

Constitutional Gridlock and Judicial Intervention: A Comparative Analysis of Judicial Activism and Legislative Supremacy

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Abstract

Constitutional stalemate can lead to institutional impasse, which can cause judicial and legislative conflicts, and raise serious doubts about the power and boundaries of the judicial branch. The present study investigates the continuing controversy between judicial activism and legislative supremacy through a study of the practice of judicial review in the era of political deadlock, while maintaining democratic accountability and the rule of law. The study involves qualitative doctrinal and comparative legal research methodology to examine competing constitutional doctrines and institutional responses to governance crises in the United States, the United Kingdom, India, Pakistan and South Africa through a constitution, landmark judicial decisions and scholarly literature. The analysis suggests that judicial activism, if properly handled, can be a constitutional remedy against legislative inaction and executive overreach, especially in times of constitutional crisis. But the judiciary's over-ambitious role in politics can have a detrimental effect on the rule of law, the separation of powers and democratic legitimacy. The study is a conclusion that neither absolute judicial supremacy nor completely unlimited legislative supremacy can sustain a constitutional model. Rather, a more effective way to defuse constitutional deadlock without compromising constitutional stability and democratic processes and public trust in institutions is to establish a balanced system of limited judicial oversight and institutional dialogue. The findings shed light on contemporary debates about constitutionalism, judicial governance, and the changing role of courts in democratic societies.

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1. Introduction

In constitutional theory, the question of judicial relationship and legislative authority is one of the oldest and most disputed issues. The closing of this relationship is a basic contradiction – how can un-elected judges approve and/or invalidate the decisions made by elected representatives? This "counter-majoritarian difficulty", as Alexander Bickel (1962) famously put it, can be especially pronounced in times of constitutional stalemate, as it occurs when political institutions are immobilized by partisan conflict, institutional deadlock or crises of governance. Bickel (1962) made this "counter-majoritarian difficulty" point that the ability of judges to strike down the action of democratically elected officials is a problem for judicial review and that it is not a reflection of popular will.

Constitutional gridlock is a situation where the process of democratic governance is hampered and the legislative body cannot be able to carry out its constitutional duties. Under such conditions, the judiciary can be asked, or invited, to step in, and complex issues of the limits of judicial authority arise. This is a dilemma that is summarized in the contest between judicial activism and legislative supremacy; that is, whether courts should take an active role in

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safeguarding constitutional ideals and fundamental rights when the political branches are dormant, or whether they should be restrained and let the political branches do their job, which is to express popular will.

This study explores this timeless debate by comparing the constitutional practice in the following jurisdictions – the United States, the United Kingdom, India, Pakistan and South Africa. The jurisdictions are from a variety of constitutional traditions and practices, from the strong judicial review of the United States to the parliamentary sovereignty of Britain, the expansive activism of the Indian Supreme Court to the balancing of judicial power and accountability of the South African Constitutional Court. In today's environment, with the rising number of populism, institutional backsliding, regulatory ambiguity and governance gridlock, the importance of judicial activism and restraint is timely, as noted by Ahmad and Zubair (2025).

The conclusion of this study is that there are no constitutional models that are sustainable, either with an absolute judicial supremacy or with an unlimited legislative supremacy. Rather, a more appropriate constitutional tool of limited judicial review and institutional discussion is the best way to overcome constitutional deadlock without losing constitutional stability, democratic process, and public trust in the institutions of the state.

2. Theoretical Framework:

2.1 Defining Judicial Activism

Judicial activism is difficult to define but it is an essential element in discussions regarding the role of the courts in a democratic society. Judicial activism, as defined by Galligan (1996), is "control or influence by the judiciary over political or administrative institutions. Black's Law Dictionary also has a more specific definition which describes judicial activism as "a philosophy of judicial decision-making that lets judges' personal attitudes toward public policy, among other considerations, influence their judgments.

