

Question:

Discuss the role of judiciary in the constitutional development of Pakistan.

Introduction:

Judiciary has always played an active role in discerning the various political and constitutional landscapes of Pakistan's history. Following the promulgation of 1st constitution, there are several incidents that have positioned judicial system openly to decide the process of democratisation and constitutional development. This process showed multiple incidents having both positive and negative repercussions, displaying the check and balance system, whereas also delineating the flaws that needs to be addressed.

Role of judiciary in constitutional development of Pakistan:

Judicial system of Pakistan has always played a contravenational role in during the process of establishing the strength of constitution. This is in the history is checkered with incidents displaying both affirmative and adverse affect.

② Constructive role of judicial system in developing constitution of Pakistan:

(i) Containing the power of Governor General:

Judiciary acts as a safeguard of Constitution and prevents the usurping of executive and legislative authority at the expense of breaching constitutional sovereignty.

→ Case in point:

(Usif Patel and the other vs Crown)

Federal Court held the verdict in Usif Patel case that the Governor General was not in position to issue an ordinance for constitutional matters in absence of constitutional assembly, that was previously dissolved on 24th Oct, 1954

(ii) Provided a semblance of stability during political uncertainty:

The initial years of Pakistan's history are replete with faction and fragmented politics. To provide a

facade of stability at that time, judiciary has complied to take certain steps

→ **Case in point:**

(Doctrine of necessity)

Doctrine of necessity provides basis for extraordinary actions to be taken by government. For this reason judiciary has played a vital role in legitimising different military takeover in Pakistan's history.

(iii) **Mitigating illegal ascent of benefit:**

Rejection of some constitutional amendments at the cost of rule of law has proved to be major role played by judiciary.

→ **Case in point:**

(National reconciliation order)

National reconciliation order was a more controversial ordinance granting amnesty to those accused of corruption. However, judiciary declared NRO to be unconstitutional.

(iv) Approval of amendment Strengthening democracy:

Devolution of power has proved to be the main foundation of democracy which is backed by jurisdiction system of Pakistan.

→ Case in point:

(18th Amendment in constitution of Pakistan).

Judiciary has supported democratic movements in Pakistan such as 18th amendment which not only provided devolution of power to provinces but also strengthened other domains through National Finance Commission Award and independent judicial commission.

② Adverse effect of judicial intervention in constitutional development:

(i) Providing a way for legitimising illegal act:

Although judiciary paved way for doctrine of necessity but it also accelerated the process of legitimising illegal acts.

→

Case in point:

(Maulvi Tameezud din case)

Judiciary inadvertently strengthened or concentrated power in Executive's domain through the verdict of Maulvi Tameez ud din case where it ruled out in favour of Governor General Ghulam Muhammad.

(ii)

Providing means for strengthening of coalition against parliament's will ::

→

Case in point:

(14th amendment in constitution of Pakistan)

Ruling in favour of anti-horse trading amendment, stripped away parliamentarians decision making according to his own will. Thus, weakening one of the constituents democracy.

(iii)

An unprecendent increase in judicial activism:

→

Case in point:

(Increase in suo moto)

Way forward:

Many prominent historical evidences has proved judicial system to be involved in upholding the strength of constitution. In this regards, judicial system requires accountability, transparency and supremacy of rule of law to abut and support the constitutional development of Pakistan. None the less, independent judicial system legitimises the way for constitutional growth.

Conclusion:

An impartial, autonomous and independent judiciary paves way for constitutional supremacy. In this regards, upholding of separation of power, curbing the concentration of power in particular group and negating supremacy of any one organ of government has proved to be beneficial for the constitutional development, as proved by judiciary.