



Role of Indian Judiciary in Ensuring Good Governance: A Comparative Analysis of South Asian Countries

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<p>Article History:</p> <table><tr><td>Received:</td><td>February</td><td>03, 2025</td></tr><tr><td>Revised:</td><td>February</td><td>28, 2025</td></tr><tr><td>Accepted:</td><td>March</td><td>03, 2025</td></tr><tr><td>Available Online:</td><td>March</td><td>05, 2025</td></tr></table>	Received:	February	03, 2025	Revised:	February	28, 2025	Accepted:	March	03, 2025	Available Online:	March	05, 2025	<p><i>Good governance is a primary principal for the rule of law in any democratic society. Good governance constitutes fairness, accountability and transparency in the functioning of the different institutions of the government. Political and social stability of any state totally depends on its governance. There are many governance challenges all over the world and specifically in the South Asian countries such as corruption, political interference, lack of accountability, abuse of merit policy and mismanagement by the government officials. Judiciary plays an important role in promoting and maintaining good governance in any country. Being an important organ of a government, judiciary takes full responsibility to provide basic and fundamental rights to the citizens. In South Asian countries where judiciary faces many challenges to uphold its position as the guardian and custodian of the constitutional and fundamental rights, Indian judiciary has established many precedents for ensuring good governance mechanism in the country. This study investigates the role of the judiciary in South Asia in respect of promoting good governance with special attention to India and comparative analysis from Pakistan, Bangladesh, Sri Lanka and Nepal. It is found that the judiciary shall perform its duties without any pressure, partiality and biasness to promote good governance. Judicial Activism can be used as a successful tool for governance reforms.</i></p>
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1. Introduction

Good governance is generally recognized as the basis for democratic resilience and sustainable development which includes principles as fairness, accountability, transparency, responsiveness, inclusiveness, serious respect for the rule of law, and so on.¹ In order to achieve this aim public

¹ United Nations. (2015). Transforming Our World: The 2030 Agenda for Sustainable Development. <https://sdgs.un.org/2030agenda>

institutions work in a productive and ethical manner, provide collective and public welfare, and maintain a public trust. These principles are adhered to in governance frameworks to mitigate corruption; to strengthen institutional legitimacy, and to create social stability. Yet South Asia suffers from severe governance deficits like widespread corruption, political instability and real systemic inefficiencies.² Constitutional values, and these challenges establish an indispensable role for the judiciary, as the guardian of such values.

The independence of the courts from government and the public is central to the idea of a democracy. Judicial review and Public Interest Litigation (PIL) are such mechanisms by which the courts ensure a government to enact certain constitutional mandates, continues to do so and protect the citizens' fundamental rights.³ These mechanisms are critical to addressing systemic inefficiencies, and democratic accountability; in South Asia, where governance challenges are acute. This study investigates the role of the judiciary in South Asia in respect of promoting good governance, with special attention to India and comparative observations from Pakistan, Bangladesh, Sri Lanka and Nepal.

Otherwise known for its activist judiciary, India has established itself as a standard bearer of judicial activism to penalize governance slip ups. Cases like *Kesavananda Bharati v. State of Kerala* (1973), which developed the doctrine of the basic structure of the Constitution, *Vishaka v. State of Rajasthan* (1997) it was the judiciary, which issued a guideline on how to deal with workplace sexual harassment.⁴ PIL has democratized access to justice such that persons and civil society organizations have been able to demand remedies in public issues ranging from conservation of the environment (*M.C. Mehta v. Union of India*, 1987) and social justice (*Unni Krishnan v. State of Andhra Pradesh*, 1993).

1.2. Research Objectives

India's judiciary showcases the potency of how judicial activism can be part of governance but experiences of other South Asia countries show, on the one hand, how judicial independence and effectiveness varies from country to country. For instance, Pakistan's judiciary has also tended to be an alternately activist bailiwick and subservient institution, validating military coups based on doctrine of necessity.⁵ But that all changed in the year 2009, when judicial independence was restored and the judiciary took charge, often with suo motu actions to reduce corruption and executive overreach (*Sindh High Court Bar Association v. Federation of Pakistan*, 2009). Like Bangladesh's judiciary, its role in governance has been to address corruption and electoral problems but there are systemic barriers to its effectiveness – of resource constraints and political interference.⁶

² World Bank. (2020). Governance Indicators in South Asia: Challenges and Opportunities. <https://www.worldbank.org/ext/en/home>

³ Cappelletti, M. (1989). *The Judicial Process in Comparative Perspective*. Clarendon Press. <https://cir.nii.ac.jp/crid/1130000797146170368>

⁴ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

⁵ Malik, R. (2015). Judicial Activism in Pakistan: A Historical Overview. *Pakistan Journal of Law*, 8(1), 23-45.