Judicial activism is usually juxtaposed with judicial restraint, which requires the court to be deferential to the elected branches of government, and limits the power of the courts to interfere with legislative and executive business. The difference between activism and restraint is sometimes questioned, however, as critics of specific decisions often use the word "activism" rhetorically to express disagreement rather than as a neutral analytical tool. Ahmad and Zubair (2025) shifted the balance between judicial activism and restraint to a "spectrum of context-sensitive adjudicative choices shaped by constitutional text, structure, and purpose" and defined activism as "rights-forward engagement that yields constitutional meaning, holds accountability, and innovates with public law remedies that remedy stalled or excluded democratic processes.

Judicial activism is defined here as judicial decisions that go beyond the adjudication of individual disputes to the greater exercise of judicial authority in the sphere of legislative and executive decision-making, including the ability to strike down legislation and to state constitutional principles that affect government decision making.

2.2 Legislative Supremacy and the Counter-Majoritarian Difficulty

In the doctrine of legislative supremacy (parliamentary sovereignty), the legislature is the supreme lawmaker, and no other body, including the judiciary, can challenge or overturn its acts. Such a doctrine has been deeply entrenched in the British constitutional tradition, in which it is assumed that Parliament has unlimited legislative powers. The concept of legislative supremacy and the intention of the legislation are still key to the interpretation, meaning, and authority in a constitutional system (as described by Allan, 2004).

Alexander Bickel (1962) has posed this counter-majoritarian difficulty as one of the fundamental challenges to judicial review in a democratic system. However, courts can overturn the decisions of elected representatives, which "displaces, not embodies, popular will" (Bickel, 1962, p. 16). This is especially felt when courts invalidate laws that are the result of the careful deliberations of the elected representatives of the people, thereby questioning the democratic legitimacy of judicial power.

But those in favor of judicial review contend the judiciary's role is to be a safeguard for fundamental rights and constitutional values against the "tyranny of majority rule. In this perspective, judicial review is not anti-democratic, but part of democracy and is indeed necessary to allow democratic processes to be carried out within the framework of the constitution. In its landmark decision of *Marbury v. Madison* (1803), the Supreme Court of the United States developed the concept of judicial review to maintain that the will of the whole people, as outlined in their Constitution, would be superior to the will of a legislature.

2.3 The Separation of Powers

Understanding the relationship between judiciary and legislature can be done by the doctrine of Montesquieu on separation of powers. Montesquieu doctrine of separation of powers is the foundation of understanding the relationship between judiciary and legislature. This doctrine aims to prevent "undue concentration of powers" and suggests that the three functions of government, legislative, executive and judiciary should be separated. Likewise, "so if the judiciary power is not distinct from the legislative power or the executive power, there will be no liberty. The principle of separation of powers is both to limit the exercise of power and to establish a system of checks and balances so that each can check the other. One important feature of this system is judicial review, which permits courts to review legislative and executive actions that are in excess of constitutional limits.

The separation of powers does also mean limits on the power of the Judiciary, though. Courts should be deferring to the legitimate powers of the legislature and not encroaching on powers that are clearly legislative. As the South African Constitutional Court said in *Mazibuko NO v Sisulu NNO* (2013), "courts should tread carefully not to go beyond their constitutional limits" and are "precluded from interfering in matters that lie outside the scope of their jurisdiction unless Parliament authorises them to do so. The principle of "separation of powers judicial self-restraint" mandates that judges should limit the courts' power over other branches of

government by deferring to the decisions of other branches of government, particularly the legislature (Constitutional Court of South Africa, n.d.).

3. Comparative Analysis of Judicial Activism in Constitutional Gridlock

3.2 America: *Marbury v. Madison*, and the Birth of Judicial Review

The American experience is the basic example of judicial review and judicial power versus democratic accountability. Chief Justice John Marshall set the precedent in *Marbury v. Madison* (1803) that the Supreme Court has the power to rule acts of Congress unconstitutional. This ruling, which Marshall made with what has been called a “statement of judicial sovereignty,” made the Court the “chief interpreter of the Constitution” (Whittington, 2007).

