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Question no 1

Discuss the role of the judiciary in the constitutional development of Pakistan? (CSS-2017)

Answer:-

1- Introduction

The judiciary is called the guardian of the Constitution. In Pakistan, it has shaped political and constitutional development by its judgments in landmark cases. Some Landmark judgments such as the Maulvi Tamizuddin Case, Dosso Case and Nusrat Bhutto Case have left lasting impacts on Pakistan's political culture. Sometimes, it has strengthened democracy, while at other times, it has supported authoritarian rule under the Doctrine of Necessity. From the Maulvi Tamizuddin Case (1954) to the NRO Case (2009), the judiciary has left a permanent

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mark on Pakistan's constitutional journey

2- Judiciary as Guardian of the constitution.

Judiciary protects constitutionalism and prevents collapse of state institutions. It acts as arbiter when legislature and executive clash. It also provides political legitimacy during constitutional crisis.

3- Role of Judiciary in Constitutional Development

(A) Early Constitutional Role

Pakistan faced constitutional crises soon after independence due to weak legislatures and political instability.

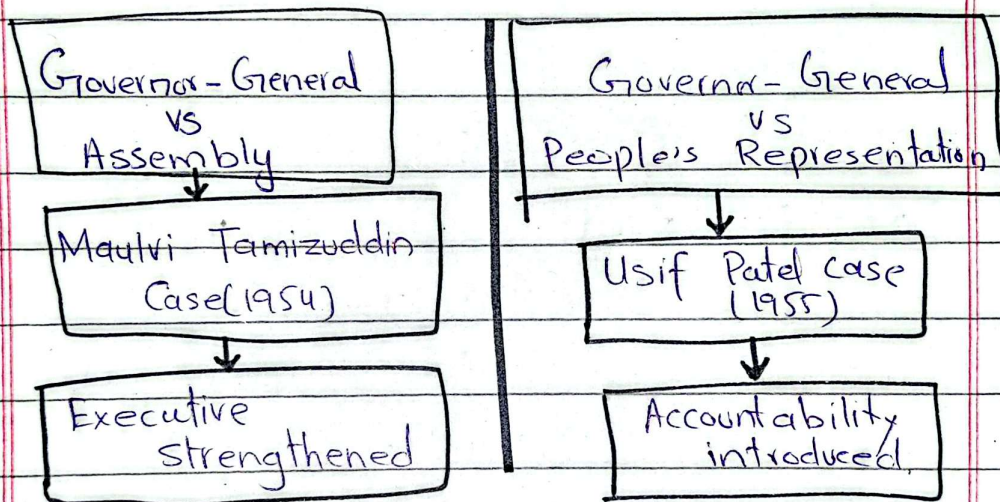
a) Maulvi Tamizuddin Case (1954)

It validated the dissolution of the first constituent Assembly, strengthening the Governor-General and undermining parliamentary supremacy.

(ii) Usif Patel Case (1955)

Limited excessive powers of the Governor-General by stressing the need for elected representatives

→ Early judiciary strengthened executive but also highlighted accountability.



B- Doctrine of Necessity & Martial laws

Judiciary justified military takeovers by calling them

"necessary for stability."

(i) Dosso Case (1958):-

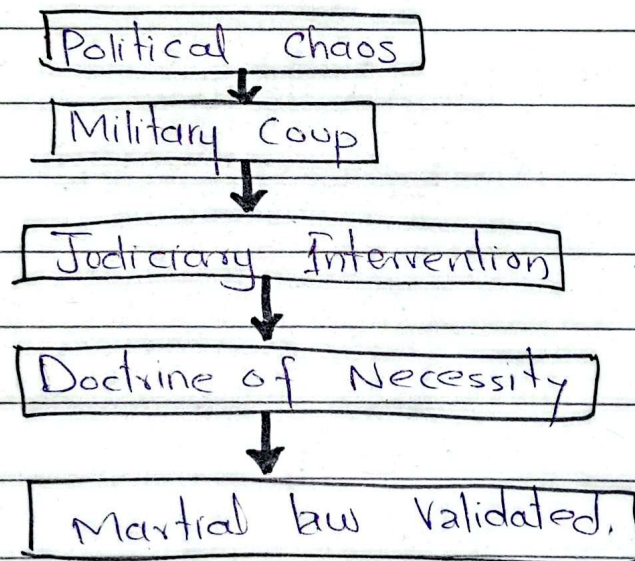
Chief Justice

Munir legitimized General Ayub Khan's martial law, arguing

that revolutionary legality validates extra-constitutional takeovers. Chief Justice introduced the 'Doctrine of Necessity' validating Ayub Khan's martial law.

(ii) Nusrat Bhutto Case (1977)

It upheld General Zia-ul-Haq's takeover, justifying military intervention in the name of stability. Thus, judiciary weakened democracy but maintained.



C-Protection of Democratic Moves

In later years, the judiciary took more democratic stances:

(i) 18th Amendment (2010)

It Recognized as a democratic

step, strengthening federalism
and civil Supremacy.

(iii) NRO Case (2009)

The NRO was declared unconstitutional in 2009, which closed the doors on political amnesty and promoted accountability. These verdicts reflected the judiciary's shifting role towards the promotion of democratic culture in Pakistan.

D - Judicial Activism after Lawyer's Movement

The lawyer's Movement of 2007-09 proved to be a turning point for the judiciary. It used suo moto powers to protect rights and check corruption, though excessive activism sometimes blurred the line between judiciary and executive.

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Lawyer's Movement (2007-09)



Restoration of Judiciary
(Iftikhar Chaudhry)



Judicial Activism Rises



Suo Motu Actions



Protection of Fundamental
rights and Accountability



Public Trust in Judiciary
increases

Critical Analysis:-

The judiciary of Pakistan has been paradoxical in its role. On one hand, it legitimized martial laws and weakened democracy. While on other hand, it provides protection of fundamental rights. This behaviour leads to the constitutional instability. Pakistan's constitutional growth requires a judiciary that is impartial, neutral and free from political influence.

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Conclusion:-

The judiciary has played both positive and negative role in Pakistan's constitutional development. At times, it supported martial law and at other times it promoted accountability. Today, Pakistan's stability depends on an impartial and independent Judiciary.