⁶ Haque, M. S. (2013). Judicial Independence in Bangladesh: Challenges and Prospects. *South Asia Journal*, 5(2), 12-25.

However, the judiciary's effect has been severely curtailed by executive dominance and political interference, especially in Sri Lanka where both of these factors have come to dominate the functioning of the judiciary.⁷ Nepal's judiciary — as the cornerstone of its young federal democracy — has acquitted itself in resolving disputes regarding federalism, constitutional interpretation and human rights. Yet, resource limitations and procedural inefficiencies impede, how it can achieve systemic governance reforms.⁸ The research further shouldered the judiciary's critical role in bridging governance deficits, and upholding constitutional principles through a comparative lens. It contributes to the brew of the discourse on good governance and the judiciary's role in sustaining democratic resilience in South Asia by identifying what constitutes best practices and what reforms are systemic.

1.3. Research Questions

This research explicitly explores the potential of these judicial practices to achieve a transformative effect in establishing good governance.

Key questions guiding this study include:

- I.** What is judiciary's impact on governance reforms in South Asia?
- II.** What lessons can India's judicial activism teach us?
- III.** What systemic reforms are necessary to enhance the effectiveness of the judiciary across the region?

In this study we have analysed landmark cases, cases which have precedent value in the South Asian region, and judicial practices in an effort to understand how the judiciary is in fact a social actor much more than a passive subject, playing an important role as driver of transparency, accountability and justice in the South Asian subcontinent.

2. Conceptual Framework

This research analyzes the role of the judiciary in achieving good governance in South Asia in its conceptual framework. It brings together theoretical foundations of governance, judicial independence and constitutionalism with practical judicial practices in India and other South Asian countries. The framework is developed to link these elements to build a foundation for analyzing the ways the judiciary can deal with governance failures and strengthen democratic principles. The vires of principles of rule of law, judicial independence and institutional balances have been scrutinized.

2.1. Good Governance and Its Elements

It is widely believed that good governance is the backbone of a stable and democratic society. The principles that characterize it are fairness, accountability, transparency, responsiveness, inclusivity and respect for the rule of law.⁹ These principles guarantee that public institutions achieve their

⁷ Welikala, A. (2017). Constitutional Governance and Judicial Independence in Sri Lanka. *International Journal of Constitutional Law*, 15(3), 451-472.

⁸ Adhikari, B. (2019). Judiciary and Governance in Nepal: Challenges and Prospects. *Kathmandu Law Review*, 2(1), 45-60.

⁹ World Bank. (2020). *Governance Indicators in South Asia: Challenges and Opportunities*.

goals of working effectively, ethically and serving the collective best interest. Followings are few of the elements of good governance:-

2.1.1. Transparency

Transparency in government is about openness of governance process, policies and actions of the government to public scrutiny. It promotes citizens' access to information, guarantees accountability and reduces chances of corruption.¹⁰ Its contribution to transparency comes through reviewing the government's decisions and ordering disclosure of information in the public interest cases.

2.1.2. Accountability

Accountability mechanisms make public officials accountable for what they do, that they act lawfully as well as ethically. Judicial review constitutes a central mechanism of accountability that has a power to invalidate those unlawful or constitutionally inconsistent acts committed by the executive or legislature.¹¹

2.1.3. Inclusivity

Governance inclusivity means equal access to resources and processes of decision making for marginalized people. India's Public Interest Litigation (PIL) pioneered by the judiciary is an example of how courts can democratise access to justice and magnify the voice of the unrepresented. (Unni Krishnan v. State of Andhra Pradesh, 1993).

2.1.4. Responsiveness and Efficiency

Effective response of institutions to citizens needs and challenges is actually good governance. It is reiterated in landmark cases dealing with environmental conservation, judicial interventions can and do compel the governments to resolve policy failure or induct reforms. (M.C. Mehta v. Union of India, 1987).