Marbury is more than just a holding. Judicial review was the practice whereby the Supreme Court “made sure that the will of the whole people, as embodied in their Constitution, would be paramount to the will of any legislature” (Supreme Court of the United States, n.d.). The formulation elegantly addresses the counter-majoritarian problem by suggesting that the higher will of the people is expressed in the Constitution, and it is up to the Court to interpret and enforce.

The American experience is a warning of too much judicial intervention, however. Critics say at times the Supreme Court has gone beyond its constitutional duties to make policy decisions instead of the elected branches. The struggle between judicial activism and judicial restraint is one of the most frequent themes in the ongoing debate about the role of the judiciary and the accountability of democracy in the American constitutional system. In his analysis of legislative supremacy and judicial activism in the United States, Bačić (2010) noted that this impasse has persisted and persists in the constitutional discourse.

3.2 The United Kingdom: *Miller*, Parliamentary Sovereignty, and Judicial Assertiveness

The United Kingdom is a special case in the debate over judicial activism, because it has a model of constitution-making quite different from the American system of constitutional supremacy. The decisions in the *Miller* cases (2017 and 2019) in the UK Supreme Court illustrate, however, how courts in parliamentary systems can have a strong constitutional impact, clearly in times of political crisis.

In *Miller I* [2017] UKSC 5, the Supreme Court ruled that the Government must first get parliamentary approval before it could invoke Article 50 of the Treaty on European Union, which allows for withdrawal from the EU. The Court decided that any power for ministers to withdraw from the EU Treaties without the previous authorisation of an Act of Parliament is incompatible with domestic law (*R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5). This was a confirmation of the pivotal role of Parliament in the constitution and limiting the powers of the executive. In *Miller II* [2019] UKSC 41, the Court went further, ruling that the Prime Minister's advice to the Queen to prorogue Parliament for five weeks was unlawful. The Court said it was “constitutionally fit” to decide “the boundaries of prerogative powers” as “the scope of prerogative powers is not a purely administrative

matter, nor one that is simply answered by precedent. The Court went on to say that the boundaries of prerogative powers is not a "purely administrative matter" nor one that is "simply answered by precedent" (*R (Miller) v Prime Minister* [2019] UKSC 41). The ruling was highly controversial and was criticized by the judges for going beyond their constitutional mandate. The Daily Mail famously dubbed the judges "enemies of the people" (2016) and some lawyers termed the Miller rulings as "a revolutionary error" (2018). However, there have been arguments that the Supreme Court's activism in the UK does not "endanger British democracy" (Antoine, 2026). Instead, the Court's role in the Brexit controversy is an appropriate constitutional role, acting within the boundaries of constitutional law, and making sure the constitutional rules are followed, which had been being flaunted by the political branches. Antoine (2026) found that the Supreme Court has become more prominent in recent years through its series of landmark decisions, but in his opinion, the decade covered in this study does not lend itself to the hypothesis that the Supreme Court was becoming an actor in "judicial activism" which threatens British democracy. The Court relied on two principles under the constitution, one of parliamentary sovereignty, and one of parliamentary accountability, both of which defend democracy (Young, 2019).

3.3 India: The Basic Structure Doctrine & Judicial Supremacy

Judicial activism in a constitutional democracy is probably most visible in the case of India. The Indian Supreme Court has usurped wide powers of judicial review such as in the establishment of the 'Basic structure' doctrine in *Kesavananda Bharati v. State of Kerala* (1973).

In *Kesavananda Bharati*, the Supreme Court, in a 7-6 majority judgement, declared that the Parliament has the power to amend the Constitution of India, but can not change its "basic structure" or its "essential features" (Krishnaswamy, 2010). The Court ruled that the Constitution of India had a "basic structure" which was immune from change even by constitutional amendment (*Kesavananda Bharati v. State of Kerala*, 1973). This doctrine provides substantive constraints on the amendment power and allows the Court to invalidate constitutional amendments that it considers unblatant from the Constitution's spirit.

