

Political Capture of Judiciary A Challenge to Democratic Governance

Outlines

(A) Introduction:

- 1- There is no liberty if the judiciary power is not separated from the legislative and executive" - Montesquieu
- 2- Deciphering the term "political capture of Judiciary"
- 3- Role of Judiciary as a pillar of democracy
- 4- Thesis statement

(B) How the Political Capture of Judiciary is a Challenge to Democratic Governance:

- 1- Erosion of rule of law: courts issue politically motivated rulings
 - a) 27th constitutional amendment in Pakistan, significantly altering the judicial structure
- 2- Weakening of accountability: limited checks on executive and legislature
 - a) In Turkey (Post 2016), purge of 4000 judges and prosecutors limit check on executive and legislature
- 3- Threat to fundamental human rights
 - a) Hungary (2010-2020), constitutional court favoured government policies restricting

media freedom, PECA amendment (2024)

4. Prioritizing political elites interest over People's interest

a) Limiting ~~Suo Motu~~ powers of judiciary via 27th constitutional amendment in Pakistan.

5. Delayed justice of political sensitive cases due to political overreach

a) Zaheer Jafir politically influenced case.

6. Legitimization of unconstitutional acts, courts validate executive overreach, a challenge to democracy

a) Molvi Tameezuddin case, Darso case

7. Encouragement of Corruption: impunity for high-ranked officials from persecution.

a) Latin America, "court packing" allowed Presidents to bypass investigations

8. Weakening of democratic norms via antidemocratic constitutional amendments

a) Highly controversial amendments of Pakistan (26th amendment), Turkey (Post 2017 constitutional referendum)

9. Erosion of judicial Credibility via political influence of powerful officials

a) ICJ judges tend to rule in favour of states that appointed them (Eric Posner research)

(B) Safeguarding Judicial independence and preventing political capture:

- 1- Transparent appointment of judges; prevent political favouritism
 - a) India's collegium system aims to select judges on seniority bases
- 2- Preventing arbitral removal of judges favours democracy
 - a) In Germany, judges in FCC are secured till retirement
- 3- Institutional mechanism against political interference
 - a) South Africa's Judicial Service Commission oversee executive influence
- 4- Civic awareness to ensure people's interest based decisions
 - a) Lawyer's movement (2007-2009) successfully resisted attempts to undermine judicial independence
- 5- International standards; obligation to each member state
 - a) OECD guidelines, UN Basic Principles on the independence of judiciary (1985)

(D) Conclusion

- 1- Restating Thesis statement
- 2- Summarizing political capture of judiciary consequences to democracy
- 3- Summarizing reforms

The Essay

"There is no liberty if the judiciary power is not separated from the executive and legislature!" - Montesquieu. Political capture of judiciary is politicizing the judicial powers. Democracy of a country is based on the trichotomy of powers that is separating three main organizations of a Stat; Legislature must be confined to law making, Executive must not override legislature and judiciary whether it should only ensure the execution or enforcement of laws in a country, and Judiciary must be impartial and unbiased, free from political clout influence and Parliamentarian overreach. These three institutions must be capable of checking powers of each other, that is how a democracy flourishes in a country. Unfortunately, world is not wholly follow the pillars of democracy and in order to pursue their interests, executive or legislature politicize the judiciary. In this way, judicial independence is undermined.

Political capture of judiciary challenges the democracy by erosion of rule of law, weakening of democracy and accountability, by threatening the fundamental rights of human, prioritizing elites interest

Over people's interest, delaying justice of political sensitive cases, legitimizing unconstitutional acts, encouragement of corruption, antidemocratic constitutional amendments, erosion of judicial credibility vial powerful officials.

One of the main factor which becomes the cause after politicization of judicial independence is erosion of rule of law which undermines the democracy of a state. Ensuring the rule of law is as much important as making a law in a parliament. Courts issue politically influenced rulings which deteriorate the democracy. **27th constitutional**

amendment is the landmark historical amendment in the history of Pakistan. It flared the public outrage because it restructures the judiciary which is in favour of political officials interest. Formation of FCC, judicial appointments by legislature members and senate members, politicizing election commission of Pakistan, limiting the tenure of judges all such statutes are impeding the government of the people, by the people and for the people. Such institutional policies are a clear evidence of political capture of judiciary and depicts that judiciary is no longer independent in a country.

