**[Judicial independence?](https://www.dawn.com/news/1774810/judicial-independence)**

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THE independence of the judiciary has been a recurrent theme in our jurisprudence in recent years. This is particularly true since the restoration of former chief justice of Pakistan (CJ) Iftikhar Chaudhry.

Judicial independence is one of the core values of our Constitution because it is inextricably linked with the enforcement of fundamental rights and the rule of law.

Its interpretation by the Supreme Court (SC), however, raises concern that instead of providing judges the security to dispense justice, independence of the judiciary has been weaponised to shield superior courts from accountability and transparency, and concentrate unbridled power in the office of the chief justice of Pakistan.

One of the most striking examples can be seen in the 18th Amendment case, when among other things, the process of appointments of superior court judges was challenged before the SC. In its interim order, a full court bench agreed with the petitioners that the CJ is paterfamilias, ie, the head of judiciary, and it is a violation of the independence of the judiciary for his role to be limited to only one vote in the Judicial Commission of Pakistan (JCP).

Independence of the judiciary, therefore, was used as a justification to make the CJ a gatekeeper in appointments to the SC: he was empowered to not only decide when to convene meetings of the JCP if vacancies arose or were expected, but also to initiate names of candidates to be considered by the JCP for selection.

There are concerns that judicial independence has been weaponised to shield superior courts from accountability.

The SC’s skewed view of judicial independence was further highlighted in the detailed reasoning of the 18th Amendment case, published alongside the judgement on petitions challenging the [trial](https://www.dawn.com/news/1165539) of civilians accused of terrorism before military courts in 2015.

The SC held that the independence of the judiciary means complete control over the judiciary’s affairs, including appointments. The judiciary (namely the chief justice) must initiate the nomination process and judges must make the final decision on appointments — any substantial role by parliament would amount to a breach of judicial independence.

Ironically, at the same time, the majority of the SC did not find a parallel judicial system of military courts to try civilians repugnant to judicial independence or the separation of the judiciary from the executive.

Soon after, in 2016, the SC refused to admit for hearing a [petition](https://www.dawn.com/news/1293176) requesting the court to direct the Supreme Judicial Council to disclose information regarding the number of complaints made to the SJC since its inception as well as their status. CJ Jamali stated that “complete confidentiality and secrecy is to be maintained” at every stage of the SJC’s proceedings, ostensibly to safeguard judicial independence.

The SC also invoked judicial independence in a number of contempt of court cases. In 2012, it struck down the Contempt of Court Act, 2012, for violating the independence of the judiciary by restricting the courts’ contempt powers.

A few years later, in 2018, the SC [convicted](https://www.dawn.com/news/1424466) PML-N’s Talal Chaudhry for contempt of court and disqualified him from contesting elections for five years because it considered his speeches questioning the judiciary’s tainted history of legitimising military rule “prejudicial to the integrity and independence of the judiciary”.

The SC placed a lot of emphasis on judicial accountability in one judgement, which stands out. The case related to petitions challenging the presidential reference against Justice Isa. The majority judgement (later successfully reviewed) clarified a sole focus on “protection of the judiciary from the depredations of the organs of the state” would not lead to the independence of judiciary but rather “it would be the rule of judges without any checks and balances”. It also said “neither judges nor the institution can retain the public trust when serious stigmas are cast on their integrity”.

The principles highlighted in the judgement were ignored when the SC suspended the notification and stayed the operation of a judicial commission, comprising Justice Isa and the chief justice of the Lahore and Balochistan high courts, constituted by the government to inquire into, among other things, the veracity of alleged conversations between persons connected to or including judges of the superior courts and their impact, if any, on the independence of the judiciary.

The SC reasoned it was an “accepted and settled constitutional principle” that the permission of the CJ first had to be sought whenever a sitting judge was to be made a member of a commission. It was irrelevant that one of the persons whose impartiality was under question was the CJ himself.

In another recent example, the SC used the cover of judicial independence to [prevent the structuring](https://www.dawn.com/news/1747432/in-pre-emptive-strike-sc-renders-bill-clipping-cjps-powers-ineffective-when-it-becomes-law) the CJ’s discretionary powers through legislation. The SC (Review of Orders and Judgements) Act, 2023, was struck down, and the operation of the SC (Practice and Procedure) Act, 2023, was suspended through an interim order.

The SC reasoned only judges could decide matters related to composition of benches and allocation of cases, and through its rules and judgements, it had already given this power to the chief justice. For parliament to legislate on this issue, therefore, was a “gross intrusion in judicial exercise of powers under the Constitution”.

These judgements show independence of the judiciary has been reduced to an empty slogan, given whatever meaning the SC — or perhaps CJs and select benches at the time — consider fit. Of­­ten, their interpretation is also inconsistent with international standards and comparative best practices on the independence of the judiciary.

Institutionally, this has allowed insulation of the SC in matters of appointments and accountability, as well as complete opacity in other decision-making such as case allocation, bench selection, assumption of suo motu jurisdiction, and prioritisation of cases. It has also been used as an excuse to empower the chief justice at the expense of other judges, establishing a ‘dictatorship’ of sorts of the CJ in the SC.

Paradoxically, in practice, concerns ring louder than ever about the lack of independence of the SC. In public perception, judges feature regularly as part of political intrigues, including as ‘collaborators’ in antidemocratic ‘projects’. And now, jud­ges too have started voicing concern about judges being viewed as ‘politicians in robes’ and the appearance of political partisanship in the SC.

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