring significance of Marbury lies in Chief Justice Marshall's assertion that it is emphatically the province and duty of the judiciary to say what the law is, thereby establishing the judiciary as the final interpreter of constitutional meaning.

A strikingly similar constitutional crisis occurred in Pakistan's much-debated precedent, *Federation of Pakistan v. Maulvi Tamizuddin Khan*. Maulvi Sahib, who was the president of the Constituent Assembly, the assembly was dissolved on the orders of the Governor General. The action was challenged but it was upheld by the Sindh Chief Court, whereas the Federal Court held that the act which conferred the power to issue the writ was constitutionally

invalid. The decision has been widely criticized in Pakistani constitutional scholarship for facilitating executive dominance and weakening constitutional safeguards during a formative period of state development.

Following brief periods of democratic rule, Pakistan repeatedly succumbed to authoritarian governance by way of three separate martial laws. While judicial activism understandably declined during these military regimes, it never vanished entirely. Instead, these authoritarian governments operated by suspending or completely abrogating the constitution, deliberately prioritizing their own centralized authority over the democratic and political intent of the original constitutional framework.

Under every authoritarian regime in Pakistan, the Supreme Court and High Courts managed to keep their formal powers and jurisdictions, but with one major catch: they were explicitly barred from issuing any orders or judgments against the military dictator. Because of this, whenever the courts reviewed the decisions of administrative agencies, they took great care to ensure their rulings never jeopardized the interests of the dictator or the ruling coalition. No court was ever permitted to question the initial proclamation of martial law, the declaration of extra-constitutional emergencies, or any specific orders passed by the military regime under those decrees. Predictably, while judicial activism flourished during democratic periods, it was severely choked under authoritarian rule. Whenever the courts stepped over the line to review regime actions or challenge military judgments, the military quickly struck back by slashing judicial powers. This retaliatory stripping of jurisdiction effectively shattered the independence of the judiciary, ensuring the courts remained entirely aligned with the interests of the ruling authorities.

In the landmark case of *Begum Nusrat Bhutto v. Chief of Army Staff*, the Supreme Court validated the 1977 martial law imposed by General Zia-ul-Haq under the Doctrine of State Necessity yet strategically retained its baseline power of Judicial Review. Writing for the court, Chief Justice Anwar-ul-Haq explicitly stated that the "superior courts continued to have the power of Judicial Review to judge the validity of any act or action of martial law authorities, if challenged in the light of the principles underlying the law of necessity". Emboldened by this judicial stance, the superior courts began actively scrutinizing the military regime's actions. Concurrently, the High Courts sought to assert their prerogative review administrative and executive measures, frequently rendering decisions that were both highly creative and carefully calibrated to navigate the severe constraints of the authoritarian landscape.

Ultimately, the judiciary's optimism proved short-lived. In October 1979, General Zia-ul-Haq intensified his structural constraints on the legal system by amending the constitution to insert a new provision: Article 212-A. Through this sweeping constitutional revision, the authority of Judicial Review, which the Supreme Court had deliberately reserved for the judiciary in the landmark *Begum Nusrat Bhutto* judgment, was completely invalidated and dismantled.

In May 1980, General Zia further curbed the powers of the High Court available under Article 199, which contained the powers of the writs under which Judicial Review is exercised of the constitution through Presidential Order No.1 of 1980, promulgated on May 27, 1980.

General Zia, often described as a 'barbarian military tyrant,' perceived the judiciary as an instrument of the state meant to facilitate, rather than constrain, government authority. Evidently, he considered the judiciary part of the winning coalition, using it to reinforce and legitimize the dictator's power.

In contrast, the exercise of Judicial Review in more recent authoritarian periods took on a different trajectory, characterized by a more strategic and cautious assertiveness. As noted by Chief Justice Iftikhar Chaudhry in a landmark 2009 judgment, the executive branch under General Pervez Musharraf had concentrated absolute and unfettered control over state agencies.