Rule of law when eroded in a State it prevails chaos in a country, people no longer trust their institutions, a wide gap is created between the masses and the rulers and a major setback to the democracy.

Another challenge to democratic governance via politicization of judicial independence cause the weakening of accountability mechanism.

Accountability is an obligatory framework of a State. If accountability is weakened a state is no longer different from a jungle where no one is held accountable for their injustice, oppression and unfair practices. Weakened accountability mechanism limits the checks on the law making bodies and the law execution bodies.

In Turkey (Post 2016), purge of 4000 judges and prosecutors accompanied the judicial independence.

After overthrowing the military influence president overthrew the 4000 judges and prosecutors for getting impunity of being persecuted is a landmark historical evidence how governments eroded the spirit of democracy in a state which stopped from being flourished. Democracy ensures the judicial independence it obstructs the executive to

Overreach their authority. But when executive overrides the institutions which interpret the constitution it impedes democracy. A central authority must obey the rules of democracy whether it is autocratic or oligarchy government. Democracy must be flourished.

Moreover, democracy challenged by political capture of judiciary when it threaten the fundamental rights of ~~de maner~~ ~~Human rights~~ is a main pillar of democracy.

UN convention of human rights severely criticized the violation of human rights. If the human rights are not secured in a state, that state is not being able to call itself a democratic government. A historical case study which proves that how political officials breach the democratic norms when they suppress the dissent is **Hungary (2010-2012)** constitutional court **favoured government policies restricting media freedom.**

Media is an important tool to air the voice of people's opinions, their views, their protests and how they shape the states narratives. But when government suppress the voices of dissent it limits the rule of the people means it confiscate the spirit of

the democratic government. Similarly, a highly controversial **PECA (2024)** amendment in Pakistan is criticized by masses because it controls the people's voice, it is a ~~tool~~ of suppressing dissent. So, when government influenced policies restrict the masses' voices by using the judiciary as a platform it severely impacts the democratic governance.

In addition, prioritizing political elites interest over people's interest when government overshadow the judiciary it obstructs the democratic governance in a country. Democracy becomes dysfunctional and institutional frameworks becomes a carefully staged charade. A clear and obvious understanding can be obtained by **curtailing suo motu powers of judges by limiting judicial review via 27th constitutional amendment in Pakistan**; democracy is severely breached. Suo Motu is necessary by considering and prioritizing public's interest by bypassing political elites interest. But, curtailment of suo motu power is a setback to democratic governance in Pakistan. It will limit the judicial independence and favours the political officials to mould the decisions

according to their interest various
Suo Motu cases persecuted the corrupt
practices of the officials and held
them accountable such as **Panama**
cases and offshore companies.

However, when Suo Motu powers reduced
democratic governance becomes limited.

Delayed justice or judicial
blockage by political elites regarding
political sensitive issues is an obvious
point how political capture of
Judiciary is a challenge to
democratic governance. Various cases
become highlighted due to social
media circulation and public outrage
which can undermine the credibility
of a political person, a **feuda**
lord or a businessman. The upper
strata of society try to persuade
political officials to turn ruling
in their favours and then
political officials pressurize judiciary
to rule the decision according
to their will. "We live in that

**World where rules are only for
poors."** - Abdul Sattar Eidhi. Numerous
cases sparked by public outrage
by suppressed by political bodies.

A historical murder case of **Noor**
Mukhammad and **Zaheer Jaji**
Case is delayed, judiciary is
failed to held accountable to
give the death sentence to the

perpetrator is a clear example how rich and high-profile cases overshadow the judiciary which in turn erodes the spirit of democracy and when democracy is eroded it limits the democratic governance.

Another blow to judicial independence by politicization of it which challenges the democratic governance is the legitimization of unconstitutional acts which are not democratic. Courts validate the executive overreach and ruled in favour to them. World has witnessed a lot of cases where court has been politicized. Legitimization of constitutional acts is mandatory for judiciary but legitimization of unconstitutional acts which are anti-democratic is nothing more than imposing autocratic rules while living in a ceremonial democratic state.

Molvi Tameez-ud-din (speaker of constitutional assembly), **State vs Dasso case**, **Asma Jahangir case** are few major cases which are clear example of legitimization of unconstitutional cases in the name of "**Doctrine of Necessity**". The spirit of democratic governance, this tool is used by various political officials to turn the

decisions in their interest, to stay in power, to strengthen their power and deteriorating the democracy.

