

Is Pakistan's Judiciary truly independent or Merely Autonomous in theory?

Outline

(A) Introduction:

- 1- There is no liberty if the judiciary is not separated from the executive - Montesquieu
- 2- What is Judicial independence?
- 3- Background of Pakistan's Judiciary system
- 4- Stance: In Pakistan judicial autonomy is only exists on paper
- 5- Thesis Statement

(B) Arguments Supporting the Thesis:

1- Constitutional Guarantee vs Reality:

- (a) Constitution guarantees autonomy but judges face political, executive, military pressure. limit Judicial autonomy
- (b) High profile cases show decisions influenced by external forces (Zahira Jaffer case. Presidential Pardon limit Justice)
- (c) Judges face transfers or pressure that curtails judicial independence

2- Impact of 26th Constitutional amendment on judicial independence

- (a) Politicization of judicial appointments by restructuring judicial commission of Pakistan
- (b) Limitations of *Suo Motu* power reduces CJ power to act on public interest
- (c) Shortening tenure of Chief Justice weakens leadership stability
- (d) Selection of Chief Justice of SC by parliamentary committee is viewed against the trichotomy of power

(3) Impact of 27th Constitutional amendment on limiting judicial autonomy:

- (a) Creation of Federal Constitutional Court
Shifts power from SC to new body: limits judicial autonomy which contradicts the original constitution
- (b) Executive power over judges: President can transfer, appoint judges curtailing the power of Judiciary over decision making
- (c) Further reduction of *Suo-Motu* Jurisdiction; a major step towards holding judicial independence

(4) Political and Military influence over judiciary:

- (a) Military courts establishment reduce the authority of judicial independence
- (b) Civilian courts cannot overturn the military courts decision, reducing judiciary's role
- (c) Indirect Military pressure on judges reflects independence is theoretical

(C) Counterarguments:

1- Claim: Amendments introduced reformed that held courts accountable

Rebuttal: Accountability does not require political control

2- Claim: Involvement of Parliament in judicial appointments strengthen democracy by public participation in decision-making

Rebuttal: Democracy requires separation of power, political appointments risk bias

3- Claim: Military courts ^{involvement} are required for terrorism and National security

Rebuttal: Military courts bypass civilian courts erode national oversight

4- Claim: Restricted suo-motu prevents judges from taking unnecessary decisions

Rebuttal: Suo-motu powers are vital for protecting public interest.

5- Claim: Structural reforms (FCC)

Streamlines Constitutional adjudication

Rebuttal: FCC weakens the TOP Court's authority

(d) Conclusion:

1- Restating Thesis

2- Summarizing arguments

3- Call to Action

The Essay

"There is no liberty if the judiciary is not separated from the executive." ~~Montesquieu~~

Judicial autonomy refers to the process of judicial independence from executive and legislature. Judicial autonomy is one of the key pillar of democracy. Judiciary ~~must~~ be separated from law making body and executive authority. A country can not progress if its judiciary is politicized.

It must be meant to check the ~~power~~ on executive and legislature. It must ensure that laws are fairly and equitable applied to the citizens. It must ensure the fair interpretation of the constitution. However, in Pakistan,

though judiciary is constitutionally ~~gauranteed~~ on papers but in reality it only exist on papers. Constitution of Pakistan gaurantees judges to act independently through decision-making, leadership and fixed tenure. But it erodes when judges face pressure from elite class. Continuous erosion of judicial independence in practical is done by various ~~constituti~~onal amendements that ~~deteriorate~~

the true spirit of democracy. 26th and 27th constitutional amendements are noteworthy which goes against the Article 177, 175 of the 1973, constitution of Pakistan. Politicization of judicial appointments, curtailment

of *Suo Motu* power, limiting tenure of CJ, selection and appointment of judges by parliamentary committee, structural reforms by establishment of FCC, influence of executive over judges transfer and power, establishment of Military courts bypass the national oversights are the hindrances in the way of judicial autonomy in practical.

Major reason in the way of judicial independence is political, executive and military pressure that influence the high profile cases and decisions. It limits the decision-making power of Supreme court and high court judges, limit judicial autonomy and erode public trust on the justice.

An important high profile case of **Zahir Jaffer** depicts the influence of political clout over justice. The culprit involved in a case of horrendous murder but delaying in justice process relates to the political and elite class pressure for pursuing a political presidential pardon limits independent judicial decision. Moreover, judges face pressure of transfer and early retirement if they don't follow the suit of executive and elite class in Pakistan. Involvement of judicial commission further ^{civilians in} _{politician} undermines the judicial autonomy. Thus, Constitution of

Pakistan according to article **171** and **175** guarantees the judicial independence but in practical it is not fulfilled. The gap between constitutional promise and practical functioning demonstrates why the judiciary in Pakistan is not always acted as fully independent institution.

The **26th** Constitutional amendment further highlighted the gap between judicial independence on paper and in practice. The 26th constitutional amendment reflects the politicization of judicial appointments by restructuring the judicial commission of Pakistan. Moreover, limitation of *Suo-motu* power reduces chief justice power to act on public trust. It is a major setback to judicial independence and erosion of public trust. Furthermore, shortening the tenure of Chief justice of Pakistan to only 3-Years weakens the leadership stability. Fluctuations in Chief justice appointments undermines the pending cases and executive can temper with decisions of cases which further undermines justice in Pakistan. In addition, establishment and involvement of Parliamentary committee for the selection of Chief justice undermines merit-based selection and increase the influence of political and

parliamentary members in appointing judges. Overall, all these amendments are against the original constitution of Pakistan which guarantees the judicial independence. These all reforms consolidate the political influence over the judiciary, making it extremely difficult for courts to act independently.

Another major blow to judicial autonomy that guarantees on paper only is 27th constitutional amendment. Creation of Federal constitutional court shifts power from Supreme court to new constitutional body. The enactment of this constitutional amendment undermines the judicial independence of Supreme court. Moreover, executive power over judges in practical is increased, in paper it may seem to be justified for accountability but in reality it is completely eroded. Appointment of judges by executive undermines the merit-based selection. Only judges can comprehend the intellectual power of a judge to be appointed on the basis of its earlier experience and knowledge. Executive does not have this power of judgement. Further reduction of power of suo-motu cases is another major step towards holding judicial independence. Together all these factors limit significantly the independence of judiciary.

Conclusion:

The constitution of Pakistan guarantees judicial independence through articles 177, 175, 180 and 199 but the reality is starkly different. Political and executive pressure, coupled with the structural changes introduced by 26th and 27th amendments and the creation of FCC Court, establishment of Military courts, restriction of Suo Motu power, parliamentary appointments of judges have significantly undermined the both the authority and autonomy of judges. As a result, judiciary remains **autonomous in theory but not truly independent in practice.** To safeguard the rule of law and uphold the justice, it is imperative to reduce the interference of political and executive bodies, maintain constitutional safeguard and ensure transparency in judicial appointments. Ultimately, **"a judiciary that bows cannot safeguard justice"** and Pakistan's court must be empowered to act independently if the country is to preserve its democratic principles by true means.

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