

# The Impact of Political Interference on Judicial Independence

## 1. Introduction:-

- i) Attention grabber
- ii) General statement
- iii) Thesis statement

An Independent judiciary is the cornerstone of democracy. Political interference in judicial affairs not only undermines judicial autonomy but also jeopardize fundamental rights, widens judicial gap, erodes public trust and weakens democratic instituti

## 2. Historical Background of Political Interference in the Judicial Affairs in Pakistan:-

- i) Recent scenario of 26<sup>th</sup> amendment in the constitution of Pakistan and its implications on Judicial Independence

## 3. How Political Interference is Impacting Judicial Independence:-

- i) Certain legislative measures

and political pressure compromise the judicial autonomy  
→ Article 175A, 183 under 26<sup>th</sup> amendment in the constitution of Pakistan

ii) Rise in judicial biasness leads to violation of fundamental human rights

a) Marginalization of minority groups  
→ Dred Scott decision (1857): a landmark case in US Judicial History

iii) Politicisation of judiciary widens the judicial divide that is a threat to national integration

→ Case story of Pakistan Supreme Court on reserved seats case 2024

iv) Judicial corruption and favouritism erode the public trust in the judiciary and rule of law

→ Reference from "Pakistan A Hard Country" by Anatol

Levers

v) Lack of judicial autonomy weakens the democratic institutions and increases despotism

→ Case study of North Korea

vi) Emergence of 'doctrine of Necessity' to back the unconstitutional acts of political elites.

→ Molvi Tamizzudin case, a notable example

vii) Insurgence of judicial activism and judicial movements as a counter measure

→ Lawyers movement in Pakistan (2007-2009)

→ Reference of a research article "The Impact of political Interference on the Judiciary: India vs. Pakistan"

Conclusion :-

## The Essay

Independent

Judiciary is an important organ of a democratic government. As per the theory of separation of power, propounded by the Montesquieu, the three functioning organs of a democratic state must be free from the subordination of one another. All the effectively governed states follow the rule of separation of power. But in the developing countries, Pakistan among one of them, judiciary is highly subdued by the political parties. Political parties meddling not only compromises the judicial autonomy but also impacting other social and political affairs. The notable impacts of political interference on judicial independence include judicial biasness, violation of fundamental rights, politicisation of judiciary,

erosion of public trust in the judiciary and rule of law, weakening of democratic institutions, emergence of doctrine of necessity and resurgence of judicial activism and legal movements as a counter measure.

As rightly stated by Justice Ruth Bader Ginsburg, **The judiciary**

**must be independent, impartial, and free from political influence. Without this, the rule of law and democracy itself are undermined.** To ensure the

good governance, effective policies and rule of law — necessary elements of democracy, politics should be separate from judiciary.

Before moving toward the impacts of political interference on judicial independence, it is necessary to have a look <sup>the history of</sup> on judicial

independence in Pakistan. Pakistan  
judicial system is the legacy of British  
colonial rule in the subcontinent. Historical  
pages are filled with the incidents  
when the judicial verdict favoured the  
political elites, in the same way, as  
in the British controlled subcontinent.  
Either through back door talks or  
direct legislative acts, political  
influence multiple times has impacted  
upon the judicial autonomy and  
decision making. In the recent  
phenomenon, Pakistan legislature  
has passed **26<sup>th</sup> amendment** that  
is deemed to curbe on independent  
judiciary. During the framing of  
1973 constitution, **article 175** was  
added to ensue free and  
impartial judiciary in Pakistan. While  
in the **26<sup>th</sup> amendment**, article 175  
has been completely amended  
in such a way that undermines

Judicial separation and independence from other two branches of government. The poor rule of law, political polarization and fragile democracy in Pakistan are the repercussions of lack of independent judiciary in Pakistan.

Political influence at a limited extent serves as a check on judicial authorities but greater meddling of political parties in the decision-making process of judiciary negatively impact the judicial autonomy and independence. These impacts are given below:

On the top of these impacts is the decline in judicial autonomy in the decision-making process either due to political

pressure on legislative acts. These are the tactics that are largely used in power politics to subdue judiciary so that wanted decision can be made. (For instance **Dred Scott decision 1857** is a landmark case in the history of USA when southern political parties pressurized the judges). For instance **Article 183** which granted the right of *Suo moto* decision to the judges, has taken away in 26<sup>th</sup> amendment so that judiciary would not interfere in the governmental affairs to regulate and check governance policies. Likewise, **reconstitutional of Judicial Commission of Pakistan under article 175A** is regarded as a successful attempt to control judiciary as well justice by the legislature and executive. Thus, these kinds of tactics are



used to undermine judicial power and autonomy.

The other major impact of political involvement in judiciary is the surge in judicial biasness and favoritism, which jeopardizes the fundamental human rights.

Political or ideological biasness results in granting patronage to a specific group and marginalizing the minorities. These kinds of activities erode the supremacy of law and thus act as a hurdle in the provision of free and fair justice. To illustrate the scenario, **Dred Scott decision** serves as a correct example.

Dred Scott decision is a landmark case in the history of United States judiciary. This decision highlights the impact of judges

ideological biasness, through which the majority regarded the black free slave as a permanent slave, even not a citizen of America. Therefore, judiciary decision violated the fundamental rights and marginalized the blacks in the country. They were considered as a property of south for a noticeable timeperiod due to judicial ideological and political biasness. In the summary, judicial biasness is a major threat to fundamental rights of humans and this partiality can be only be reduced by declining the political intervention in judicial affairs.