While Musharraf's tenure saw rapid economic growth, marked by a boom in high-rise commercial real estate and urban housing, there was a severe neglect of safety regulations in urban planning. Pakistan got hit by a massive earthquake in October 2005 that claimed the lives of seventy-five thousand people. A high-rise tower collapsed in Islamabad and regarding the matter the Supreme Court heard a petition from its residents. The petition was against the

Capital Development Authority (CDA) and the construction companies. The petitioners argued that the CDA had failed to protect the life, liberty, and property of the residents by ignoring repeated complaints about material defects in the tower. Meanwhile, the CDA was ordered by the Supreme Court to provide accommodation to the residents and find out the culprits in the case of Saad Mazhar v. Capital Development Authority 2005. Two months later, the petition was converted into a large-scale judicial investigation of the earthquake damage. Provincial officials were ordered to report on the government schools, colleges, and universities that had collapsed, an action that was required by officials responsible for the substandard construction. The quake provided an opportunity for the Supreme Court to aggressively intervene in construction safety in general. This is an ideal example of hard-look review during a regime of a dictator. Here the judiciary has been given freedom to scrutinize the decisions of agencies such as demanding explanations for decisions they make. These interventions illustrate how courts tend to intensify scrutiny of administrative agencies when regulatory failures produce significant threats to public welfare and expose deficiencies in administrative oversight.

In April 2006, an appeal was taken to the Supreme Court, which initially declined to restrain the Lahore Development Authority (LDA) from proceeding with the construction of high-rise commercial structures that lacked adequate safety standards. Subsequent investigative findings revealed a critical regulatory vacuum: not a single structural engineer was employed by or collaborating with the LDA to guarantee structural stability. However, in May 2007, during the period when the Chief Justice was suspended, a two-member bench pivoted sharply, issuing a sweeping stay order on all building projects exceeding three stories. This judicial intervention immediately impacted more than one thousand ongoing structures across Lahore. Ultimately, this aggressive expansion of the court's supervisory role served as a primary catalyst for enforcing structural construction safety and compelling adherence to urban planning regulations within the municipal framework. At the same time, such interventions generated debates regarding whether courts were exceeding their institutional competence by effectively assuming functions traditionally performed by technical regulatory bodies.

A public interest petition was filed seeking to enjoin the lease of a public park in Islamabad for the purpose of constructing a miniature golf course. In February 2006, the Supreme Court determined that the lease agreement was invalid, ruling that it violated Article 26 of the Constitution, which guarantees the fundamental right of non-discriminatory access to public places. This landmark decision was handed down in the case of *Moulvi Iqbal Haider v. Capital Development Authority (2006)*.

This Islamabad precedent triggered a massive domino effect, leading the Supreme Court to take *suo motu* notice of illegal commercial projects built on public spaces in both Karachi and Lahore. These cases became textbook examples of the judiciary stepping in to police low-level bureaucratic corruption in urban planning. By doing so, the court's jurisprudence pulled off an unprecedented expansion of its own fundamental rights jurisdiction. Ultimately, the institutional space for aggressive judicial intervention in construction safety and urban planning was carved out by the dual forces of rapid economic development and the catastrophic 2005 earthquake.

Following its interventions in construction safety and urban planning, the Iftikhar Chaudhry Court turned its attention to the soaring prices of oil and sugar. Both instances represented judicial responses to severe market shocks occurring within a framework of economic deregulation and high-level bureaucratic corruption. In the case of oil, international prices of oil were at a rise during the period 2004-2005. The Petroleum Ministry delegated the power to set the price of petroleum to a group of oil companies called the Oil Companies Advisory Committee (OCAC), with no oversight of Parliament. When the international oil price rose to US $70 per barrel in the beginning of August 2005, the OCAC increased the petroleum price, but when the oil price dropped to US $62 per barrel at the end of the month, the OCAC did not correspondingly decrease the petroleum price. Consequently, in May 2006, the Supreme Court entertained petitions challenging the artificial price hike and

directed the National Accountability Bureau (NAB) to initiate a formal inquiry. Following preliminary hearings, the bench referred the matter to a larger constitutional bench to determine whether the OCAC had colluded with corrupt officials within the Ministry of Petroleum to enforce arbitrary pricing structures. This litigation demonstrates the judiciary's willingness to extend Judicial Review into areas of economic regulation ordinarily considered matters of executive and administrative policy.

