

Topic: The Impacts of Political Interference on Judicial Independence

Outline

(1) Introduction

Thesis statement: The political interference in judiciary is a chronic issue of all developing democracies including Pakistan. Political interference curb the judicial independence resulting in decline of democracy, fundamental rights, rule of law, and governance efficiency. However, Independence of judiciary can be achieved by following the principle of separation of power.

(2) 26th Amendment: A Blow to Judicial Independence

(3) Forms of Political Interference in Judiciary

- (a) Political influence on appointment of Judges
- (b) Oversight and regulation of ^{Judges} Judicial by a political entity
- (c) Depriving Supreme Court of *Suo moto* powers
- (d) Selection of Judges for hearing particular cases
- (e) Harrassing the Judges who give verdict unacceptable to ruling politicians

(4) Repercussions of Curbing Judicial Independence by Political Interference

- (a) Safety of Fundamental Rights cannot be ensured
- (b) Manipulation of Constitution becomes easy
- (c) Decline of Democratic norms takes place
- (d) Situation of Rule of law worsens
- (e) Issues of governance are exacerbated
- (f) Corruption becomes rampant in executive branch
- (g) Difficulty in resolving conflicts among Provincial and federal governments

(5) Pragmatic Measures to Ensure Judicial Independence

- (a) Ensuring the Balance of power among 3 state organs
 - (b) Case study of American Judiciary and separation of power
 - (c) Devising a clear criteria for appointment of Chief Justice
 - (d) Increasing stake of Judges in judicial commission
 - (e) Ensuring the Tenure security of Judges
- (6) Conclusion

The Theory of Separation of Power given by Montesquieu is considered as a hallmark of democracy. The theory proposed the complete separation of power among three organs of state: legislative organ, executive organ, and judicial organ. It was aimed at diminishing the interference of one organ to the affairs of others. Pakistan is a democracy and can prosper by applying the theory in true letter and spirit. However, judicial branch in Pakistan is not free from political interference. There are allegations that legislative and executive branch unduly interfere in judiciary. This interference curbs the judicial independence by politicizing the process of appointment of judges, ^{and} regulation of judges. In this backdrop, 26th amendment is considered to be a blow to judicial independence. It has deprived the ~~suo moto~~ power of supreme court from its power of suo moto. Furthermore, judges are routinely harassed for not giving verdicts acceptable to those who rule. Consequently, judiciary finds it difficult to ensure the safety of constitution and fundamental rights. Democracy tends to decline and

Situation of rule of law worsens. Similarly, governance efficiency declines due to weak judicial check. However, some pragmatic measures can be taken to uphold the judicial independence such as merit based appointment of judges, ^{and} ensuring a safe tenure of judges to prevent political interference. In short, by following the principal of separation of power, judicial independence can be attained.

The independence of judiciary and political interference in judiciary have become hot topics nowadays. The reason behind this is the passage of 26th amendment in the constitution of Pakistan on October 21, 2024. A major chunk of this amendment deals with reorganization of judiciary. Amendment in Article 175 of ^{the} constitution is considered to be the most significant in this backdrop. The proponents of the amendment state that the amendment will streamline the judiciary, reduce delays and pendencies in courts, and ^{prevent} avoid the (distractions ~~to the~~) judges to be distracted. However, the opponents of the amendment consider it as a serious blow

to the independence of judiciary. They argue that political appointment of judges, formation of constitutional benches, and removal of *suo moto* authority are measures to curb the judicial independence.

There are various forms of interference in judiciary, chief among them is the political influence on appointment of judges. When the judges are appointed through political influence, their verdicts ultimately tilt in the favour of those who appoint them. Before 26th amendment, Chief Justice of Pakistan ^(CJP) was appointed on the basis of seniority principle. However, after the amendment, the CJP will be appointed from the top 3 Supreme Court Judges based on the criteria. The executive ultimately gets more stake in the appointment because the evaluation of judges on criteria will be done through political entity. Apart from CJP, other judges of Supreme Court and High Courts will be appointed through Judicial Commission in which majority of members are from political arena. Hence, judicial independence has been reduced by giving more stake

to politicians in appointment of judges.

Other than appointment of judges, the evaluation of Judges of High Court by judicial commission is considered as a major setback to judicial independence. This measure taken through the amendment can be manipulated by the politicians for the political gains. They can easily disqualify, transfer, or stop the promotion of judges. As the ^{proem} chances of promotion becomes politicized, the judges will tend to give judgments in order to please the politicians to secure promotion. Hence, it goes beyond saying that the provision of 26th amendment which mandated the judicial commission to evaluate the performance of judges is a major setback for judiciary.

Another provision of 26th amendment has been taken as a check to judicial independence which deprives the ^{supreme} court of its power of suo moto. The power of suo moto helps Supreme Court to taken action against any

action which is perceived as a threat to constitution and fundamental rights. It is a prevalent thought that this provision render the judiciary as a toothless organ. Because, the Supreme court cannot take actions on any ease now. The International Court of Justice has criticized the amendment and called it a threat to ~~democracy~~ democracy and judicial independence.