2.1.5. Rule of Law

The rule of law is a pre-requisite for good governance, meaning for all individuals and organizations be the government or any other, they are subjected to the law. The protection of the rule of law is a central responsibility of the judiciary as the guardian and interpreter of constitutional principles, and as one of its principal responsibilities.¹²

3. The Judiciary as a Guardian of Governance

The judiciary plays the unique role as a watch dog of constitutional principles and as a safeguard against the misuse of power by other branches of Government. Independence is essential to hold

¹⁰ United Nations. (2015). Transforming Our World: The 2030 Agenda for Sustainable Development.

¹¹ Cappelletti, M. (1989). The Judicial Process in Comparative Perspective. Clarendon Press. <https://cir.nii.ac.jp/crid/1130000797146170368>

¹² Raz, J. (1977). The Rule of Law and Its Virtue. Law Quarterly Review, 93(1), 195-211.

up the balance of power in a democracy. It is judicial decisions which keep the executive within its bounds and protects the rights of common people.

3.1. Judicial Independence

Judicial Independence is a guarantee that courts are able to declare decision impartially without any pressure from executive and legislative branch.¹³ In South Asia this independence is crucial as political interference so often sours governance.

3.2. Judicial Review

Courts of their own initiative may review the constitutionality of the laws or executive measures. It is in South Asia that judicial review has been a weapon to fight governance challenges, and it is in India where the doctrine of basic structure of the Constitution of India was applied and recognized in *Kesavananda Bharati v. State of Kerala* (1973).

3.3. Public Interest Litigation (PIL)

Through PIL, citizens and civil society organizations have the opportunity to seek remedies for public grievances and in so doing, PIL has revolutionized access to justice. PIL has been used in India to protect the environment as well as gender issues.¹⁴

4. Good Governance in the South Asian Context

Patterns of governance in South Asia are hardwired with political, institutional, and socio-economic realities for any country in this region. These challenges crop up in the form of poor institutions, political risks and structural incapacities that all work against the principles of governance.

4.1. Transparency and Accountability Challenges

Standard of transparency and accountability is still low in South Asia which results in corrupt practices and inefficiency. Certain aspects of the problems have been recognized qualitatively, with attempts to fight these issues made through judicial actions, for example, the suo motu actions in Pakistan (*Sindh High Court Bar Association v. Federation of Pakistan*, 2009).

4.2. Inclusivity and Social Justice

Poverty and social marginalization have continued to be characteristic features of the area. The legislatures have failed to fill this void and the courts have tried to do so through progressive jurisprudence, such as *Vishaka v. State of Rajasthan* (1997), which was progressive towards gender equality in India.

¹³ Hirschl, R. (2004). *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press.

¹⁴ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

4.3. Political Interference

Some South Asian countries for instance; Bangladesh and Sri Lanka are experiencing political interferences that make it very difficult for judiciary to be independent and productive.^{15,16}

4.4. Judicial Capacity and Resource Constraints

Lack of funds, time constraints, and enormous case backlog are some obstacles that affect judicial performance in all the countries of the region.¹⁷

5. The Judiciary as a Driver of Governance Reform

In this paper, it is noted that the judiciary plays a role as multipurpose organ in reform process in governance as it is not only meant for hearing cases but it also has many other functions in the process of governance reforms. Through extraneous construction of provisions in the Constitution, as well as through duties imposed on the court in relation to the aforesaid policies, a court can become synergistic to triggering changes. Judicial activism can be defined as the type of Judicial operation whereby the courts have the aggressive responsibility of dealing with governance failures and defend important rights. India has perhaps overemphasized the activism of its judiciary, especially through dynamic constructions and in the employment of the PIL to redress social concerns.¹⁸

6. Comparative Insights from South Asia

This paper found that the effectiveness of judiciary in South Asia depends on political and institutional context of the country. Although India's judiciary has been impartial and active, few other nations including Pakistan and Bangladesh are found to have confronting issues such as political influence and inadequacy of resources.^{19, 20}

This paper conceptualizes the judiciary as an institution with transformationalism in enhancing good governance via tools such as the constitutional Court and PIL. Based on the analysis of governance issues and judicial actions in South Asia, this study highlights the judiciary's imperative contribution to forging successful strategies for enhancing governance transparency, accountability, and inclusiveness. It offers the background needed to understand how practices of judiciaries can fill governance shortcomings and defend democratic tenets in the area.