Parallel to the petroleum crisis, Pakistan experienced a severe national sugar shortage between 2005 and 2006. The price of sugar more than doubled in less than a year, from Rs. 21 (US 35^) per kilogram (2.2 lbs.) in February 2005 to Rs. 45 (US 750) per kilogram in January 2006. The Supreme Court took *suo motu* notice of the increase in the price in 2006 and ordered the NAB to investigate. Their report implicated eight current ministers (as well as Nawaz Sharif, the exiled prime minister, and Asif Zardari, Benazir Bhutto's husband) and claimed that the government's "soft policy" was responsible for the sugar crisis. The sugar cases were not decided before March when the Chief Justice was suspended; cooperation from the NAB and media encouraged the Court to do more. These proceedings highlight the extent to which Judicial Review may be shaped by public pressure, media scrutiny, and widespread perceptions of governmental failure.

Instead of shielding the military regime from public backlash over unpopular economic deregulation measures, the price control and urban planning interventions actively exposed the administration, casting a stark light on high-level state corruption. The institutional space for judicial intervention in price regulation, largely amplified by media coverage, was effectively created by the deep societal discontents following rapid financial progression. Consequently, as analyzed in the literature regarding administrative law and judicial control in autocratic states, a regime may respond to these pressures by tightening its grip on the judiciary to prevent the courts from transforming into a primary locus of social and political change. Paradoxically, principal-agent dynamics are often more severe within a democracy than a dictatorship, primarily because public sector employees in democratic systems possess entrenched legal protections that insulate them from arbitrary dismissal".

Within democratic regimes, the three legal remedies most frequently deployed in the arena of Judicial Review are the writs of *mandamus*, *quo warranto*, and *certiorari*. In the constitutional jurisprudence of Pakistan, a foundational rule of natural justice was articulated by the late Chief Justice Hamoodur Rahman in the landmark case *University of Dacca v. Zakir Ahmed*. The Chief Justice ruled that "Whenever any person or body of persons is empowered to take decisions after ex-post facto investigation into facts which would result in consequences affecting property or other rights of any person, then the absence of any express words in the enactment giving such power, including the application of principles of natural justice, the courts of law are inclined generally to imply that power so given is coupled with the duty to act in accordance with such principles of natural justice as may be applicable in the facts and circumstances of a given case." This implied presumption operates universally, binding both the judicial and administrative actions of public bodies, particularly in instances where the underlying proceedings threaten to impact the person, property, or vested rights of the parties involved in the dispute.

Even under the umbrella of formal democracy, authoritarian structures have persistently coexisted in Pakistan. Military courts represent a deeply entrenched feature of this fragmented judicial landscape, operating as a parallel legal system that systematically sidelines civilian jurisdiction. Under this bifurcated model, politically sensitive or high-stakes security matters are diverted to military tribunals, leaving civilian courts to struggle with the pressures of maintaining institutional legitimacy while navigating the regime's core interests. This reliance on military adjudication has deep historical precedents. Even during the civilian administration of Zulfikar Ali Bhutto, summary military courts were established following the controversial general elections of 1977. Similarly, in 1998, the government of Nawaz Sharif invoked Article 245 of the Constitution to call upon the armed forces in aid of civil power, subsequently promulgating an ordinance to establish military courts. Consequently, the

military courts authorized by the 21st Amendment to the Constitution do not represent an unprecedented departure, but rather a continuation of the state authorizing military tribunals to try civilians. Ultimately, these tribunals operate outside standard constitutional due process; a primary benefit of Judicial Review is its capacity to introduce procedural legality and constitutional accountability to such exceptional mechanisms.