Along with the given setbacks, the power of supreme court has been divided by creating a parallel body known as **Constitutional Benches**. These benches are mandated to hear the constitutional cases only. First of all, the creation of this body has resulted in confusion, and overlapping of jurisdiction among the suborgans of supreme court. Moreover, this division results in political influence on selection of judges who will hear the most important cases of constitutional nature. Resultantly, its efficiency ^{is going to be} declined because of this division. Hence, political interference through constitutional benches curbs the independence of judiciary of

impartial hearing of constitutional cases.

Apart from 26th amendments many other tactics are used to pressurize the judges including harassment. There is a long history of judicial manipulation by harassing the judges and their closed family members. They are forced to give the judgements in favour of politicians. In simple words, judges are not free to hear the case and give verdict impartially and fairly. Recently, the ^{brave} judges of High Court ~~arise~~ took the issue into light by writing letters to Chief Justice of Pakistan for taking actions against the people responsible for the harassment. This shows that political interference is a major hurdle in independent judicial hearings and verdicts.

These forms of
This political interference curb the judicial independence, which, in turn, have serious repercussions for the state. A so major repercussion is the inability of judiciary to ensure the safety of fundamental rights. Supreme Court of Pakistan is mandated to

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prevent the government's encroachment on fundamental rights of the people of Pakistan.

If the Supreme court is under the influence of politicians, it cannot protect the rights of people by giving judgments against the government. As the appointment of judges and their evaluation is highly politicized, judges fail to uphold the people's rights. Thus, in a politically influenced judicial environment, fundamental rights of people cannot be secured.

Similarly, the safety of constitution is also compromised if the judiciary is not full independent. Judiciary is the custodian of the constitution and is liable to protect it from any undemocratic changes in constitution through judicial review. In Pakistan, this power of judiciary has been compromised by creating separate constitutional benches. The constitutional judges are also appointed by the politicians who will appoint only those who will justify their moves. This political influence is not new to the Pakistan's judiciary. Historically, the judges of

Supreme court repeatedly justified the unconstitutional moves of the rulers. For instance, they use the Doctrine of necessity to give the legal cover to the martial laws and abrogation of constitution under the political pressure. In a nutshell, political interference in judicial matters is a threat to the constitution of Pakistan.

Furthermore, the political interference in judiciary undermines the hallmark of democracy: separation of powers. Judiciary completely separate from executive and legislation can work effectively, efficiently, and impartially. But this balance of power is disturbed by the encroachment of politicians on judicial matters.

By A separate judiciary has powers to appoint its own judges through judicial scrutiny and evaluate the performance of judges as well.

Unfortunately, the appointment of judges and evaluation has become politicized resulting in reduce independence of judiciary. In short, the 26th amendment and the political interference

They are proved to be a cause of democratic decline in Pakistan. According to Economist Intelligence Unit, Pakistan has downgraded from ~~an~~ hybrid regime to authoritarian regime (EIU, State of Global Democracy, 2023). Thus, political interference in judiciary is one of the factors of declining democracy in Pakistan.

Apart from democratic norms, the independence of judiciary is very important to ensure rule of law in the country. An independent judiciary can only maintain the rule of law. The ^{rising} political interference results deteriorating situation of rule of law. Pakistan ranks 129th out of 142 countries with the worst rule of law situation. One of the reasons behind it is the politicians' defiance of court verdicts. Recently, the government ^{defied} ~~defy~~ the ^{supreme} court verdict in the case of reserved seats. This defiance results in sparking of political protests and civil unrest. In short, judiciary plagued with political interference cannot ~~ens~~ uphold the rule of law in the state.

Moreover, the efficiency of governance declines due to little judicial check as a result of political interference. The supreme court can contribute to the governance and efficiency through its *suo moto* power.

The government institutions worried about judicial check try to comply their duties.

However, the 26th amendment deprives the supreme court of its power of *suo moto*.

Now, the government institutions are no more concerned about the judicial scrutiny. That is why, the efficiency of governance is projected to decline. Thus, a weak judiciary results in poor performance of government institutions.

Similarly, political interference also caused the judicial partiality in case of federal provincial government conflicts. The supreme court is thought to give verdicts in the favor of federal government. For instance, in the Federal court overruled the Sindh High court verdict in the favor of government in case of dissolution of constitutional committee in 1951. This shows that judiciary cannot

be play a role of impartial arbiter due to influence caused by politicians.

In order to secure judicial independence, various pragmatic measures can be taken. The major step to be taken is balancing the power among three state organs. This can be done by legislating the ^{laws} provisions which ensure the separation of power. In this backdrop, the American Separation of ^{Power} Paper is a role model to follow. In America, all three organs are completely separate. Judges of the Supreme courts of the states are elected. Moreover, the tenure of Supreme court's judges is very safe as they are appointed for lifetime. This helps to prevent political influence. Thus, separation of power can be ensured by following the model of American separation of power.

Moreover, the appointment of judges must be merit-based, impartial, and free from political influence. This can be ensured

by devising a clear formula for selection of judges. Moreover, the number of judges should be increased in judicial commissions as judges, aware of the judicial environment, can efficiently evaluate the judges as per the given criteria. In short, judges' appointment should be free from political interference.

Last but not the least is the security of tenure of judges. It will help them to give judgments impartially.

In summation, judicial independence is curbed by the political interference. Result is the decline of democratic norms, fundamental rights, and governance efficiency. However, the independence of judiciary can be achieved through principle of separation of power.