¹⁵ Haque, M. S. (2013). Judicial Independence in Bangladesh: Challenges and Prospects. *South Asia Journal*, 5(2), 12-25.

¹⁶ Welikala, A. (2017). Constitutional Governance and Judicial Independence in Sri Lanka. *International Journal of Constitutional Law*, 15(3), 451-472.

¹⁷ Adhikari, B. (2019). Judiciary and Governance in Nepal: Challenges and Prospects. *Kathmandu Law Review*, 2(1), 45-60.

¹⁸ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

¹⁹ Malik, R. (2015). Judicial Activism in Pakistan: A Historical Overview. *Pakistan Journal of Law*, 8(1), 23-45.

²⁰ Haque, M. S. (2013). Judicial Independence in Bangladesh: Challenges and Prospects. *South Asia Journal*, 5(2), 12-25.

7. Judicial Role in India: A Case Study

The Judiciary, especially in post-independent India, has played an important role to influence governance relating to constitutional morality, indictable organizational anomalies and social equity. The Indian judiciary, which is the protector of the constitution of India has not shied away from addressing governance issues by upholding PIL and therefore acting as instrument for resolving governance issues. In this paper, we focus specifically on the following question: How has the judiciary impacted on good governance? To answer this question, this case study evaluates the efforts of the judiciary in fighting corruption, protect basic human rights, and enhance transparency and accountability.

7.1. Historical Evolution of Judicial Role in India

India has a written constitution and its judiciary has three branches of the government under loyal constitutionalism. Indian judiciary since independence in 1947 has shifted from a traditional passive political role to an active political institution of interpretation of constitution and protector of democracy. Judicial review which like many aspects of law and political system, the practice borrowed from the American model empowered the Judiciary to declare legislation's and executive action ultra-vires or unconstitutional.²¹

7.1.1. Emergence of Judicial Activism

The decade of 1970's was path breaking in the history of Indian judiciary with the advent of the doctrine of 'basic structure' of the constitution in *Kesavananda Bharati v. State of Kerala* (1973). This historic verdict made certain that no amendment could change the very structure of the Constitution and so preserve democracy from autocratic forces.²²

7.1.2. Rise of Public Interest Litigation (PIL)

The judiciary in the two decades of the 1970s and the 1980s introduced public interest litigation, which was a liberal legal reform with a view of democratization of the forum for accessing justice. PIL facilitated an opportunity to the chiefs, individual and civil society organizations to apply to the court on behalf of marginalized groups thus making judiciary an active participant to change in governance systems.²³

7.2. Judiciary's Role in Promoting Good Governance

The Indian judiciary has been involved through its judgements in acts of good governance in areas like transparency, accountability and inclusion.

7.2.1. Ensuring Transparency and Accountability

The judiciary has provided strong support for demanding accountability of the public officials while also insisting on openness in the running of the State. Notable cases include:

²¹ Baxi, U. (1985). *Crisis of the Indian Legal System*. Vikas Publishing House.

²² Seervai, H. M. (1991). *Constitutional Law of India: A Critical Commentary*. Universal Law Publishing.

²³ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

- **Vineet Narain v. Union of India (1998)**

This case set the foundation of the rule that investigative agencies cannot be controlled by the political executive; formulated rules for the CBI. In its ruling, the Supreme Court pointed out that the judiciary can effectively fight corruption, and that it is independent of institutions.²⁴

- **Centre for Public Interest Litigation v. Union of India (2012)**

In the 2G spectrum case – a corruption scandal, the Supreme Court quashed the allocation of telecom licenses due to procedural viscosity and lack of transparency upholding its principle of accountability for the distribution of public resources.²⁵

7.2.2. Protecting Fundamental Rights

The judiciary has played a very proactive role in defending citizens' rights against their encroachment by the executive arm of government. Landmark cases include:

- **Maneka Gandhi v. Union of India (1978)**

New dimensions were added to the rights to life and personal liberty under Article 21 of the Constitution with reference to procedural freedom in the State's action. Such a judgment prepared the judiciary to embrace a broader concept of fundamental rights, later on.²⁶

- **Navtej Singh Johar v. Union of India (2018)**

In this case, the judiciary was able to strike down laws that criminalized consensual same sex relations because they deny equal protection of the law and fairness to a group of people highlighted the courts' mandate of defending basic rights.

