

What is significance of independent judiciary in a democratic republic? Do you think that without an independent judiciary a system of check and balances can be established in the government? Explain with appropriate examples.

### Exordium

Independent judiciary in a democratic republic like Pakistan is the most crucial element for the well being of state. Independent judiciary help is governance and ensuring democracy in a state. Judiciary is conspicuous element but independent element of government. Judiciary consists of courts which ensures the interpretation of law in state. Judiciary creates an environment of check and balance between legislature and executive. Through out the history of Pakistan, judiciary always remain an institute of controversy. However, only independence and system of check and balance can ensure accurate job

of judiciary.

### ⇒ Significance of Independent Judiciary

Judiciary ensures law and order and plays vital role by keeping check on all institutions so,

judiciary must be free from any influence ~~and~~ ensure its job. The independence of judiciary is necessary for number of reasons including;

#### a) Rule of law

Judiciary is very important and sole responsible for exact implementation of rule of law.

Judiciary deals with interpretation of law and by accurate interpretation of law, rule of law can be ~~established~~. Judiciary

is responsible to punish those who violates law and by doing this law will prevail in society. If judiciary is not independent then rule of law can be easily influenced.

The weak independence of judiciary leads to unethical use of law

for favors of political interests. For instance, judiciary did not ensure rule of law and its weakness brought military dictator. The use of 'doctrine of necessity' is evidence of poor rule of law.

### b) Protection of fundamental rights

Judiciary must ensure accurate and authentic fundamental rights protection. The fundamental rights are given to individuals from article 8-29 in constitution of Pakistan (1973).

Judiciary steps from the violation of fundamental rights as right of one person is duty of another person.

Judiciary punishes on violation

and made it accountable. Anatol

Lievan in his book, 'Pakistan a hard country' criticizes that judiciary is

so influenced that in terror areas under militants are best in trials.

Judiciary don't ensure protection

of rights and forced people to depend

on decisions and courts established by

'Talibans' in far flung areas.

use more specific and self explanatory headings.....

#### 1) Democratic governance

Democracy needs a pure and unbiased environment and judiciary plays its role. An unbiased judiciary protects media from suppression and opposition from arrest. By doing this judiciary presents rule of democratic laws and not biased political agendas. Free media and opposition is necessary for democratic environment. Judiciary is responsible for it.

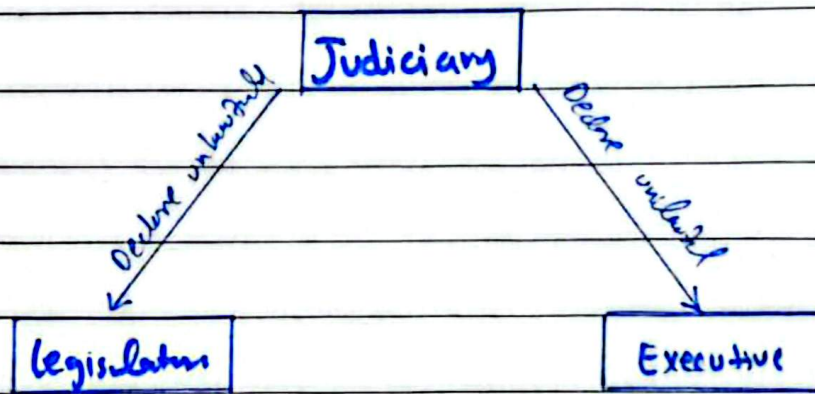
#### 2) Accountability of Judiciary

Judiciary is accountable and independent judiciary is free and confident for accountability. Judiciary can question electoral issue and corruption to win the interest of public. Judiciary became accountable when laws will establish equally for all. For instance, the dismissal of Nawaz Sharif government after Panama Leak case is judiciary's win in field of independence. Judiciary

will decide and give punishments and strength its roots.

### ⇒ Check and Balance

No, it is not possible to establish a system of check and balance in government without independent judiciary. Independent judiciary is strong enough to not be influenced. It has a check on legislative and executive. The most bookish example of it is check and balance of these three departments in US constitution. It was established by president Madison and secures the duties of all departments.



Judiciary can declare any law as unlawful act which is against the

Fundamental rights. The check of one department on the other is not given birth to balance among three, executive, legislature and Judiciary.

### ⇒ Judicial Review

Judicial review ensures the rule of law and an environment of check and balance. It was first time used by John Marshall in 1803 in a case of 'Marbury versus Madison'. It gave importance and superiority to judiciary. This is judiciary's check on executive and legislature. Executive and legislature also have check on judiciary of nominating and selecting the members of judiciary.

### ⇒ In Pakistan

The appointment of judges in Pakistan is always an unwavering question. The lack of check and balance in Pakistan is due to weak independence of judiciary. Judiciary has always

been an instrument to suppress opposition in Pakistan. There are number of reasons behind this situation. The solution of those reasons can lead to independence of judiciary and ultimately check and balance.

### 1- Tenure:

The tenure of judges must be long, as in Pakistan the age limit for 'Supreme Court' is 65 year and 62 year for 'High Court'. In US, judges are appointed for lifetime. The longer the tenure the power the judiciary.

### 2- Privileges:

The number of privileges also guarantee the independence of judiciary. It can stop others to influence judiciary. For instance, judiciary can sell decisions for material gain.

### 3- Appointment on merit:

Appointment of judges in Pakistan

Date: \_\_\_/\_\_\_/20\_\_\_

Day: \_\_\_\_\_

already faced so much controversy.

The appointment of judges must be on merit for accountability and transparency. This can build the trust of public on judiciary.

### → Power of Judiciary

- Article - 8: Article 8 of constitution of Pakistan focuses on that any law which is against fundamental rights can veto.

- Article 199: It allows the judiciary to give free decisions from any influence.

- Article 184 (3).

### Demerit

Independent judiciary is very significant for good governance and welfare of society. It must be independent for establishment of check and balance system. The pure establishment of laws and policies favoring independence of judiciary is needed. It was work as the backbone of Pakistan in the way of progress.

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