

# The Impact of Political Interference on Judicial Independence

## Outline

### 1. Introduction

#### Thesis statement:

The seourge of political intrusion disrupts governance structure, politicizes judiciary and subverts fundamental human rights. However, A fair compliance of certain pathways can ensure separation of powers and smooth governance.

### 2. What are impacts of political interference on judicial independence?

a. Judicial polarisation : a manifestation of political interference

b. Biased decision making owing to political intrusion

c. Red-tapism : a politicised tool used by judiciary in delaying cases

d. Judicial murders : a manifestation of politics  
case in point : Zulfiqar Ali Bhutto case

e. Interests-based legislation sabotages democratic framework

f. Politicised judiciary : a major blow on fundamental human rights.

g. Corrupt practices malwares judicial functioning

h. Judicial lobbying : a product of political intrusion.

i. Political interference blurring the line of jurisdiction of cases

j. Judicial activism driven by political influence

k. The menace of horse trading driving judicial inclination

3. What are strategic directions to curb political intrusion and judicial politicisation?

a. Strict legislation to ensure devolution of powers

b. Forestall judges from unnecessary networking

c. Filter social media to curb propaganda against judiciary

d. Regular streamlining of controversial political cases

4. Conclusion

At its core, democracy ensures devolution of powers and shuns centralization of powers. But what if parliamentary sovereignty supersedes judicial sovereignty? An aura of contentions and contradictions emerges. Political intrusion strikes down the prestige of judiciary.

As it foments biased decision making and judicial partisanship. Moreover, the lacunae in the

relationship between three arms of state are exploited to a larger extent. In this race of interests, the right to a fair trial becomes a pipe dream for the populace.

Furthermore, this menace renders liberties of individuals in shambles, undermining their constitutional rights. Besides, patronage culture and colonial remnants of politics further drives interests of

Judiciary. With that, in such aura of woes, the right

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to information subverts. Moreover, the judicial censorship becomes a new normal. Will forestalling judges from socialisation put an end to political interference? Will regular streamlining of controversial cases ensure transparency and democratic stability? Nevertheless, the scourge of political intrusion disrupts governance structure, polices judiciary and subverts human rights. However, a fair compliance of certain pathways can ensure separation of powers and smooth governance.

First and the foremost aftermath of political interference is polarised judiciary. Polarisation reflects dissection of interests and motives of different bodies. The menace of polarisation not only remains confined to politics

but extends to benches of courts. For example, the recent 26<sup>th</sup> amendment of constitution of Pakistan allowed the cherry-picking method for appointment of Chief Justice of Pakistan. It was very controversial amendment, causing nation wide-protest.

Some analyst argue this amendment has shown judges the way to find their political elite to ensure their promotion. Thus, it is beyond reasonable doubt that political interference in the judicial matter results in polarised judiciary.

Furthermore, political interference creates biased decision making.

Biased judgments is not a recent issue but a colonial remnant of Pakistan. For instance, the sanction for martial laws in Pakistan is the product

of political intrusion. The martial law of Ayub Khan was sanctioned by the apex court of Pakistan. Moreover, the interests of political elites and judicial officers always supersede the rule of law and meritocracy in such scenarios. Therefore, it can be asserted that when judiciary becomes polarised biased decisions becomes a new normal.

A part from it, red-tapism is a politicised tool that is exploited by judiciary and justice is delayed. According to a saying, justice delayed is justice denied. Red-tapism is a colonial remnant of Pakistan that requires unnecessary paperwork and documentation for petty ventures. According to dawn, the ex-prime minister

of Pakistan has kept imprisoned and his trial is denied to ample formalities and paper-work. According to lawyer, judiciary remains inclined to their political elites despite fulfilment of all requirements of cases. Thus, it is evident how judiciary exploits such petty tactics to make decisions beyond plausible justification.

Moreover, judicial murders becomes normal when political interference emerges. Judicial murder is merit-less sentence that is either driven by interests rather than merit and reason.

The long controversial case of ex-prime minister of Pakistan Zulfikar Ali Bhutto who was sentenced to death due to political instability and biasness of judiciary. The history of



Pakistan witnessed ample of judicial murder. Hence, it can be argued that race of motives, interests and inclination can cost many lives, undermining the role of judiciary and its functioning.

Moreover, interests-based legislation disrupts democratic framework. The essence of democracy lies in the devolution of powers and avoiding fusion of power. In essence, legislature is exploited to further their political interests in a censored way. For example, the enactment of National Reconciliation Ordinance became a law that conferred impunity to ex-prime minister of Pakistan, Benazir Bhutto. As per sources, her exile was ended and she started her political career under the

patronage of NRO. A huge number of petitions were filed against her but judiciary was bound by law. Thus, such legislations provide a major blow to judicial independence.

With that, politicised judiciary renders fundamental human rights in shambles. Fundamental human rights are constitutional rights that protect the very interests of populace. When politics is embedded in judiciary a wide manacle of rights is witnessed. For example the abrogation of article 370 and 35-A by Indian supreme court was orchestrated by BJP government. It led to wide-range protests and illegal detentions of masses. Thus, it can be contended

that politicised judiciary forges biased decisions dictated by their political elites.