Judicial power is asserted in a major way by the basic structure doctrine. It was a judicial creation, "to a considerable degree in response to the immediate political context," and has since "developed into an 'omnicomprehensive' form of judicial review which serves to restrain a broad range of State activity" (Krishnaswamy, 2010, p. 45). The doctrine has been invoked to invalidate amendments that would have encroached on the independence of the judiciary, upon the fundamental rights, and upon other elements of the constitutional order.

Critics say the basic structure doctrine gives judges the power to enforce what they believe is the best policy on behalf of the citizens, which is a violation of democratic accountability. But critics argue that the doctrine is an important safeguarding mechanism, because allowing fleeting political majorities to control the Constitution could jeopardize its core principles. On the other hand, Justice Surya Kant highlighted the role of the Indian judiciary in ensuring the continuity of democracy through its interpretations of the Constitution, as seen in the *Kesavananda Bharati* case and the basic structure doctrine (Times of India, 2025). The basic

structure doctrine has led to judicial activism which is defined as "a tool in the hands of the judiciary to deliver justice when executive and legislature negligence in their duties" (Chanakya Law Review, n.d.).

3.4 Pakistan: Judicial Activism, Constitutional Crises, and Political Instability

Judicial activism has both positive and negative implications as seen in the history of Pakistan's Constitution. The Pakistani judiciary has many times intruded on political issues, sometimes to support military coups and at other times to question the authority of the executive.

Supreme Court's endorsement of martial law regimes led by Generals Ayub Khan, Yahya Khan, Zia-ul-Haq and Pervez Musharraf is a testament to the scholars' coined term "Hybrid militarised legalism" (ORF, 2026). The Court's use of the "doctrine of necessity" to justify interventions outside the constitution should be analysed "in the context of state fragility and elite fragmentation" (ORF, 2026). In many civilian regimes, both with and without military backing, "extra-constitutional accommodation was less bad than the prospect of institutional meltdown" (ORF, 2026).

The lawyers' movement that was launched against the dismissal of Chief Justice Iftikhar Chaudhry by President Musharraf was the peak moment of judicial activism in Pakistan in 2007-2009. The eventual result of this movement was the downfall of Musharraf regime (ORF, 2026). Chaudhry's reinstatement in 2009 led the Supreme Court to "make a significant impact in the supremacy of the constitution and judicial activism, often using suo motu powers under Article 184(3)" (ORF, 2026).

But the judicial assertiveness has come under criticism as well. The Supreme Court has been criticized for "toppled governments, disrupted governance, interfered in administration and used constitutional text as a tool of political engineering" (Pakistan Observer, 2026). Judicial innovations like "basic structure" and "necessity" have been described as "tools that are designed to give supremacy to the judiciary over other institutions within the state, such as the parliament" (Pakistan Observer, 2026). These interventions, however, critics say, violate the constitutional balance, create political debate and overstep the judicial authority (Pakistan Observer, 2026).

The "hyper-activism" of two Chief Justices of the Supreme Court of Pakistan, Chief Justice Iftikhar Muhammad Chaudhry and Chief Justice Mian Saqib Nisar, was cited as the main reason for the "unprecedented augmentation" of the court's "original docket" by Awan (2025). The Chaudhry and Nisar Courts not only added hundreds of cases to the original docket, but also made interventionist judgments on what are essentially political issues, such as population control and dam construction (Awan, 2025). In recent years, there has been widespread criticism of this misuse of the original jurisdiction power by many jurists, judges and politicians. Justice Syed Mansoor Ali Shah wrote a dissenting opinion and condemned the "one-man show" that is a consequence of a centralization of suo moto power in the hands of Chief Justice (Awan, 2025).

The Pakistan case illustrates the dangers of judicial activism in a regime of poor institutionalisation and political upheavals. The choice of the people should decide matters of governance and there should be no room for the collective wisdom of unelected judges who are the least accountable branch in Pakistan," Justice Saqib Nisar said. Chief Justice Asif Saeed Khosa also posed the question whether "the Supreme Court should bind future generation for the will of the past generations".

