

Q1 Discuss the role of judiciary in the constitutional development of Pakistan:

Introduction:

A state has three organs: judiciary, executive, and legislature. Every organ has its own importance. The state's power is divided among three organs in such a way that no other organ has more power than other organs. However, when an imbalance is created regarding the distribution of power among three organs then state's survival becomes difficult. Pakistan came into existence on 14th August 1947 on the world map. Unfortunately, not only the people of Pakistan but also state itself had to face many problems. One of the major problems was the constitution of Pakistan. At last when a constitution of Pakistan was proclaimed then several other powers challenged the constitution. Then, only hope

was judiciary. Judiciary has played a significant role. It role is considered as positive and negative also.

Era of 1947 to 1958

This era decide the future of Pakistan. What would be the democratic value, what would be the role of army, political parties and judiciary etc is decided in this era. This era paved the way for the future of Pakistan.

Maulvi Tamizuddin Case:

When Governor General Gulham Muhammad noticed that he is losing the favour of parliamentarians, then he dissolved the constitution assembly of Pakistan. The Speaker of Assembly Maulvi Tamizuddin filed a case before Sindh High Court. Sindh High Court described in its verdict that Governor general decision to dissolved assembly is illegal and unconstitutional. However, the governor

Gulam ~~for~~ Muhammad move to SC. SC declared that Sindh High court was unable to decide the matter and ~~they~~ Justice Munir called the Governor's decision is legal.

Usif Patel case:

In 'Usif Patel & others' case the problem was put before court was that the Governor's consent is not needed to introduce amendment in the constitution, However SC detained the petitioner's file and called it is unconstitutional, But SC also ordered governor general to work according to the constitution and law, and arrange the stage for elected assembly.

In this way, the impact of SC decision was both positive and negative. On one hand, SC bound the powers of governor general and called its actions beyond the law, are unconstitutional.

Era of 1958 to 1973

In 1956, Pakistan's constitution came into power, but unfortunately, Military chief Ayub Khan took the charge of country and abrogated the constitution of 1956.

The State vs Dosso & others:

In this case, General Ayub's martial law was challenged before the Supreme Court of Pakistan. However, SC called it the Doctrine of necessity. SC validated the Ayub martial law. This verdict of SC paved the way of Martial law in Pakistan.

Miss Asma Jilani Case:

When Ayub took over his charge to General Yahya then this step was challenged in the court. As Ayub cannot transfer his control to other Military general in

called it the doctrine of necessity. When General Musharraf want to amend constitution then some judges resist but most of them allowed him to amend the constitution.

So in 13th amendment, again Semi-presidential system was launched. However, when General Musharraf tried to curtail the power of suo-Motto of Supreme court, then Chief Justice Iftikhar Chaudry called it unconstitution, Judiciary resist General Musharraf decision. And again the judiciary revived in Power.

18th Amendment in 1973 Constitution & role of Judiciary

18th amendment was the landmark step in the constitution of Pakistan. ~~Government~~ In 18th amendment, it was enforced that judiciary cannot validate the martial law and abrogate of constitution would be consider as high treason and its punishment would

be death. Some steps related to judiciary also taken such as retirement age of chief justice, judicial council and its change in members etc. This step make it possible so that violation constitution cannot take place.

Conclusion:

Role of judiciary has been very important in the constitutional development. Due to its resistance before the military rule paved a way for the democratic movement of Pakistan. It also try to do his best as a safeguard of the constitution. Now All three organs must collaborate in such a way that a balance of power may be maintained and Pakistan may progress in all fields of life. Every institution must work within the boundary of constitution. If anybody violates the constitution, He must be punished so that supremacy of constitution may be make possible.

in such a way. The judiciary called the act of take over of martial law as illegal and unconstitutional. In this way Judiciary brought back the country on the road of democracy.

Era of 1973 to present date

In 1973 constitution of Pakistan was launched, In this constitution Article 6 was launched to make sure that military general cannot take rule over again. But this attempt failed in July 1977 General Zia topple the Bhutto government and took him in his custody.

Miss Nusrat Bhutto vs The Chief of Army Staff

Miss Nusrat Bhutto filed a petition in SC on 7 July 1977. Supreme Court dismissed the petition of Nusrat Bhutto and called it again it is the Doctrine of Necessity.

In this way SC on one hand derailed the democracy but on the

hand it was seemed the demand of the situation. However SC allowed the dictator to amend the constitution. So in 8th amendment General Zia introduced the semi-presidential system.

Haji Saifullah case:

General Zia introduced 58-2B in the constitution which empowered the president to dissolve national Assembly. ~~Power~~ When General Zia dismissed his PM Junego then Haji Saifullah case was registered in the SC. Judiciary called his removal as unconstitutional, but at that time schedule of election has announced so SC donot allow him to continue his term as PM.

Zafar Shah case vs The Pervez Musharraf

When General Musharraf toppled down the government of Nawaz Sharif in Oct 1999 then a case of constitution was filed in SC. Supreme court again