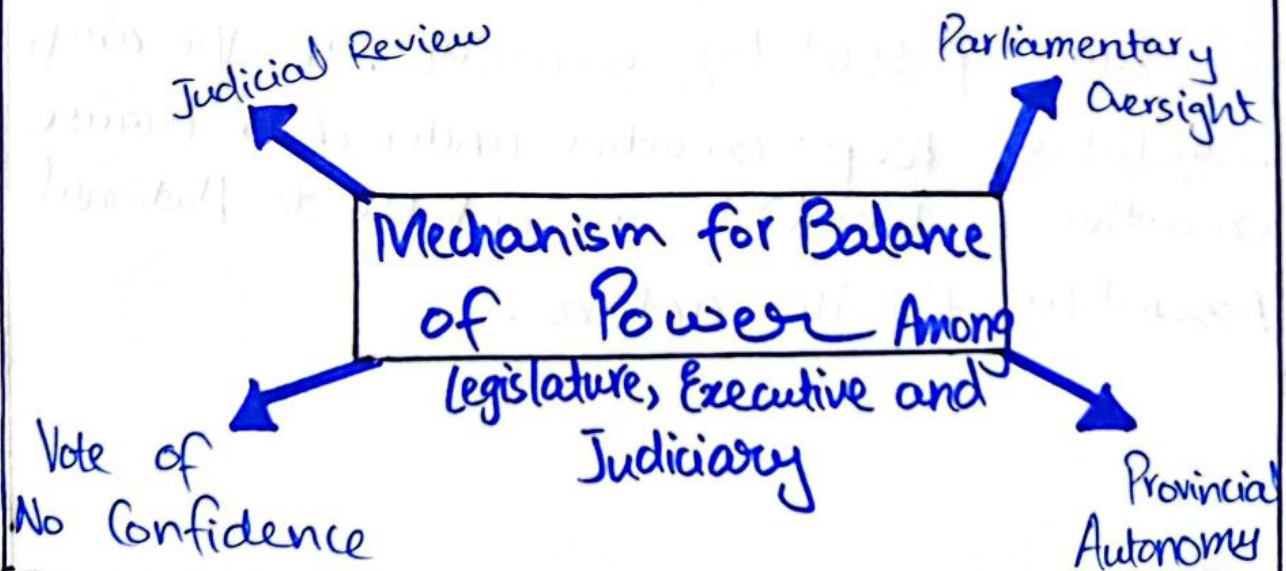


Q: Discuss major issues for balance of power between executive, legislature and judiciary in constitution of Pakistan. 1973

## Explicating Balance of Power between Executive, Legislature and Judiciary in the Light of 1973 Constitution of Pakistan

The constitution of Pakistan given in 1973 maintains balance between executive, legislature and judiciary branches of Pakistan. According to this constitution, all three branches have to exercise their assigned authorities within certain limits. Even this constitution has allowed one branch to have checks and balance on the other. This constitution has given mechanism for balance of power among three branches in the form of judicial review, parliamentary oversight, impeachment and vote of no confidence and provincial autonomy.



# Mechanism for Balance of Power Among Three Branches of state according to 1973 Constitution

## i- Judicial Review :

Although 1973 constitution has allowed Prime Minister and his executive to exercise supreme powers like formulating laws for the entire state, but supreme court has authority to declare laws given by executive unconstitutional. So, supreme court keeps checks and balance over legislative and executive actions.

## ii- Parliamentary Oversight :

According to 1973 constitution, executive and head of executive (Prime Minister) is responsible for making foreign policy, defence policies and financial policies. But this constitution has given ~~legislature~~ National Assembly the authority to review the laws passed by executive. In this way, legislature keeps executive under check because executive (cabinet) is accountable to National Assembly for its actions.

### iii- Impeachment and Vote of No Confidence :

The 1973 constitution has given National Assembly an authority to pass vote of no confidence against Prime Minister. Similarly, President can be impeached for misconduct. Thus, executive (Cabinet and Prime Minister) can not exercise powers without checks and balance. In this way, constitution maintains balance of power between executive and legislature.

### iv- Provincial autonomy:

According to 1973 constitution, Pakistan is a federal state where supreme powers are divided between centre and federating units. This ensures balance of power between federal government (executive) and provincial governments (legislature) so that <sup>neither of two</sup> ~~no~~ branches dominates another. In this way, constitution maintains checks and balance between two branches of state.

## Major Issues For Maintaining Balance Among Three Branches of State Organs

### i- Military Interventions:

One of the major issues for imbalance of powers among legislature, executive and judiciary is military interventions in political matters. For instance, General Zia ul Haq combined military and

executive authorities in one person in 1978. He introduced 8<sup>th</sup> amendment to constitution of 1973 in 1985, thereby increasing executive dominance over legislature and judiciary. This intervention is still persistent in 2024.

## ii- Lack of Judicial Independence:

Interference of political parties in jurisdiction has been causing imbalance of powers among legislature, executive and judiciary. For instance, President Perwaiz Musharraf dismissed Chief Justice Iftikhar Muhammad Chaudhary in 2007 highlighting imbalance of power among legislature, executive and judiciary.

## iii- Lack of Adherence to Rule of Law:

Another issue for imbalance of power among legislature, executive and judiciary is lack of adherence to rule of law. Molvi Tameez uddin case of 1953, Usif Patel case of 1953 and Dosso Case of 1958 are key examples of constitutional cases of Pakistan that have arisen due to lack of adherence to rule of law and have disrupted balance among three branches of state organs.

## iv- Lack of Accountability:

The imbalance of power among three branches of state organs persists due to lack of accountability of these branches before

the state. For instance, Reko Dik case is the best example of imbalance of power among legislature, executive and judiciary that has arisen due to lack of accountability of these state organs before the state. This case has imposed Rs 5.973 billion penalty of on Pakistan.

## v. Judicial Activism:

Judicial activism is another issue for maintaining balance of power among legislature, executive and judiciary. For instance, the intervention of supreme court in the conflict between federal and sindh government in 2019 over the ownership of hospitals of karachi soared ties between legislature and executive (Tribune, November 2019, Judicial Activism in Pakistan).

## vi. Resistance to freedom of Expression

Another major issue for imbalance of power among legislature, executive and judiciary is resistance to freedom of expression in Pakistan. For instance, According to Human Rights Commission of Pakistan over 3500 journalists have been victims of enforced disappearances since 2011. Due to lack of freedom of expression, there is no checks and balance in three branches of state organs and imbalance of power, persists among them in Pakistan.

## vii- Weak Centre - Province Relations :

Weak centre-province relations of Pakistan has been a major issue for balance of power between executive and legislature. For instance, recent conflict between KP and federal government on energy crisis clearly highlight that weak centre-province relations cause imbalance of power between legislature and executive (Tribune, Conflict between KP and Federal Government, June 2024).

## CONCLUSION

The constitution of Pakistan given in 1973 has defined balance of power among legislature, executive and judiciary by defining proper mechanism of checks and balance for these three branches of state organs. But due to persistence of various issues like military interventions, weak centre-province relations, judicial activism etc, Pakistan has been facing imbalance of power among legislature, executive and judiciary.