7.2.3. Advancing Social and Environmental Justice

The judiciary has applied PIL to handle miscarriages of social justice such as gender, education and environmental cause through cases like;

- **Vishaka v. State of Rajasthan (1997)**

This case set legal standards regarding sexual harassment at the workplace – a trend, in which judiciary provides a legislative void and actively advances women's rights.

- **M.C. Mehta v. Union of India (1987)**

Judicial activism in environmental matters can be firmly concluded with reference to the Ganga pollution case, how the judiciary is sensitive to sustainable development and intergenerational justice.

²⁴ Narain, V. (1998). Judgment in Vineet Narain v. Union of India. SCC (1998) 1 SCR 101.

²⁵ Bhatia, G. (2013). *The Transformative Constitution: A Radical Biography in Nine Acts*. Oxford University Press.

²⁶ Bhagwati, P. N. (1978). Judgment in Maneka Gandhi v. Union of India. SCC (1978) 2 SCR 621.

7.3. Judiciary's Role in Addressing Governance Deficits

Indeed, the judiciary plays an active role in governance but has experienced some crucial challenges where it tries to perform this role, like:-

7.3.1. Corruption and Institutional Weaknesses

Some of the areas in which judiciary has tried to put checks on corruption include; Allocating corruption scams as in the case of coal block allocation scam (Common Cause v. Union of India, 2014). However, there are system viz-a-viz macro structural factors that include delay in the judicial system and low enforcing authority.²⁷

7.3.2. Balancing Judicial Activism and Overreach

Although indeed, through judicial activism considerable governance reforms have been brought about, it has also accompanied fears of judiciary's uncalled for interference. Scepticisms raised about the judiciary and the policy concern, for instance, the National Judicial Appointments Commission (NJAC) case (Supreme Court Advocates-on-Record Association v. Union of India, 2015), stands the danger of straying into the territory of the executive and legislative arms of government.²⁸

7.3.3. Backlog of Cases and Resource Constraints

India has a very large number of cases before the judiciary and this position has negatively affected the provision of justice on time. National Judicial Data Grid revealed total 40, 66,117 cases were pending across the courts of India in 2020 which highlights the importance of increase the efficiency of judiciary systems.²⁹

7.4. Comparative Insights: Lessons for South Asia

As a model to other South Asian countries, India has much to teach about good governance through the judiciary. Through PIL, judicial activism, and energetic constitutionalism, the region has role models from which to learn from, on how to handle governance issues. At the same time, the experience of India shows that the issue of independence and, therefore, the capabilities of the judicial system to correct the identified vices must be balanced with the issue of accountability for similar systems and the presence of systemic inefficiencies.

Its vigorous acts taken to foster good governance proved that the transformative Indian judiciary serves as a guardian of Constitution and also as a reformist force. By visionary decisions and other progressive means such as PIL, the Judiciary of India has been able to respond to the major governance failures like corruption, unfair policies and irresponsible management of natural resources. Although great progression has been made towards judicial reform, the embedded structure biases, therefore, should continue to be refined to further improve judicial efficiency. The

²⁷ Krishnan, J. (2020). The Struggle for Justice: Delays and Case Backlogs in India's Courts. *Harvard Law Review*, 133(5), 1253-1282.

²⁸ Dhavan, R. (2016). *Judicial Activism and Constitutional Interpretation in India*. Oxford University Press.

²⁹ NITI Aayog. (2020). *India Justice Report*. Government of India.

following sections examine how judiciaries in South Asia, in general, might build connectivity to governance lacks transforming judiciaries into inviolable democratic pillars.

8. Comparative Judicial Practices in South Asia

This paper has discussed how and in what ways Judiciaries of the South Asian Nations have supported good governance, again it has been analyzed that no two Countries in the region are same in their political, historical and institutional setting. Despite the fact that the judiciary has now become central to the resolution of governance questions, its efficacy depends on judicial autonomy, financial impunity and lack of political influence. This section offers a comparative study of judicial experiences of SAARC member countries, consisting of India, Pakistan, Bangladesh, Sri Lanka and Nepal etc.