During Pakistan's democratic intervals, the judiciary frequently exercised a "hard look" doctrine when reviewing administrative actions, demanding rigorous compliance with statutory frameworks. A classic manifestation of this proactive oversight is the judicial challenge surrounding the appointment of the first Chief Executive Officer (CEO) of the Drug Regulatory Authority of Pakistan (DRAP). Although the authority maintained that the selection process was entirely transparent, the final appointment was executed directly by the Prime Minister. A petition was subsequently filed challenging the appointment of the newly inducted CEO, Dr. Muhammad Aslam, asserting that the executive's action fundamentally contravened the statutory provisions of the DRAP Act, 2012. The dispute serves as a textbook example of Judicial Review enforcing statutory legality by ensuring that executive discretion remains confined within the limits prescribed by Parliament.

Specifically, the petitioner argued that the induction directly violated Section 18 of the DRAP Act, 2012, which explicitly disqualifies any individual from serving as CEO or director if their financial or professional interests' conflict with the mandate of the regulatory body. Because Dr. Aslam maintained active shareholding in a private pharmaceutical firm at the time of his appointment, his commercial interests were inextricably vested in the very market sector DRAP was tasked to regulate.

His appointment was declared *illegal ab initio* by the court. The court held that there was a violation of the law, and therefore he was removed. Judiciary played a vital role in the removal of the CEO while the executive played a role in the appointment of the CEO. The judgment reflects the judiciary's role in preserving institutional integrity within regulatory agencies by preventing conflicts of interest that may compromise regulatory independence. It is necessary for the judiciary to have a Judicial Review of the actions of the agencies, because otherwise carelessness is shown in the procedure of appointment of CEO. The Supreme Court ordered the federal government to appoint a new CEO within 45 days of the removal of the current CEO. It is necessary for the judiciary to have a Judicial Review in the matters of the agencies otherwise the regulatory agency does not follow the laws vested in the Act they are supposed to oblige to. This brings us to the benefit of the Judicial Review where Judicial Review provides legality to the decisions of the agencies. Since there is a violation of the laws, it is absolutely necessary for the court to ask the regulatory body for the explanation of the decisions they make such as the appointment of the CEO.

In 2014, the Supreme Court took a major stand against regulatory negligence by issuing two separate *suo moto* notices to DRAP. The apex court was forced to step in because of two major crises: first, a horrific public health disaster where over one hundred patients died after taking contaminated heart medication, and second, widespread public anger over a sudden, artificial hike in medicine prices. Therefore, the *suo motu's* were necessary for the agency to function according to laws and attain the benefit of Judicial Review through process of legality.

On 26th January 2012, more than 100 patients died in Lahore subsequent to taking faulty heart drugs. The deaths, which occurred over a three-week time span, were connected to a cluster of flawed medicines given to 40,000 cardiovascular patients at government-run hospitals. In this case, the review of the DRAP was extremely important. It is necessary to regulate an agency if it is not doing its job up to the standard. It was also important here to demand explanations for the decisions the agency made. In the case where there was a price hike, the regulatory agency was interfering with the marketplace and the resources by increasing the price and therefore there would be a decrease in the demand, again before making any decision, the agency should consult all the stakeholders who should be satisfied. However, if the increase in the price is fair because of any external factors, i.e., increase in price of petrol, the court should be informed of the same and then it is the arbitrariness of the court to make a decision.

Upon assuming power, political regimes in Pakistan routinely initiate mass recruitment drives within the public sector to satisfy patron-client obligations, appeasing localized factions, influential individuals, or administrators to consolidate political support. This systemic patronage acts as a vicious manipulation of the state's administrative machinery, leaving the bureaucracy deeply politicized and highly ineffective.

A stark illustration of this institutional breakdown occurred in the landmark case of *Imran Khan v. Nawaz Sharif*, where the Supreme Court took the exceptional step of forming a Joint Investigation Team (JIT). The bench explicitly noted that while such an inquiry should ordinarily be conducted by the National Accountability Bureau (NAB), the court was constrained to look elsewhere because the NAB Chairman appeared entirely indifferent and unwilling to perform his statutory duties. This institutional paralysis is a direct consequence of the appointment process: when the head of an accountability agency is appointed through political consensus or partisan alignment, the chairperson is structurally incentivized to remain indifferent to top-level political scandals. Rather than relying on judicial activism to construct an ad hoc investigative committee, the judiciary should have invoked its *suo moto* jurisdiction to conduct a formal Judicial Review of the NAB's administrative inertia. By applying a "hard look" doctrine, the court could have demanded a reasoned explanation for the agency's inaction. While judiciary typically lacks the technical expertise of specialized regulatory bodies, the question of whether an agency is flatly refusing to investigate a matter is not a complex scientific issue beyond judicial comprehension. This case demonstrates that even during democratic regimes, the courts often fail to apply a true "hard look" review where it is most critically needed, choosing instead to bypass agencies rather than holding them legally accountable.

