

What are the political and legal constraints over the sovereignty of parliament in Pakistan?

1. Introduction

The sovereignty of parliament is a fundamental principle in democratic nations, reflecting the authority and autonomy of elected representatives to create and enact laws on behalf of the people.

However, this sovereignty is not absolute; it operates within a framework of political and legal constraints aimed at maintaining balance of power and upholding the rule of law. Pakistan, as a democratic republic, is no exception to these principles. The nation's parliamentary sovereignty is subject to a complex web of political and legal factors that have evolved over time. These multifaceted constraints are crucial for comprehending the dynamics of Pakistan's democratic system, its challenges, and its evolution in an ever-changing political landscape.

2. Pakistan's Parliament as sovereign

Parliamentary sovereignty means passing laws that serve the interests of the people rather than those of politicians, and it places the interest of the people first. Referring to Parliament as "sovereign", ultimately means that members of it are "supreme" and "self-determining", and have complete freedom and power when acting in their capacity as representatives of the people.

Pakistan's parliament as supreme, is not the case in reality

Being an Islamic nation, Pakistan's parliament is required to uphold Islamic principles. And in Islam, only Allah has the right to be omnipotent, and His creation has no other role than that of a subordinate. All laws must be created in accordance with Islamic principles. Therefore, the parliament has sovereign authority over the application of laws that follow Islamic precepts, and all the members of parliament serve as agents of Allah.

3. Political constraints on the sovereignty of Parliament in Pakistan

Political constraints are primarily driven by the dynamics of the country's political landscape, the influence of various power centers, and the complex interplay of competing interests.

(a) Military's de facto control over the government significantly constrains the sovereignty of parliament

The historical legacy of military involvement has had a long lasting impact on Pakistan's political landscape. General Ayub Khan's rule with limited parliamentary involvement, Yahya Khan's

regime with separation of East Pakistan, Zia-ul-Haq's martial law, and Pervez Musharraf's dissolution of parliament; all are the events that constrict the power of parliament. Even during civilian rule, the military influence in matters of national security and foreign policy can limit authority of parliament. The tussle of control between the civilian government and military establishment can create political constraints.

(b) Coalition politics can lead to delays in passing laws by parliament

The multiparty nature of Pakistan's political landscape often leads to coalition governments at federal and provincial levels. Parties with different agendas must reach consensus on legislation. This leads to compromises in passing laws.

A lack of clear majority can result in political gridlock and an inability to push through key policies, constraining parliament's effectiveness. Most recent was coalition of 11 parties (PDM) against Iq.

(c) Political instability can disrupt the parliament's legislative process

Frequent changes in government, no-confidence motions, and political turmoil can disturb the law making process of parliament. The focus

on short term political survival can limit the government's ability to implement long-term policies, affecting the sovereignty of parliament.

(d) Interest groups and lobbies exert influence on decisions of parliament. Powerful business interests, organizations, and pressure groups influence policy decisions of parliament that may not fully align with the broader public interest. This undermines the autonomy of parliament.

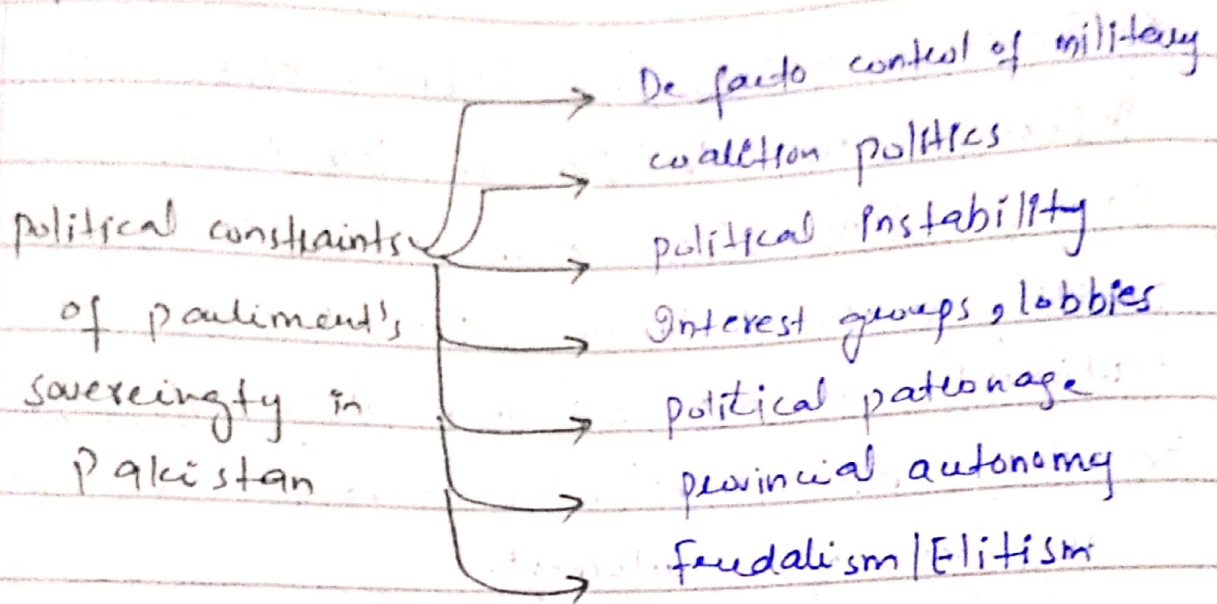
(e) Political patronage and electoral irregularities raise questions about legitimacy of parliament.