8.1. Judicial Independence and Constitutional Frameworks

- **India**

The Indian judiciary operates under a flawless constitution which gives it the necessary freedom. The Supreme Court through such judgements including *Kesavananda Bharati v. State of Kerala* (1973), has claimed that it has the monopoly over the function to safeguard the Constitution and then the use of basic structure doctrine has been made.³⁰ Thus PIL being one more facet of judicial activism has added yet other responsibilities in governance than law making.³¹

- **Pakistan**

Like most of the third world countries, the independence of judiciary of Pakistan has been under threats especially during the military era. The principle of necessity applied in State affairs as a reason for military coups (*State v. Dosso*, 1958), The alleged bribery to the judges through cash gifts threatened the professionalism of the judiciary. Nevertheless, the judiciary regained its independence, effectively reacting to these issues in 2009, and even began to actively fight against corruption and abuses of the power by the executive branch. However, recent 26th Constitutional amendment has made changes into the composition and appointment process of Judicial Commission of Pakistan, coupled with changes in vires of Article 184(3). Now time will tell about its impacts on judicial independence.³²

- **Bangladesh**

The judiciary of Bangladesh draws its powers from a constitution and in theory ought to work independently but this has not been the case due to interference by politicians. The judiciary has not been disappointing where the country's unconstitutional actions are concerned, for instance, nullifying the Fifth and Seventh Amendments which sought to sanction military rule.³³ But its

³⁰ Seervai, H. M. (1991). *Constitutional Law of India: A Critical Commentary*. Universal Law Publishing.

³¹ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

³² Shah, A. (2019). *Judicial Independence in Pakistan: Challenges and Reforms*. *Lahore Law Review*, 35(4), 201-225.

³³ Rahman, M. (2017). *The Role of Judiciary in Good Governance: A Bangladesh Perspective*. *Asian Journal of Law and Policy*, 9(1), 89-112.

influence on governance reforms is constrained by systematic factors such as lack of resources among others.

- **Sri Lanka**

Still, the main protagonists in the governance issues have been Sri Lanka's judiciary especially during constitution making crises and post conflict rebuilding processes. However, due to the dominance of executives and political interference, its efficiency has been more of the norm. For instance, the impeachment of Chief Justice Shirani Bandaranayake a few years down the political ladder signaled the weakness of the third arm of government i.e. judiciary.³⁴

- **Nepal**

Nepal is a young federal democracy and its judiciary plays an important role of maintaining the constitutional stability. It has contributed enormously in disputes arisen regarding federalism and human rights which were instrumental in the democratic development of the Country. However, due to its limited institutional capacity as well as the resource constraints, it is unable to achieve a much wider impact.³⁵

9. Key Challenges in Judicial Practices in South Asia

In the South Asian perspective, judiciary is taken into account as a defender of constitutionalism, a pleader for good governance initiative, and an architect of democratic norms. However, the region's judiciaries are currently confronted with challenges which incapacitate their structures and undermine the quest for justice delivery. Much of this section endeavors to provide deeper insights to these key challenges.

9.1. Political Interference and Judicial Independence

This constitutional foundation can be properly understood only as resting principally on the independence of the judicial branch from the other two branches of the Government. But external political influence in appointment, decision making and administration and day to day judiciary matters is still a major problem all over the South Asian region. This erodes trust and drains the judicial ability to be bias free.

9.2. Resource Constraints and Institutional Inefficiencies

It can be explained that the assured infrastructure in the judicial system has been limited by resources as well as outdated technology to provide efficient working capacity for the judicial branch. Lack of favorable financial, technological and manpower necessities result in considerable wastage of time and energies.

³⁴ Welikala, A. (2015). The Impeachment of Chief Justice Bandaranayake and the Rule of Law in Sri Lanka. *International Journal of Constitutional Law*, 13(2), 432-451.

³⁵ Adhikari, B. (2020). *Judicial Independence and Governance in Nepal*. *Kathmandu Law Journal*, 5(1), 123-145.