Judicial independence is necessary to overcome such hurdles and to limit the powers of person in authority.

Moreover, encouragement of corruption; though corruption erodes the trust of people; by granting "impunity" to the high ranked political officials by withdrawing the judicial independence is a major factor and implication of democratic governance undermining deterioration. "All men are equal before the Law" Holy Prophet (PBUH)

When all men are created equal and grant equal status then whether a man is King or a beggar it must be subjected to same punishment and incarnation.

No body should be immune from the persecution and must be held accountable.

In various countries such as Latin America's "court packing" allow presidents to bypass investigation, also in current scenario in Pakistan High ranked military official is immune from persecution, these all laws breach the judicial independence. These unconstitutional and

antidemocratic statutes depicts that politicization of judiciary is a grave challenge to the democratic governance, as democracy ensures the legitimization of those laws which are in the interest of the populace, not in the favour of high-ranked officials which enjoys the protocols whole life and granted impunity from every persecution near retirement.

In addition, several democratic norms weakening via antidemocratic constitutional amendments erodes the public trust and create a gulf between the populace and the government. If a state is democratic then its laws must be democratic and law making bodies must follow the all rules of democracy while constitution formation.

Highly controversial 26th amendment of Pakistan sets an example of antidemocratic

laws which includes politicians for judicial appointments, transfer of judges from lower courts to apex courts bypassing the chief justices of that lower courts and MPA's, MNA's inclusiveness in the appointments of benches and PM's role in appointing of chief justice of Pakistan depicts how

Political capture of judiciary is
Challenging the democratic governance.
Similarly, Turkey's Post 2017
referendum which encompassed
the independence of judiciary
sets another precedent of
antidemocratic enforcement of
rules and laws. Judiciary must
be free to ensure the rule of
law and Constitutional law must
be guaranteed.

Similarly, another major
factor is how political capture of
judiciary challenges the democratic
governance is erosion of judicial
credibility via political influence
of powerful elites. International
Court of Justice (ICJ) is a
international body, its framework
is designed to uphold the
justice worldwide by resolving the
disputes, mediating and persecuting
the oppressive states so that peace
and justice must be ensured.

But according to Eric Posner research
showed that ICJ tends to
rule in favour of states that
appoints its judges, it depicts
the grave concern how political
capture is undermining the
judicial independence which is
severely eroding the spirit of
democratic governance worldwide.

If an international justice body is not ensuring the provision of justice, not favouring the oppressive states and not evading from being political captured; how states individually will follow the suit. Therefore, a world lateral institution must follow the internationally recognized policies of justice to set a precedent for the other states to ensure democratic Governance.

A lot of implications, rationals and factors we have been discussed that justify how political capture of judiciary is undermining the democratic governance.

Numerous recommendations and precedents are granted by some states; by following these precedents and integrating these way forwards can bring the democracy's spirit back.

Transparent appointments of judges by preventing it from political favouritism such as **India's collegium system** which aims to select judges on the basis of seniority can govern the democratic governance, by preventing arbitral removal of judges; such as in **Germany**, Judges in FCC are secured till retirement. Similarly, by ensuring the institutional mechanism

strengthening, raising civic awareness to pursue their interests by limiting politicians interests and by acting upon the international standards which are mandatory for each member states; **Lawyers movement (2007) in Pakistan, South Africa's Judicial Service Commission, OECD, UN Basic principles on the independence of judiciary** are the precedents of history and frameworks that must be followed for governing the states on the basis of independent judiciary by limiting political overreach.

In conclusion, erosion of rule of law, weak accountability mechanisms, legitimization of unconstitutional laws, favouring political interest over peoples interest, ~~delaying justice, favouring politicians by granting them impunity favours crimes and corruption,~~ ~~weakening of democratic norms,~~ erosion of judicial credibility are the hallmarks of undemocratic governance by limiting the judicial independence when politics capture it. Consequences are grave which cause the erosion of trust of people, encouragement of corruption, countries following the suit of mispractices of

international standards thus
deterioration of world recognized
institutional policies, validation of
executive overreach which later
become norms are some of the
consequences. All states and
institutions must coordinate to
ensure the democratic governance
in their states and in
international institutions. This is
the only way to bring peace
around the world.

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