3.5 South Africa: Constitutional Court, Separation of Powers, and Judicial Restraint

South Africa provides a blueprint for limited judicial activism in which the Constitutional Court can find ample means to engage in strong judicial review while respecting the separation of powers. The South African Constitution provides for a detailed process of constitutional review which allows courts to declare any law or conduct as being unconstitutional (Constitution of the Republic of South Africa, 1996, s 172). Courts have the power to review the actions of the other arm of the State as long as the actions are in conflict with the Constitution (Obiter, n.d.).

But the South African Constitutional Court has always placed a premium on the judiciary's role of exercising restraint and respecting the legislative domain. In *Mazibuko NO v Sisulu NNO* (2013), the Court noted that the "judiciary should be wary not to stray beyond the constitutional limits" and that in terms of the separation of powers, the court "is barred from interfering in matters that are within the competence of Parliament, except when the Constitution requires it to do so.

The Court has moreover reiterated that "law-making is an exclusive preserve of Parliament" and that, "courts have no business interfering in policy formulation, which is the role of the executive, or law-making, performed by the legislative arm" (*Mazibuko NO v Sisulu NNO* 2013). The idea is that this power "is something like a judicial review power, which is 'an accelerator which gets the court to intervene and prevent the violation of the Constitution,'" and the separation of powers doctrine is used "as breaks against unmandated encroachments of the judicial power into the functions and powers of the other powers" (Obiter, n.d.).

The South African Constitutional Court, which is a constitutional court, has applied the doctrine of judicial restraint based on separation of powers, but has not interfered with the decisions of other government arms when they are deemed to be consistent with the Constitution (n.d., University of South Africa). The respect of the other government branches' domains poses a dilemma for the court between respect and oversight.

The South African experience indicates that effective judicial review is compatible with the respect accorded to the authority of the legislature, provided that courts are mindful of their own limitations and respect the authority of the political arms of government. The Constitutional Court, as Chaskalson CJ put it, is "the final and independent arbiter in the contest between the state and its citizens: but it must be done "with a certain amount of diplomacy".

4. Institutional Dialogue as a Framework for Constitutional Governance

4.1 The Theory of Institutional Dialogue

The theory of institutional dialogue provides a useful mechanism for balancing judicial activism and legislative supremacy. Under this theory it is said that "courts and legislatures engage in a dialog to ensure constitutional principles and public policies are properly balanced" (Tremblay, 2005). The dialogue model does not see judicial review as a zero sum game between judicial and legislative power, but rather as a "conversation about constitutional meaning, in which both parties (should) listen to learn from the other's point of view, which can lead to a change in their own views" (Indian Kanoon, 2019).

This has had a notable impact on the Commonwealth countries, which Roach (2001) describes as "intermediate models of constitutional control that aim to balance the protection of rights with the maintenance of legislative autonomy, and which are based on the concept of institutional dialogue. The dialogue model recognizes that there is no one who has a monopoly on constitutional wisdom, whether it be courts or legislatures, and that the superior constitutional results are obtained through the continuous dialogue between the two institutions.

The Canadian experience and practice of constitutionalism have given rise to the theory of institutional dialogue, in the context of the Canadian Charter of Rights and Freedoms (Tremblay, 2005). According to the theory, this type of dialogue is now possible thanks to the "limitation" clause (section 1) and to two more important provisions: the "override clause" (section 33) (Tremblay, 2005). The limitation clause grants legislatures constitutional power to limit by law any guaranteed rights, but only when doing so meets certain justificatory requirements which constitute complex tests of legitimacy, rationality, necessity and proportionality (Tremblay, 2005). The override clause allows legislatures to override by law certain specific guaranteed rights without depending on the dodging of specific guaranteed rights that the overriding law expressly mentions "notwithstanding" (Tremblay, 2005).

4.2 The Limits of Institutional Dialogue

Critics of the dialogue model suggest that it offers an "unrealistic conception of government, is subject to the potential of moralizing and does not take into account the necessity of difference and disagreement for a democratic government under the rule of law" (Tremblay, 2005). Dialogue can make it difficult to pay attention to the fact that institutional relationships can sometimes be more about conflict and power play than conversation.