9.2.1. Case Backlogs

There are significant and similar problems of the backlog of cases across different courts in South Asian regions. Currently in India, millions of cases are still awaiting trial, most of them started in the lower courts.³⁶ Similar situation exists in Bangladesh, where an estimated 3.7 million cases are pending and Pakistan is not an exception to it.³⁷

9.2.2. Outdated Infrastructure

Most of the courts which are still existing are located and operating in dilapidated structures, coupled with the lack of usable modern technology, this hampers the efficiency in delivering justice. Existing challenges of Nepal's judiciary include inadequate infrastructure – outdated and under-equipped; and low application of technology.³⁸

9.2.3. Judicial Vacancies

A lack of judges widens the problem. For instance, while India's judiciary works with a shortage of 43% of judicial vacancies authorized at the higher judiciary level, this leads to considerable prolongation of the legal processes.³⁹

9.2.4. Corruption and Lack of Transparency

This sort of corruption is completely disadvantageous for any nation's position and erodes the public's faith in the legal system. It has been alleged that there has been bribery, favoritism as well as non-transparency as far as the court processes are concerned.

9.2.5. Lack of Institutional Reforms

In the South Asian perspective, judiciary is taken into account as a defender of constitutionalism, a pleader for good governance initiative, and an architect of democratic translation. However, the region's judiciaries are currently confronted with challenges which incapacitate the region's judiciary and undermine its quest for delivery of justice.

10. India's Experiences and Recommendations

Indian experience of judiciary has been widely recognized as successful example of how to use active judicial branch for tackling the violations of democratic principles. The experience shared here can be a useful guide for other South Asian countries that will encounter similar issues. Nevertheless, the accomplishments present the following caveats which, therefore, underlines the need for context analysis and reforms in the South Asian countries and beyond. This section synthesizes major issues emerging from the Indian experience of the judicial practices and provides suggestions about judicial efficiency in South Asian region.

³⁶ NITI Aayog. (2020). India Justice Report. Government of India.

³⁷ Haque, M. M. (2018). Judicial Practices in Bangladesh: Challenges and Opportunities. Dhaka University Law Journal, 29(2), 45-67.

³⁸ Adhikari, B. (2020). *Judicial Independence and Governance in Nepal*. Kathmandu Law Journal, 5(1), 123-145.

³⁹ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

10.1. India's Judicial Practices

10.1.1. Judicial Activism as a tool for Governance Reform

The judiciary of India has shown that when the courts act proactively they can make up for lack of governance. Classics such as *Kesavananda Bharati v. State of Kerala (1973)*, which formed the part of the basic structure of the Constitution, reflect the counter-majoritarian might of the judiciary. PIL has yet again strengthened public participation in seeking justice because it empowers the citizens and civil society organizations to seek solutions of issues of concern to the public.

The PIL mechanism has dealt with numerous questions of law including environmental conservation (*M.C. Mehta v. Union of India, 1987*), workplace harassment (*Vishaka v. State of Rajasthan, 1997*), and the right to education (*Unni Krishnan v. State of Andhra Pradesh, 1993*).

The Supreme Court has especially under Articles 21 and 32 adopted an active judicial interpretation to infuse the fundamental rights with a number of socio-economic and even environmental rights.⁴⁰

10.1.2. Transparency and Accountability in Governance

The Indian judiciary has brought progressive reforms by insisting on such notions as accountability and transparency through means such as judicial checking. Through this way of checking the other arms of government, judiciary has created a way of instilling confidence in governance institutions. For example, the Supreme Court's directions in electoral reforms (*Union of India v. Association for Democratic Reforms, 2002*) extended the idea of candidates' criminal records disclosure contributing to electoral transparency.

10.1.3. Checks and Balances through Judicial Independence

The judiciary of India has indeed performed a wise and balanced over-sighting role in the conflict between the executive and the legislative branches. In NJAC case 2015 the Supreme Court upheld its independence when it nullified attempts of infringement into the judiciary's authority in regard to appointments.

10.1.4. Balancing Judicial Activism and Overreach

Thus, though judicial activism has played a central role in governance reforms, instances of judicial activism have raised discussion on judicial capacity. For example, instances of judiciary's involvement in policy making for example banning of diesel vehicles in Delhi has been viewed as infringement of authority's docket.⁴¹

11. Recommendations for South Asia Based on India's Experience

11.1. Strengthening Judicial Independence

It indicates that in order to achieve similar outcomes for South Asia, judicial independence has to be accorded supreme importance by the regional states. Political interference should be eliminated,

⁴⁰ Baxi, Upendra, *Crisis of the Indian Legal System* (Vikas Publishing House 1985).