Furthermore, politicisation of judiciary splits the judges on the legal matter that is creating disharmony and

disintegration in a country.  
Politicisation of judiciary means  
where a judge political stance  
influence his ruling. The objective  
of independent judiciary completely  
fails when politicisation of  
judiciary occurs. If the judges  
divide on political matters rather  
than on legal issues then  
the supremacy of constitution starts  
dwindling. Same has been seen  
in Pakistan where the  
senior judges of Supreme  
court including chief Justice  
of Pakistan divided on  
the reserved seats case 2024  
in pro-government and anti-  
government. This politicisation  
based divide has eroded the  
judicial and constitutional supremacy  
because public does not prioritize  
judges on the basis of merit

while on the basis of their political vision. This is also increasing polarization and thus endangered national harmony and integrity.

Additionally, judicial corruption and patronage to elite class undermines the public trust in the judiciary and its decision. All over the world judges are elected to higher position as per merit and their salaries, provided by the state, are much higher than the basic needs to thwart corruption and mischievous attitude. The fact is if the judiciary—the guardian of constitution—conducts bribery and corruption then how it can judge misconduct and violation of rules of law. Because judicial corruption not only erodes the supremacy of constitution by disrespecting

the rules but also undermines citizen's trust in country's law and justice system, and promotes self-justice by military groups and tribal leaders. As stated in a book **'Pakistan: A Hard Country'** by **Anatol Leiven**: "In Pakistan, taliban justice is more prudent and fair than the courts justice. And they provide a free justice within three days while courts would empty your pockets without providing justice." This proves the stance that justice in Pakistan is only for elites and political personnels due to political patronage and kinship. The poor does not have access to free and fast justice and there is a resource proverb **Justice delay is Justice denial.** To retrieve the trust of public in judicial

system, political interference must need to be limited as much as possible in judicial matters.

Another impact is weakening of democratic institution due to judiciary dependence on political parties in their decision-making.

The democratic institutions include popular sovereign parliament - a legislative body, and executive office of the state head. These institutions strengthen by public trust and when <sup>rule</sup> of law prevails in the country then citizen's trust in these democratic institutions diminishes. The public start protest to restore democracy but the political officials instead of meeting their concerns, deal with them heavy hands and try to establish an authoritarian regime to stabilize

its control and maintain the pillar of its authority. History has witnessed the same instance in the **North Korea and Egypt**. North Korea declares itself as an authoritarian and dictatorial state while Egypt has de facto democracy but de jure authoritarianism. All kinds of anti government protests and movements are banned in Egypt. Critical censorship of media and newspapers, patronage to political elites and centralization of power along with the dependent judiciary, all are the indicators of authoritarianism. To restore democracy, judicial independence is a first and foremost step in this way.

In the same way, emergence of 'Doctrine of necessity' is

also the beholder itself to the subordination of judiciary to the political powers. Doctrine of necessity in Pakistan evolved in the spirit to back the illegal and unconstitutional actions of political elites. Throughout the historical context of Pakistan judiciary, this doctrine has been used by the judges to constitutionalized military rule in Pakistan, that is by no mean, can be considered constitutional. In all the developed and democratic nations, this doctrine is considered as an illegitimate act while the developing nations are still under the debris of British colonialism. First time in Pakistan, after the independence, this doctrine takes birth in the **Molvi Tamizzudin case** when the judges of supreme court



legalized the unconstitutional dissolution of 1<sup>st</sup> Constitution assembly of Pakistan, to favour the political elites, under the Govt. of India act 1935. Since then, the doctrine of necessity has been utilized by the political parties to fulfill their desire to rule over the judicial decisions.

In the last but not the least, judicial activism and legal movement are indebted to the declining judicial power. Judicial activism and legal movement rise due to political interference in the legal matters as a counter measure. Judicial activism empowers the judges to intervene in the governance issues and ensure effectiveness of policies. Judicial activism

first time used in USA **Marbury**  
**vs. Madison case** when American  
judges realized their responsibility  
to intervene in executive and  
legislative affairs while acting  
as a watchdog of constitutional  
supremacy. With the rise in  
political interference in judicial  
affairs with erosion of judicial  
independence, a surge in judicial  
activism in the form of judicial  
review has been seen. In **India**

as per citation of the article

## **The Impact of Political Interference on the Judiciary:**

**India vs. Pakistan**, resurgence  
of judicial activism has been  
seen as a counter measure to  
political interference in the judicial  
decisions. Similarly, in Pakistan

**Lawyer movements from 2007-  
2009** were initiated to reinstate

the then chief justice who was removed by the President Pervez Musharraf on not following his commands. Thus, the legal lawyer movements initiated to restore democracy and judicial independence had achieved their little success by reinstating the chief justice Iftikhar Chaudhary at his position but failed to achieve its longtime goals. Democracy and judicial independence would only be possible when the political intervention in the judicial matters diminished.

In a nutshell, judicial independence is very important to reestablish and strengthen democracy in Pakistan. Because the political parties and their political agendas compete with the judicial independence in the field of

power politics. Thus, political influence directly undermines the judicial authority and indirectly impacting the fundamental rights provision, judicial unity, public trust, democratic institution in a negative way. And consequently results into <sup>the use</sup> doctrine of necessity, judicial activism and legal movements in the way to restore judicial independence. As rightly said by the Justice Sonia Sotomayer;

**An Independent judiciary is the corner stone of democracy**

And it is not impossible to establish judicial independence in an independent, democratic and sovereign country.