However, Tremblay (2005) has made a good point that there are important constraints on the ability of institutional conversation to legitimize the institution of judicial review. He distinguished between deliberative and conversational approaches to dialogue, and explored the boundaries of each. Tremblay (2005) did not argue that a dialogue between courts and legislatures is impossible, but that it is what is not possible, namely, a dialogue that would confer legitimacy on the institution of judicial review and on the practice of judicial review. In sum, until now, the institutional dialogue theory is a rhetorical one in a normative sense. (Tremblay, 2005)

Furthermore, there is the fundamental issue where courts and legislatures are not equally strong in a dialogue model. In regimes of strong-form judicial review, courts have the last say on constitutional matters, rather than the first. Dialogue requires institutional design, such as the ability to legislatively respond to judicial decisions, to be effective.

4.3 Weak-Form Review and Constitutional Dialogue

One way to avoid strong-form judicial review is to have a weak-form system of judicial review, where courts can say that laws are in conflict with constitutional rights, but legislatures have the option of changing the laws to comply with the Constitution, thereby potentially overturning court rulings. In this model, which is linked to the Canadian Charter of Rights and Freedoms and the New Zealand Bill of Rights Act, it aims to "maintain the protection of rights whilst maintaining the autonomy of the legislature" (Gardbaum, 2014).

In weak-form review systems, the courts have the power to review legislation and determine whether it complies with constitutional norms, but have the power to be overruled by ordinary legislative majorities (University of Oxford, 2017). The United Kingdom, Canada and New Zealand are often taken to be instances of "weak-form review" where the legislature can ignore, reject or override judicial decisions under the respective Bill of Rights (University of Oxford, 2017). The nature of the weak-form review decision is actually an embodiment of the doctrine of parliamentary sovereignty in the Westminster Parliament which is the antithesis of the doctrine of judge-made law (Buana, 2024). A very similar system of weak-form review exists in Great Britain and Canada, and Tushnet (2008) explained how it functions there, as well as looking at how far legislatures are likely to go to enforce constitutional norms on their own.

The weak-form model provides a process for institutional communication in the form of legislative reaction to judicial rulings. When legislation is ruled unconstitutional by a court, the legislature may be able to change the law to comply with the court's decision, or, in certain systems, override provisions may be available to keep the law in effect. This is designed to facilitate continuous dialogue between institutions and to maintain ultimate legislative power.

5. The Judiciary and the Executive: Constitutional Tensions and the Powers of the Judiciary

5.1 Understanding Constitutional Gridlock

Constitutional gridlock happens when the regular working of democratic government is hindered to the extent that the legislature is unable to carry out its constitutional tasks. Partisan conflict, institutional design features, and government crises can all cause gridlock. For instance the US Constitution, in the way of separated powers and checks and balances, "makes gridlock both possible and inevitable" (Ferejohn et al., n.d.).

Institutional paralysis is more likely to occur during times of constitutional gridlock, when the rule of law and effective government may be compromised. Under such conditions, the judiciary might be called upon to take action to settle disagreements, uphold constitutional principles, or deliver relief that the other branches of government are not able or willing to

offer. Ahmad and Zubair (2025) identified some contemporary pressures, including, populism, institutional backsliding, regulatory complexity, and governance gridlock, that increase judicial dockets and increase legitimacy pressures.

5.2 Judicial Intervention as a Constitution safeguard

When legislation becomes stagnant and executive action becomes too aggressive, judicial activism may be a constitutional cure. In times of political paralysis, courts can play a role in the enforcement of fundamental rights, enforce constitutional limitations, and ensure the viability of government.

In India, one can see how judicial activism can serve as a bulwark for the constitutional values in the absence of the political wings. In the context of the basic structure doctrine, the Supreme Court has been able to invalidate constitutional changes that threatened the fundamental rights as well as judicial independence. Likewise, the constitutional function of Parliament became inviolable in the UK in the Brexit crisis, as the Supreme Court ruled that the executive cannot 'work around' Parliament to circumvent its constitutional powers (Antoine, 2026).