⁴¹ Dhavan, Rajeev, *Judicial Activism and Constitutional Interpretation in India* (Oxford University Press 2016).

for which clear channels for appointment of judges akin to the Collegium System in India should be put in place. In order to traverse the mentioned degrees of politicization, the idea of suggested separate financial autonomy of judiciaries can be effective because it will lessen the dependent role of the judiciaries on the executive.⁴²

11.2. Institutionalizing Public Interest Litigation (PIL)

Introducing the PIL model used in India will increase the ability of citizens to act against failures in governance. For instance, Pakistan and Bangladesh that are still in the process of developing and implementing the PIL can add environmental and socio-economic rights to their catalog.

11.3. Addressing Resource Constraints

Therefore, the South Asian judiciaries need take more focused on issues of infrastructure, technology and human capital. This includes digitization of courts, capacity building and judges training programs.⁴³

11.4. Enhancing Accountability Mechanisms

Hence, there is the need to introduce systems to track the performance of the judiciary and tackle issues of corruption. For instance: appointing their own distinct offices which would focus on investigating cases of misconduct of judges.⁴⁴

11.5. Promoting Regional Cooperation

There is much to be learned from one another regarding judicial governance in South Asian countries. Corruption and improvement of judicial transparency may be discussed as expert-near issues in regional forums.⁴⁵

11.6. Balancing Activism and Restraint

This is where judiciaries should be very careful not to encroach. On this background, clear regulation of judicial activism is a necessity in order to retain balance of powers within the legal institution, supported by the Indian examples. It is also important to set the boundaries of activism to avoid any outreach into the policy domains of the government.

12. Conclusion

Judiciary holds an important position in shaping good governance and democratic trajectory mainly due to its role in handling generic issues like corruption, political viruses, and poor institutional mechanisms. This work has brought out how judicial systems in the region especially in India, have impacted on governance through the delivery of justice that provided for

⁴² Shah, A. (2019). Judicial Independence in Pakistan: Challenges and Reforms. *Lahore Law Review*, 35(4), 201-225.

⁴³ NITI Aayog. (2020). *India Justice Report*. Government of India.

⁴⁴ Rahman, M. (2017). The Role of Judiciary in Good Governance: A Bangladesh Perspective. *Asian Journal of Law and Policy*, 9(1), 89-112.

⁴⁵ Adhikari, B. (2020). Judicial Independence and Governance in Nepal. *Kathmandu Law Journal*, 5(1), 123-145.

transparency, accountability, inclusion and the adherence to the rule of law. Nevertheless, the comparative analysis shows that although the judiciary can be a catalyst of change the problem of regional aspects like deficiency of funds, political processes influence and bureaucratic interventions prevent it from being effective.

Law enforcement, courts and related institutions are the primary guardians of the Constitution to the effect of facilitating proper functioning of a government in democratic spirit. In India some of the important judgements like: *Kesavananda Bharati v. State of Kerala (1973)* and *Vishaka and Others v. State of Rajasthan (1997)* have amply demonstrated that judiciary does have the potential to bring positive change in governance.

However, it is noteworthy that the judiciary's radicals in South Asian countries, similar to institutions in many other nations, are twisted by political interventionism, scarcity, and ineffectiveness. India has retained a relatively autonomous judiciary, however, judiciaries in Pakistan and Sri Lanka have been confronted with the challenges of guarding the Constitution and its people from over-assertive executives on one hand and, political influence on the other. While Nepal's judiciary is relatively autonomous to some degree to intervene in or unsigned influence the reform, it has capacity issues that hinder its effectiveness.

Sound governance of South Asian states cannot be discussed without reference to the performance of the judiciary as the independent, impartial and efficient institution. Indian judiciary serves as an example for addressing the governance issues through judicial activism but the region requires overall solutions to improve judiciary. These ingredients are all powerful in ensuring that judiciaries around the world gain the strength in not only defending constitutions, but also fighting corruption and nurturing democracy.

In this manner the transformative potential of the judiciary also extends beyond the corrective of governance deficits of the political authorities. Thus, understanding India's experiences and regional issues, other SAARC countries can build better judicial frameworks and develop sustainable development and social justice.

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