Having defined the impact of political interference on fundamental rights, corrupt practices malwares judicial functioning.

Corrupt practices includes the acts and omissions that are beyond moral values and norms.

According to a analysts, the political arena of Pakistan has become very stowned due to populism and polarised politics.

According to dawn, populism that emerged in 2018 has caused judicial inclination towards the charismatic leader due to ethnical links and networks. Thus, it can be contended that such immoral acts can becomes a threat to future of

## Judiciary of Pakistan.

Besides, judicial lobbying is a result of political intrusion in judicial matters. The inclination of judicial officers is not a recent thing. According to etribune, the election of president in US in 2016 was challenged by many lawyers but the trumpism in US superseded the violation of electoral laws and confirmed that the rivalry of conservatives and liberals can forge the future of nation. Therefore, it can be asserted that judiciary become stigmatized when their inclination supersedes the very essence of rationality.

A part from it, political interference blurs the distinction

activism is the leading role of judiciary in the governance matters. Where political instability prevails, the judiciary becomes the leading body of the nation. For example, the no confidence motion against the Benazir Bhutto and sudden shifts in power caused judiciary to hold the strings of nation. In such scenarios judiciary takes suo-moto action and legitimise a coup or authoritarian rule of personal interests. Therefore, the political interference in the matters of executives and judiciary leads to judicial activism.

With that, the menace of horse trading becomes the driving force of judiciary. The exercise of horse trading

of jurisdiction of cases. Jurisdiction of cases is clearly defined in the Limitation Act but yet still Pakistani judiciary grapples with the original jurisdiction of cases. For instance, the issue of military courts under limelight reflects almost biasness in the arena of Pakistan. Military trial is only inducted upon person of armed forces as per army act, 1952. However yet still the captives of incident of 9<sup>th</sup> may are being tried under military laws. Thus, such unacceptable decisions can undermine the right to fair trial. In short, politics makes judiciary in ambivalence.

In Addition to it, judicial activism appears to be play of political intrusion. Judicial

is a colonial legacy for Pakistan that is still followed with consistency. The floor-crossing is the act that is caused due to horse-trade. It is metaphorical term to form a consensus through monetary exchanges. For example, the enactment of 26<sup>th</sup> amendment of constitution of Pakistan was initially legitimised by legislature and then ratified by judiciary. It is further argued that the wealthy politicians makes immoral judicial officers prone to such advantages and benefits. Hence, horse trading creates judicial deception and censorship.

Having defined the horrible repercussions of political interference of judicial independence,

the way forward shall be brought to light.

First and the foremost pathway to ensure an environment free from bias is to enact strict laws to halt the centralisation of power.

According to the theory of Montesquieu, there are three arms of state; legislative, judiciary and executive. He argues that a nation becomes autocratic when one arm intrudes in the functioning of the other.

Therefore, a strict legislation must be introduced that dictates the actions of arms and confining them to their domain. Why legislature feels the need to amend practice and procedure codes of courts. Thus, such enactment will



surely bore fruits to Pakistan.

Going down the ladder, judges must be halted from the unnecessary socialisation. The act of socialisation becomes the impetus for politicisation. To ensure the judicial esteem and impartiality, judges must be made very restricted to certain areas. According to rules of judicial officers, a civil judge is barred from unnecessary gatherings and assemblies. Beyond doubt that it contains the liberty of individuals - officer but the national interest must prevail. In reality, the judges are seen violating their rules and procedures. Thus, it must be ensured that a strict security be exercised over judges.

A part from it, social media platforms are widely exploited by politicians to stigmatize the judicial esteem. For example, the prevalence of notion of media being subservient to political elites is alarming. When the media is not free in a democracy still alive, thus media must be filtered through laws. When political views of politicians are not complied by judiciary, the tool of social media is used against judiciary. It is further evident from the stigmatization of CJP Chazi Faiz esa and Ex CJP Saqib nisar that how media is exploited in malofiding judiciary.

Lastly, the regular

streamlining of cases may or can restore the prestige of judiciary. The streamlining of case proceedings ensure the right to information to populace and allow them to trust their institutions. For example, in UK that is the democracy in the world. It allows courts to regularly streamline the case-proceedings to ensure transparency, rationality and compliance of legal principles. In the same manner, the public distrust must be abolished through streamlining of at least controversial cases.

Hence, it can be contended in the long run, this consistent exercise will restore judicial independence, containing political intrusion to a greater extent.

information to the populace,  
a fair and just future  
of nation can be anticipated.

In conclusion, the politics undermines the prestige of judiciary, rights of individuals, trust of individuals on governance institutions. Furthermore, the role of judiciary becomes subservient to their political elites. It enhances emotions-driven governance over the meritocracy and reasons.

A part from it, it creates factions in governance, distorting the idea of devolution of powers. In addition to it, the idea of judicial activism takes the lead and distort democratic framework intrinsically. To cure, judicial accountability, ban on social media to be introduced. By ensuring fundamental right of