In Pakistan, the lawyers' movement and the subsequent activism of the Supreme Court brought the face of authoritarianism to an end, and helped restore democracy. The case of Pakistan also serves as an example of how courts can be over-involved in the issues of the times, but can also act as a safeguard of constitutional governance in crisis situations. Active citizenship, as defined by Ahmad and Zubair (2025), is "rights-based involvement in the creation of constitutional meaning, holding those in power accountable, and creating public law remedies when democratic processes fail to move or fail to include vulnerable groups."

5.3 The Risks of Excessive Judicial Intervention

But too much judicial intervention comes with plenty of risks too. Courts can encroach on the authority of the legislature, cheat on the separation of powers and have a negative effect on democratic legitimacy when they do more than their constitutional duties. These dangers are also illustrated by the Pakistani experience, where critics say that the judiciary's "snowballing judicial activism that went beyond the constitutional boundaries" has "driven the country into periodic instability" (Pakistan Observer, 2026).

Excessive judicial intervention may also lead to political opposition which could pose a risk to judicial independence and the rule of law. The UK Supreme Court received a lot of criticism after the Miller decisions, some politicians and the media even doubted the legitimacy of judicial review. A peak in the Daily Mail was on 4 November 2016, following the High Court judgment which was followed by the Supreme Court's ruling in Miller 1. The judges were singled out in a rare public fashion, beyond the usual condemnatory criticism of the judiciary, were considered as "enemies of the people" (Antoine, 2026). In Pakistan, resistance to judicial activism has resulted in constitutional changes and reforms of institutions which have the potential to affect the independence of the judiciary.

The constitutional dilemma is to find a balance: courts will have to safeguard constitutional values, while not intruding into the legitimate jurisdictions of the political branches. In

accordance with the South African Constitutional Court which has noted that "courts must 'know their own limits or boundaries' and 'stay in their lane' with 'self-restraint' (Mazibuko NO v Sisulu NNO, 2013), it is necessary for courts to have some awareness of their limits or boundaries.

6. Towards a Balanced Constitutional Framework

6.1 Constrained Judicial Review

Based on the analysis in this study, a constrained judicial review seems to be the most viable solution to resolve the conflict between judicial activism and legislative supremacy. Limited judicial review acknowledges that the courts have a legitimate role in enforcing constitutional restrictions, but also gives due regard to the primacy of the political branches.

The following are some of the principles of constrained judicial review:

1. **Judicial self-restraint:** Courts should respect the democratic nature of the political branches of government, and leave legislative judgments alone where they are reasonable. Judicial restraint, which is important for the survival of democracy and constitutionalism, is also under "circumstances when it is called for" (Constitutional Court of South Africa, n.d.).
2. **Respect for legislative domain:** Courts should not encroach upon issues which are within the competence of the legislature, such as policy making and allocation of resources. The principle of 'separation of powers judicial restraint' presumes that the judiciary possesses limited power in relation to other branches of government, in that the judiciary must defer to decisions made by other branches of government, especially the legislature (Constitutional Court of South Africa, n.d.).
3. **Proportionality and reasonableness review:** Courts should not replace the legislature's decision making process with their own interpretation of the constitution's goals, but rather examine whether a law is proportionate or reasonable in relation to those goals. Ahmad and Zubair (2025) suggested a "contextual proportionality" discipline, which considers various constitutional hooks, state reasoning, less-restrictive options, and feasibility of implementation, using them as the basis for determining the intensity of review and intrusiveness of remedy.
4. **Remedial minimalism:** If courts decide that legislation is unconstitutional, they must design remedies that do not impugn the legislature, which may then decide how to take action. According to Ahmad and Zubair (2025), "remedial calibration, whether it is a declaration, suspension of invalidation, time-bound compliance, or exceptional structural supervision, does not take away policy space to protect rights.

