

Topic: The impact of political interference on judicial independence:

Outline:

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- 1) Introduction
- 2) The Impact of political interference on the judiciary
- 3) No separation of powers between the state organs.
- 4) No Suo Motu powers for higher judiciary in Pakistan
- 5) The Judiciary should not be dependent to uphold the justice
- 6) political interference can lead to favourable decision of the Government. 6.1, 26th Amendment ^{of political interference.}
- 7) Judicial independence in Pakistan.
 - 7.1 Constitutional framework
 - 7.2 Judicial structure
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- 8) Challenges to Judicial Independence.
 - 8.1. political interference
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- 9) Judicial Response to political challenges.
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The political interference in the judiciary poses a serious threat to the rule of law, democratic institutions, and public confidence in governance. Although Pakistani constitution of 1973 guarantee judicial independence but political influence has consistently challenged the judiciary's autonomy in nation. Pakistan, has experienced more profound and sustained political interference, especially from military coup regimes. The judiciary has frequently been used to legitimize unconstitutional acts, with the famous doctrine known as 'Doctrine of necessity' being invoked repeatedly to justify their acts, with compliance of military coup. However, in a bold step of lawyers, in 2009 the lawyer's movement lawyers restored judicial independence but it is now curtailed by politics as by 26th Amendment.

The Judiciary is expected to be more independent and more likely to challenge the incumbent government. The political interference reduces the capability of incumbents to overturn the judicial decisions or interference to judicial decision, which is curtailing the separation of powers, rule of law and judicial independence. For example, The Molvi Tamizuddin case in 1954,

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in which the then chief justice of Pakistan, Muhammad Munir, along with four other judges, declared the dissolution of the legislative assembly by Governor General Ghulam Mohammad legally valid.

With political interference to the judicial in terms of any act, the principle of separation of powers is violated. Separation of powers means the three most important organs of state i.e. legislature, executive and judiciary should be separated from each other. So that each organ work within their domains. There are 3 aims of this which help to judicial independency. First, a combination of constitutional articles and judicial innovation empowered the judiciary to intervene in the actions of other branches of government. The 1973 constitution enhanced the judiciary's powers of review. This power is also known as *Suo motu*, which is now curtailed by political interference through 25th amendment.

Second, Judiciary previously separated itself from the executive, taking control of judicial appointment from the executive. However, through 25th Amendment the executive made the appointment of Supreme court and High court judges.

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Third, high court judges are primarily recruited from a legal profession where they know the legal culture. However, the separation of power is not being upheld as the executive is now have the appointments of judicial so they indirectly and directly get dependent to executive.

The political interference impacted the suo motu powers of high and Supreme Court. Article 184(3), which grants the Supreme Court suo motu powers, as its own an effective test by way of which the constitutional validity of laws and decisions made by public bodies may be reviewed. However, due to 20th Amendment now judges cannot take this suo motu action by its own unless the matter get approved by political body. Same as with High Courts, in Article 229

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which is allowed the High court to take suo motu action in any matter to check the validity of the matter which is good for the matter which are public at large matters, now this cannot be allowed. This suo motu worked as kind of a check and balance in the institutions to work properly.

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IF the Judiciary get dependent on the other organ of a State then it is likely possible, to uphold the justice very late, (i.e. Justice delays justice denied). As the Judiciary is appointed by the executive, it is likely possible they make favorable decision for that government. This is a drawback of political interference to the Judiciary, which is a threat to rule of law. This can be seen in our history like in Zulfikar Ali case, the hanging of Zulfikar Ali Bhutto was bad judicial decision, as the Judiciary get influenced by politics.

The political interference to Judiciary can lead to favorable decision of the present government. The Judiciary should be independent to take the decision in terms of rule of law, to uphold the justice. This interference create a chaos to the Society and country. The public and general masses will not trust the Judiciary as institution. They should blame both the organs. Still now the general masses and a lay man will not trust the just judicial and not respect the judicial decisions.

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In a recent move by the Government, the Government passed a Act known as 26th amendment which basically is that political interference in judicial appointments, no merit or seniority based. The Article 175A is amended and parliamentary Committee was created in which committee takes part in judicial appointment. The judicial Commission and parliamentary Committee select 3 judges & committee refer one name for chief justice of Highes and Supreme Court. Also this same amendment Article 184(3) and 199(1A) is inserted to curtail the suo moto powers.

The constitution of Pakistan 1973, after the amendment of Article 175A, the judiciary is not separate and it is not independent now. The Pakistan's Supreme Court has recognized judicial independence as part of the 'basic structure' of the Constitution, which protects it from amendments that could undermine its integrity. However, its appointment process ~~has~~ ~~is~~ ~~or~~ ~~political~~ ~~participation~~ ~~in~~ ~~the~~ ~~which~~ ~~can~~ ~~undermine~~ ~~its~~ ~~integrity~~ after 26th amendment.

The Supreme Court, is the highest court and it interprets the constitution, safeguards fundamental rights and check the legislative and executive actions in-line with constitution. It has original, appellate and advisory jurisdiction, in which original jurisdiction is the summa is not with judiciary.

The High Court, which exercises supervisory authority over lower courts. It addresses constitutional issues and ensuring access to justice. Same as the original jurisdiction of high court, the summa is no more with the high court.

The Independence is not ensure now as the appointment processes is changed with the 25th amendment, which is more selection based not merit or seniority based.

The political interference, the judiciary in Pakistan has historically faced challenges from political leaders and military regime, which have intervened in judiciary matters and influence judicial appointments. Such interferences have compromised the judiciary's independence and integrity. This could lead the judicial decision is biased for someone and favoring the other one. Means no rule of law is

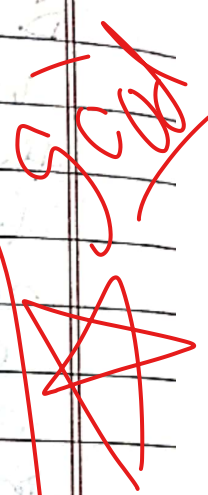
upheld.

The military's involvement in politics has significantly impacted judicial independence. The controversial Doctrine of Necessity has often been invoked to justify judicial decisions that align with military interest, further undermining the judicial autonomy. This influence can be seen in the history's decision which is undermined the state institutions and public trust, in the result of this influence.

The Judicial Accountability, the call for accountability within the judiciary has intensified, especially in light of allegations of corruption and delays in the justice system. Balancing judicial independence with accountability remains a contentious issue.

The judiciary has demonstrated resilience against political interference, exemplified by landmark rulings that assert its independence and uphold constitutional rights. Cases addressing executive overreach, and the protection of civil liberties illustrate the judiciary's role in maintaining democratic principles.

In the end, Pakistan's judiciary has experienced more persistent and profound interference, especially under military regimes. The Pakistan's judiciary continues to struggle with maintaining its independence in the face of ongoing political and military pressures. As Pakistan continues to confront these respective political challenges, reinforcing judicial autonomy remains essential for the protection of justice, fairness, and democratic governance. The political interference also curtailed the judicial independence and rule of law is a threat and which will impact the whole justice system.



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