Nepotism can lead to appointment of individuals who may not be qualified or may have conflicts of interest in key positions. This can weaken the oversight of parliament. Issues related to electoral irregularities and fairness of elections can impact the perception of parliament's sovereignty.

(f) Provincial autonomy also affects the uniformity of laws and policies.

Pakistan's federal structure grants significant

autonomy to provincial governments. It often leads to conflicts between federal and provincial authorities, ultimately affecting the policies of parliament.



(8) Parliamentary sovereignty is also being harmed by feudalism.

In Pakistan's parliament, rather than elected representatives, elected officials make decisions that are against country's constitution.

The presence of these elites renders Pak's parliament incapable of exercising sovereign authority.

4. Legal constraints on Parliamentary Sovereignty

Many legal experts, particularly those in the judiciary, have argued that the parliament is not the final authority. Legal constraints can

be identified in a variety of ways.

(a) The constitution of Pakistan is the supreme law of land

Parliament's authority is derived from the constitution, and it must act within the limits defined by the constitution. The Judiciary has the power of judicial review to ensure that parliamentary actions in accordance with the constitution.

(b) Pakistan's constitution stipulates that all laws should be in accordance with Islam

This places certain constraints on the legislative process, as laws must adhere to Islamic principles. The objective resolution was adopted by the constituent assembly on 1949 and became part of the constitution 1973 through presidential order in 1985 as section 2A stating:

Sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the state of Pakistan, through its people for being exercised within the limits

(c) Constitution prohibits the parliament to pass laws contrary to Islam

Article 227 states that

"all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Quran and Sunnah"

This states that parliament is bound by a restriction that prevents it from passing laws that are contrary to Islam.

(d) Constitution limits the powers of parliament on fundamental rights laws.

Constitution prohibits it from adopting any laws that violate a person's fundamental rights.

Article 8 states that

"Any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by this chapter, shall be void"

(e) Pakistan's parliament is responsible for ratifying international laws

International law is considered superior to domestic law. Pakistan is signatory to many international agreements and treaties and is bound to follow those

agreements. In this way, international agreements and laws may constrain the parliamentary authority in areas of foreign policy and defense. Pakistan may face international legal actions in case of violation of these agreements.

5- Conclusion

Pakistan's parliamentary sovereignty is a subject to a complex interplay of political and legal constraints. Political constraints, including military interventions, coalition politics and legal constraints like constitution, the protection of fundamental rights, and international obligations, have disrupted the smooth functioning of parliament. Addressing these constraints is necessary for Pakistan to navigate its democratic path and strengthen the sovereignty of its parliament.

Role of independent judiciary in democratic republic? without it can checks and balance system be established? explain with example.

1. Introduction

In the architecture of democratic societies, the concept of checks and balances stands as a bulwark against tyranny, safeguarding the core principles of justice and individual rights. At the heart of this system lies the institution of an independent judiciary. Its pivotal role cannot be overstated, as it acts both the guardian of the rule of law and the arbiter of justice. Within the delicate dance of power among the executive, legislative and judicial branches, the judiciary serves as the ultimate referee, ensuring that no single branch oversteps its bounds. In its absence, the delicate equilibrium of democratic principles and governance can be severely disrupted.

2. Role of Independent judiciary is pivotal and multifaceted in a democratic society

Independence of judiciary means a fair and impartial judicial system of a country, which makes its decisions without any interference from the executive or legislative branch of government. For the survival of democratic republic, an impartial and independent judiciary

is essential. Without it liberal democracy cannot flourish. The concept of independence is a broader one that encompasses concepts such as impartiality, accountability, efficiency, and respect for other government institutions.