Another profound instance necessitating a "hard look" review occurred in the case of *The State v. Anwar Saifullah Khan*. In this matter, Federal Minister Anwar Saifullah Khan coerced the chairman of a public sector corporation into relaxing established regulatory rules to appoint 145 individuals to various public positions, solely to appease his political allies in Parliament. The court applied a rigorous "hard look" review to this administrative action, drawing upon extensive precedent to establish that the minister had flagrantly misused his executive clout. This case represents a classic instance of abuse of discretion, where statutory authority was exercised for an improper purpose unrelated to the objectives contemplated by law. However, it is challenging for the court to determine that whether minister even had the authority and if he did can he force his will on the chairman. The court held that there has been wrong and improper exercise of authority, for a purpose not intended by the law, and the person in authority acts in disregard of the law with the conscious knowledge that his act is without the authority of law. The appointment of 145 people was politicized hence it was necessary for the judiciary to take a hard look review. As we have seen, the reason for judicial deference is that agencies should not only be independent from the judiciary but from the Parliament as well. Administrative agencies' conduct is not political so Parliament should not interfere in the matters of the agencies.

The core function of Judicial Review is to operate as "a check against excess power in derogation of private right"; yet, the judiciary cannot realistically supervise all administrative adjudications, for its purpose exists fundamentally to check, not to supplant them.

In the Pakistani context, the way Judicial Review in the administrative actions is scrutinized is not different from the existing theories. The expressions such as 'lawful authority', 'of no legal effect' are scrutinized by the judiciary. It is then made sure by the judiciary that the concept of proportionality is applied, where the costs should equal the benefits or benefits should exceed the costs. The expressions "without lawful authority" and "of no legal effect" are expressions of art; the basis of court for the constitutional power was to suppress the impugned action "is unlawful on the ground that it is ultra vires".

Thus, in the field of Judicial Review, the word "lawful" has a technical meaning which is that when a person has acted unlawfully, it means that he has acted outside the powers conferred on him by law. At that point when the inquiry is of the legitimacy of an administrative action, the

main inquiry the court asks is: Has the leader surpassed his statutory powers, in this manner acting ultra vires and along these lines unlawfully.

Through the examples mentioned above, it has been learned that if an Executive is allowed to exercise its powers unchecked by the judiciary, it may be deemed as dictatorship, political influences and arbitrariness etc., So this makes up the historical rationale for Judicial Review.

Judiciary, by record, has always had more freedom when there is a democratic government. However, during the era of Musharraf when emergency was imposed and the courts saw a very difficult time, Judicial Review was still done with freedom such as that of the Capital Development Authority and Lahore Development Authority. It would not be correct to say that during any authoritarian government Judicial Review was at its peak; however, that is not true for democracy as well. The Pakistani experience demonstrates that Judicial Review performs its most effective function when it operates as a mechanism for enforcing legality, transparency, and procedural fairness rather than substituting judicial preferences for administrative expertise. While hard-look review can serve as a valuable safeguard against arbitrariness, its effectiveness ultimately depends upon maintaining a careful balance between accountability and institutional competence.

However, judiciary was more at freedom during the democracy in Pakistan. Earl Warren, Chief Justice, again, "to our system of jurisprudence was the establishment of an independent judiciary through the principle of Judicial Review ". As Earl Warren has stated, the judiciary is only independent when it exercises Judicial Review which the country exercised during democratic as well as authoritarian regimes but Judicial Review is more inclined towards democracy than dictatorship. The judicial elites of Pakistan upheld the Judicial Review as it was adding to their power and glory.

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