

Topic: Impact on Political Interference on Judicial Independence

Outline

I Introduction

(a) An anecdote briefly explaining how political interference impacts judicial independence.

(b) Thesis: Where political interference clips the wings of judiciary by jeopardising rule of law of a state and fundamental rights, it also prevents judicial overreach, necessitating a balance between the two.

II The importance of judicial Independence

III The adverse impacts of political interference on judicial independence.

(a) Violates the doctrine of Separation of powers

Case in point: The political philosopher ^{Montesquieu} pioneered "Separation of power" and proclaimed it crucial for overall functioning of state.

(b) Jeopardises the democratic norms and culture

Case in point: UNGA declared 'ten essential elements of democracy' among which judicial independence is an important marker of democracy.

(c) Threatens 'Rule of Law' in a state as judiciary becomes a toy at the hands of political entities.

Case in point: The martial laws and military coups of civilian governments were legitimized by judiciary through the precarious 'Doctrine of necessity'

(d) Raises concerns about the safety of human rights and fundamental rights of citizens as judiciary is the protector of rights

Case in point: Judicial review enables justice to declare unconstitutional legislation as null and void.

(e) Clips the wings of judiciary to perform activism for the welfare of citizens.

Case in point: Judicial activism enabled the judges to perform activism outside their constitutional jurisdiction.

(f) Raises suspicions on the ability of judiciary to extend justice in cases where political entities are involved.

Case in point: By controlling justice judiciary, political actors can leverage their power to evade judicial procedures.

IV The positive impacts of political interference on judicial independence.

(a) Judicial overreach can be curbed in areas where judiciary does not have the jurisdiction to intervene.

(b) Smooth policy formulation and execution without judicial intervention

(c) Supremacy of parliament ensured.

(d) Pending cases in Supreme court and high courts will be addressed.

V Critical Analysis: Striking the balance between Independence & Overreach

VI Conclusion.

In the bustling city of Karachi lives Anna, a diligent law student who takes keen interest in political activities happening within the state and loves to pen her two cents of opinion in the column section of a local newspaper. It is ^{the} 15th of July in 1977 when Anna wakes up to the news of Zia ul Haq, the Chief of Army Staff, overthrowing the democratic regime of Zia Zulfikar Ali Bhutto. Agonised by the hit to civilian supremacy, she vehemently writes how the toppling down of the civilian government, brought through the mandate of people, jeopardises the democratic norms in a state. This is followed by days of social unrest where people coming to the streets, vandalising infrastructure, to further communicate their dislike of the heinous military coup, becomes rampant. To curb the social unrest, Zia, conveniently, imposes a martial law — another blow to the parliamentary natured constitution — further threatening civilian supremacy in a state where judicial framework is nascent. Anna, perturbed again, writes in the newspaper how a martial law signals to an emerging authoritarianism in Pakistan. But little does she know that dictatorship can be legitimized and given a political cover in states where judiciary is controlled. This was realized when the Supreme Court of Pakistan declared the martial law lawful under the famous **Doctrine of necessity** or formally known as

'Hans Kelsen - theory' This r. is an event from 1977 where martial law and military coup was given legal cover just like that in 1958 and 1999. One wonders why did authoritarianism legitimised in a country whose constitution explicitly advocates for civilian and parliamentary supremacy. The answer are the systemic flaws within the machinery of the state especially the judicial branch, compromising its independence to interpret legislation in accordance to the constitution and not whims of strong political entities. In Pakistan, the continual political interference has turned the judiciary into a toothless tiger, taking away its powers to keep a check of unconstitutional tendencies of executive and legislative tiers of government. This has resulted in the violation of separation of power as advocated by Montesquieu and hurt the democratic norms. This essay delves into the adverse and positive impacts of political interference on judicial independence and finally critically analyses how a state should endeavour to maintain balance of power among various political entities to avoid autocratic and dictatorial inclinations.

Before expanding upon the impacts of political interference on judicial independence, it is pertinent to understand the importance of judicial independence. Judiciary - one of the three tiers of government - is known to

the protector of fundamental rights of citizens, mentioned in the articles from 8 to 28 in the constitution of Pakistan. Moreover, the preamble of the 1973 constitution (present day constitution) explicitly advocates for the independence of judiciary. Its independence guarantees unbiased and unprejudiced interpretation of legal injunctions and allows it to keep a check on the legislative and executive tiers of government. If any thing unconstitutional takes place in the country, judiciary steps in, reversing the unlawful practices. It also advises legislation of a state to devise laws for the welfare of the state. Furthermore, it also restrains the autocratic tendencies of the executive tier, adhering to constitutionalism of the state. Its independence, if threatened, can have menacing impacts on the overall functioning of the state.

The foremost adverse impact of political interference on judicial independence is the violation of the doctrine of Separation of powers. In a parliamentary form of government, like that in Pakistan, a system of separation of powers among the executive, legislative and judicial tiers of government is of paramount importance. This is complemented with the independence of judiciary which takes a role to also keep the ~~ties~~ other tiers in check. This notion was ~~adv~~ pioneered for the first time by Montesquieu, a political philosopher. According to Montesquieu, an

Independent judiciary acts as a guardian of rights of citizens and maintains the supremacy of constitution. The excessive political interference in judicial matters violates the idea of separation of powers, reducing judiciary merely as a tool for the fulfilment of political objectives.

The second impact of political interference in judicial matters is the threat to the democratic culture and norms in Pakistan. Democracy propounds the supremacy of civilians and their mandate, adhering to their freedom of expression, opinion and association. According to **United Nation General Assembly**, there are ten essential elements of democracy. Among the ten elements is the independence of judiciary from all external factors. When judiciary's independence is curtailed, it can no longer protect the freedom of citizens as given to them through the constitution. It can not give any rulings against the political elite's interest even at the costs of democratic rights of citizens. Therefore, political interference in judicial matters tears the fabric of democratic culture within the state.