6.2 Institutional Dialogue and Constitutional Stability

Institutional dialogue provides a tool for dealing with court-legislative tension in a manner that fosters constitutional stability. If courts and legislatures have continued conversations about the meaning of the Constitution, they can also come to a shared understanding, without diminishing the legitimate role of either.

Institutional dialogue has been demonstrated through the Canadian experience of the Charter of Rights and Freedoms. The weak-form review of the Charter allows the courts to strike down legislation if it breaches the Charter, but the legislature can either change the legislation, or use override provisions. This is a structure that allows for continuous interaction among institutions, and for legislation to react to judicial rulings (Tremblay, 2005).

Likewise, in South Africa, it is shown that courts can be able to carry out effective judicial review, respecting legislative authority. Judicial restraint and a respect for the separation of powers have allowed the Constitutional Court to play a role as guardian of constitutional values without compromising the democratic legitimacy. Zubair and Ahmad (2025) have found that constitutional orders are most viable when courts serve as principled guardians: "outspoken in the face of clear constitutional failings, silent where constitutional issues call for gradual and expertly crafted policies.

6.3 Implications for Constitutional Design

The results of this research can be useful in the design of a constitution. The framers of the Constitution should think about ways in which there can be dialogue among institutions but keep the judiciary independent and accountable under the Constitution. The site features some key design elements:

1. Strong, but limited judicial review: Although constitutionally empowering courts to strike down unconstitutional laws, constitutions should also provide standards for judicial review and ways for legislative response.
2. Enunciate clear constitutional norms which are applicable to judicial review and thus limit the likelihood of subjectivity on the part of judges and make judicial review more predictable.
3. Legislative response mechanisms: there should be mechanisms for legislative reaction to judicial decisions, either through the override or amendment process, to facilitate continued communication between institutions in the constitution.
4. Institutional independence: Judicial independence should be guaranteed to enable the courts to play their constitutional function without political pressure.
5. Judicial accountability mechanisms: Judicial accountability mechanisms should be preserved to guarantee a court's responsiveness to constitutional values and democratic expectations.

7. Conclusion

The tension between the judiciary and legislation is a reflection of the core debates over the nature of constitutional democracy and the place of courts in democratic society. In this study I have explored this debate by comparing constitutional practice in five jurisdictions, and concluded that there is scope for judicial action in constitutional deadlocks and for judicial action to have many beneficial consequences, but also significant risks.

The analysis suggests that judicial activism can be an effective form of constitutional protection against both legislative inaction and executive overreach, especially in times of constitutional crisis. The potential of courts to safeguard constitutional values in the absence of the political arms is evident from the Indian Supreme Court's pronouncements on the basic structure doctrine, the UK Supreme Court decisions in *Miller* and the Pakistani judiciary's involvement in the lawyers' movement.

At the same time, the study points up dangers of too much judicial overreach. If the courts exceed their constitutional authority, they can challenge the powers of the legislature, the separation of powers and the legitimacy of the democratic system. In this regard, the Pakistani case is a clear warning of the danger of going over the constitutional boundaries of judicial activism, which can add to political instability and institutional conflict.

There is no viable constitutional structure that is based on absolute judicial supremacy or on absolute legislative supremacy. Rather, a complementary system of limited judicial oversight and institutional cooperation constitutes the best means of resolving constitutional deadlock and ensuring constitutional stability, democracy, and trust in the institutions of the state.

It upholds the constitutional limits on court power and maintains the supremacy of political institutions. It recognizes that constitutional interpretation is a dynamic discussion among institutions that requires communication and dialogue between courts and legislatures about the meaning and application of constitutional principles. This balance between activism and restraint is a viable process for courts to sustain their legitimacy and pursue constitutional fidelity (Ahmad & Zubair, 2025).

The results of this study can help in the current discussion about constitutionalism, judicial governance and the changing function of the judiciary in democratic society. However, in rapidly changing constitutional democracies, such as those in most parts of the world today, the issue of how best to divide authority between judges and democratic government is likely to continue to be a central concern in constitutional theory and practice.

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