**Independence of Judiciary**

**If every judge acts according to his oath then there can be no injustice in the society.**

[Malik Muhammad Ashraf](https://www.nation.com.pk/columnist/malik-muhammad-ashraf)

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According to World Justice Project (WJP) Rule of Law index for 2023 Pakistan ranked 130th across 142 countries. The WJP is an independent, multidisciplinary organization working to advance the rule of law worldwide. It is indeed a matter of shame and great embarrassment that the Islamic Republic of Pakistan which should rank number one in the world on the rule of law index lies so low on the ladder.

The question is that when the constitution stipulates independence of judiciary and there are no prescribed curbs on the judges to dispense justice then why the country languishes at almost the bottom of the rule of law index?

Before trying to find an answer to this question perhaps it would be appropriate to have a close look at the text of the oath prescribed in the constitution for the judges of the high courts and Supreme Court. The text reads “I do solemnly swear that I will bear true faith and allegiance to Pakistan. That, as Chief Justice of Pakistan (or a Judge of the Supreme Court of Pakistan or Chief Justice or a Judge of the High Court for the Province or Provinces ) I will discharge my duties, and perform my functions, honestly to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law: That I will abide by the code of conduct issued by the Supreme Judicial Council: That I will not allow my personal interest to influence my official conduct or my official decisions: That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan: And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favor, affection or ill-will. May Allah Almighty help and guide me (A’meen)”.

[18pc people quit smoking after cigarette prices raise: Survey](https://www.nation.com.pk/05-May-2024/18pc-people-quit-smoking-after-cigarette-prices-raise-survey)

As is evident every judge in his oath pledges to protect the Constitution and dispense justice without fear or favour. If every judge acts according to his oath then there can be no injustice in the society. The prevalence of such a culture in the judiciary will surely act as a deterrent against interference in the judiciary. But the dilemma is that the situation has been quite contrary to it to earn our judiciary the lowest place on the rule of law index.

The answer to the question of why it is so has many dimensions. Corruption is the main reason in the lower judiciary and barring honourable exceptions the situation in the higher judiciary is also not very enviable. The other reason is that the successive governments both military and civilian have inducted judges of their own choice in the judiciary who were under obligation to serve the interests of their benefactors. Yet another reason has been the presence of weak and pliable judges in the judiciary who preferred their own perks and privileges over justice and gave decisions which have had profoundly adverse impact on the political landscape of the country.

[Randhawa directs to clean all nullahs before monsoon](https://www.nation.com.pk/05-May-2024/randhawa-directs-to-clean-all-nullahs-before-monsoon)

Presently the Supreme Court is considering the question of interference in the judiciary by the agencies as alleged in the letter to the Supreme Judicial Council and Supreme Court by six judges of the IHC and ways and means to stop it. The Lahore High Court and Islamabad High courts have also submitted their recommendations in this regard after their full court deliberations. What will be the final outcome of the hearing and what remedy would be suggested cannot be suggested or conceived at the moment.

As they say commonsense really makes sense therefore I would like to look at the whole question from this perspective. We have seen that there are no curbs prescribed on the independence of judiciary in the constitution. If a judge does not act independently while adjudicating a case, takes pressure from any other organ of the state or agencies in exchange for personal benefits then it actually reflects on his personal character.

[Pak-EPA enforcement team seizes 70kg single-use plastic bags](https://www.nation.com.pk/05-May-2024/pak-epa-enforcement-team-seizes-70kg-single-use-plastic-bags)

The judges of the high courts and Supreme Court have the power to initiate contempt proceedings against anybody trying to influence their decision or interfering in the judicial proceedings. They do not have to lodge complaints to the Supreme Judicial Council or the Supreme Court. The judge who is approached by any agency must have the heft to resist it and also take appropriate action against it.

The case of Justice Shaukat Siddiqui is a classic example of resistance to pressure. He showed the character to resist the pressure and unveil those behind it. Though he had to pay a heavy price for showing exemplary courage but in the end he was vindicated by the decision of the Supreme Court which not only quashed the decision of his dismissal by the Supreme Judicial Council but also declared him as a retired judge with all the post-retirement benefits.

The judges of the Islamabad High Court who have written the letter regarding interference of the agencies in regards to incidents that happened one year before have themselves shown weakness of their character in not taking action against those who were guilty of interference. If a judge cannot stand to pressure from any official quarter then he has no right to be a judge of the high courts or Supreme Court.

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The Supreme Court has asked the government and the agencies to file response to the recommendations of the High Courts regarding elimination of interference and adjourned proceedings till 7th May. An observation was also made regarding the role of the parliament in making necessary legislation in this regard. In my view no matter how many laws are enacted to curb the phenomenon of interference it is not going to help much. It is a very complicated situation.

The biggest fault lies with the way the judges of the High Courts and Supreme Court are appointed or elevated. A way has to be found to stop political appointments in the judiciary to ensure that only people with impeccable and unblemished careers are made judges of the High Courts and then merit and seniority is strictly adhered to for the elevation of the high court judges to the Supreme Court. That will tackle the situation to a great extent. It would, however, require a dialogue between judiciary and the executive which is ultimately responsible for governing the country, to evolve that system. We need men of character to man the judiciary.

[Muqam urges opposition to be constructive, not confrontational](https://www.nation.com.pk/06-May-2024/muqam-urges-opposition-to-be-constructive-not-confrontational)

Malik Muhammad Ashraf  
The writer is a freelance columnist. He can be reached at ashpak10@gmail.com