The third impact of political interference in judicial matters is that the rule of law in the country is compromised. Judiciary, responsible for the interpretation of laws as formulated by the parliament, ensures that lawlessness never prevails in the country. However, when political entities control judiciary, they also control

the interpretation of laws in accordance to their interests. An example of this are the **military coups of 1958, 1977, 1999**, in which judiciary played a crucial role in giving military regimes the legitimacy they lacked. This was achieved when political entities influenced the interpretation of constitution and justified their regimes through the famous **Hans Kelsen theory or Doctrine of Necessity**, calling out the civilian governments' inability to run the affairs of the state. Hence political interference jeopardises the rule of law in the state as law is non uniformly and selectively applied.

The fourth adverse impact stemming from political interference in judiciary's ambit are the concerns pertaining to the human rights and fundamental rights of citizens. In all democratic states like India, USA, the rights of individuals like right to life, property, practice religion and choice of occupation, are guaranteed to ensure a safe and inclusive society for citizens. In Pakistan, fundamental rights are elucidated in the constitution from **article eight to twenty-eight**. However, these articles are violated like in times of emergency and political crisis. This is where the judiciary steps in and takes review of abrogation of rights through its power of a **Judicial review**. It can declare an unconstitutional law as null and void or **Ultra vires**. Political interference clips the wings of judiciary to take judicial review in cases where the interests of political

elites are threatened. This in turn leads to the abandonment of fundamental rights of citizens.

The fifth consequence of this uncontrolled political interference is that it ~~reduces~~ curtails the ability of judiciary to perform **Judicial activism** for the welfare of citizens. Judicial Activism refers to the practices and acts of judges, outside their ambit of jurisdiction, in matters of socio-economic importance. An example is of this is the **collection of funds for dam construction**, proposed by a senior judge. When judiciary is subdued to political impulses, it can no longer perform activism. This leads to continued exploitation of resources and assets of the country, without any entity calling these atrocities out. This also results in the hegemonisation and centralisation of power in the hands of few who control the course of laws in the country, thereby putting the welfare of people at peril.

The sixth consequence of political interference in judiciary impacts the ability of judiciary to extend justice in cases where political entities like political mafia, politicians and strong business owners are involved. These entities leverage their influence through bribing and threatening judges to not only evade judicial procedures but also steer the directions of judicial rulings in ways they deem appropriate. An example of this is the **NRO**

promulgated in 2007 by then President Pervez Musharraf. This National Reconciliation Ordinance was intended to grant amnesty to politicians, bureaucrats and other public officials accused of corruption and money laundering. Despite the clear misuse of power, the judiciary delayed addressing the NRO for years, allowing politically affiliated individuals like Zardari to evade accountability. This represents one of the dire culminations of "**Justice Delayed is Justice Denied**", plunging the independence of judiciary at the mercy of political elites.

However, some analysts in the civil society are often found as proponents to subdue judiciary to the government of the state. The first impact that the controlled judiciary is the prevention of judicial overreach in executive and legislative ambit of jurisdiction. An example of this is the decision of Supreme Court in 2013, declaring the **Reko Diq mining project** unconstitutional and null and void. This led to the cancellation of a project which could have resulted in ^{an} enormous economic breakthrough by tapping the largest gold and copper reserves in Balochistan.

The second ~~in~~ positive impact of political interference in judicial matters is the smooth execution of policies. The incessant review and activism by judiciary has led to disruptions and interruptions in policy execution. An example of this is the **Kalabagh dam construction ruling by the Supreme Court**. The Supreme Court intervened and halted the ^{ongoing} construction of a dam,

resulting in exhaustion of resources and a consequent political stalemate.

The third positive impact ^{of political interference} that policy analysts quote is the supremacy of parliament. The preamble of the 1973 constitution declares the parliament supreme, implying that the ability of legislators, brought into power through the mandate of people, can not be challenged. Excessive checks by judiciary on parliament meant a compromise on the supremacy of parliament therefore political interference is vital in important matters.

The fourth reason why analysts favour the political interference over ^{an} independent judiciary stems from a high number of pendant cases in the supreme court and high courts of Pakistan. It is said that unregulated and unchecked independence of judiciary has resulted in the inclination of judiciary towards political cases only, taking away its attention from the cases pertaining to the civil society.

This grave duality of judiciary's independence calls for strategies to strike a balance between the independence of judiciary and regulation of judiciary through political interference. To maintain harmony, judicial accountability mechanisms such as transparent appointments, periodic reviews of performance, well-defined jurisdiction and parliamentary oversight must be strengthened. These judicial reforms

have been delineated in the recent **Twenty-sixth Amendment** in October, 2024. A separate bench of judges is allotted the constitutional and political cases, sparing the other judges time and energy for civilian cases. Currently, the backlog of pendant cases has reached a staggering 2.6 million, necessitating the continuous attention of judiciary. The periodic reviews of performance will also ensure productivity of judges and will prevent judicial overreach. It is also pertinent that the jurisdiction of various tiers be defined so that the independence of judiciary and separation of powers are certain.

To conclude, the impacts of political interference on judicial independence range from violation of separation of powers and any imminent threat of reduction of judiciary as a political tool to jeopardising the democratic fabric of society. With Pakistan's complex history of misuse of power by judiciary, some policy analysts advocate for a more regulated and check judiciary to avoid judicial overreach and maintain the supremacy of parliament. The culmination of which is the recently passed 26th amendment which aims to strike a balance between the independence of judiciary and supremacy of parliament and preserve the democratic fabric of Pakistan.