According to James Bryce, "There is no better test of excellence of government than the efficiency of its judicial system."

(A) Independent judiciary plays an important role in interpreting and upholding constitution

It ensures all government actions, laws, and policies are in accordance with the constitution, thereby safeguarding the rule of law. Judiciary serves as the guardian of constitutional principles.

In the landmark case of *Marbury v. Madison* (1803), the U.S. Supreme Court established the principle of judicial review, affirming the judiciary's authority to declare laws unconstitutional.

(B) An independent judiciary acts as a protector of individual rights and freedoms

It ensures that citizens' fundamental rights, such as freedom of speech, religion, and the right to a fair trial, are upheld and protected from government overreach.

The judiciary helps to ensure the rule of law, that everyone, regardless of their status is equal before law. One of the conclusion of the International Conference of Just (1985) emphasized the importance of judicial independence,

"The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened and independent judiciary and upon adequate provision of speedy and effective administration of justice"

(c) An independent judiciary hold government officials accountable for their actions

An independent judiciary ensures that government officials and agencies abide by the constitution. Government officials engage in unlawful actions can be subjected to legal proceedings. By holding government officials accountable for their actions, independent judiciary upholds rule of law.

(d) It protects the people against the usurpations of the executive and legislative department

As Madison says "Independent tribunals

of justice will consider themselves... an impenetrable bulwark against every assumption of power in the Legislature or Executive. Citizens and organisations seek legal remedies from independent judiciary.

(e) Independent judiciary as last hope of the citizens contributes to preserve the social peace

The quantum of its contribution, however, largely depends upon the willingness of the people to present their problems before it. What matters the most, is the extent to which people have confidence in judicial impartiality.

According to the Justice Frankfurter

"The confidence of the people is the ultimate reliance of the court as an institution."

In fact, the independence of judiciary is essential for maintaining purity of justice in social system and enabling it to earn the public confidence in the administration of justice.

3. Independent judiciary is crucial to establish system of check and balances

In democratic governments, the separation of powers (system of check and balances) among executive, legislative and judiciary is a foundational concept. The independent judiciary ensures that no single branch becomes too dominant.

(a) Without an independent judiciary, the system of check and balances becomes significantly weakened

In such scenarios, the executive and legislative branches could potentially wield unchecked power, which can lead to a range of issues:

(i) Without judicial oversight, the government may infringe upon civil liberties, such as freedom of speech, freedom of press, and freedom of assembly, without any effective recourse of citizens.

(ii) The executive branch may accumulate excessive power

This abuse of power allow the executive

to engage in actions that are not consistent with the constitution.

(iii) The lack of an independent judiciary means no independent review

If there is no impartial body to review or challenge government actions, the government can operate without meaningful constraints on its power.

(b) The United States provides an excellent example of a country with an independent judiciary that ensures system of checks and balances within democracy

The US constitution, with its separation of powers, is upheld and maintained through the actions of the independent judiciary. One notable example is the case of United States vs Nixon (1974):

Background: In this case, the independence of judiciary and its role in checks and balances became evident during the Watergate scandal. President Richard Nixon faced allegations of involvement in a coverup of a break-in at Watergate complex. The supreme court, in a unanimous decision, ruled that President had to release the tapes. The court's

decision emphasized that even the president was not above the law and that privilege could not be used to shield wrongdoing.

(c) The French Revolution and the absence of an independent judiciary

The French Revolution (1789-1799) provides a historical case where an attempt was made to establish a system of checks and balances without a truly independent judiciary, and the consequences that followed.

The pre-revolution French judicial system was closely tied to monarchy. The absence of independent judiciary led to widespread abuse of power. Revolutionary tribunals, driven by political fervor, carried out mass executions, including the region of terror.

Creation of system of check and balances by establishing multiple governing bodies, such as National convention, led to political instability and violence.

The French revolution illustrates that an independent judiciary is a critical component of a functional system of checks and balances. Without it, system of checks & balances is impossible.

4 - Conclusion

The role of an independent judiciary in a democratic republic is pivotal and irreplaceable. It is a vital component of the system of checks and balances, which is essential for maintaining the integrity of a democratic system. Without an independent judiciary, establishing a system of checks and balances is exceptionally challenging. In conclusion, an independent judiciary is a vital pillar of a democratic republic and its absence complicates the establishment of a robust system of checks and balances.
