

JUDICIAL CAPTURE IN PAKISTAN: PARLIAMENT VS JUDICIAL INDEPENDENCE

OUTLINE

(A) Introduction

Thesis Statement: The evolving dynamics between Parliament and the Judiciary — exacerbated by the recent 26th Amendment — represents a critical juncture in Pakistan's democratic evolution. This move is not merely procedural but symbolizes a deliberate shift towards judicial capture, with profound implications for the rule of law and separation of powers.

(B) Historical Evolution of Judiciary in Pakistan

(i) Pakistan inherited a colonial legal system from the British, which included the Government of India Act 1935. Judiciary's role was largely overshadowed by the dominant executive branch, led by political leaders and bureaucrats.

(ii) Over subsequent decades, the judiciary oscillated between passive interpretation and bold activism, particularly during periods of military rule and political crises.

(C) Mechanisms of Judicial Capture in Pakistan through the 26th Amendment

(i) Endeavored to redefine the balance of power between the three branches of government i.e., judiciary, executive, and legislature

(ii) Altered the composition of the Judicial Commission of Pakistan (JCP)

(iii) JCP has given the power to determine and nominate the "constitutional benches" in the Supreme courts and high courts.

(iv) Special Parliamentary Committee will nominate the Chief Justice of Pakistan.

(v) Supreme Judicial Council (SJC) has the

power to remove CJP on the basis of "inefficiency". The term inefficient is not clearly defined.

(D) Implications for Democratic Governance and Rule of Law

- (i) Risks undermining judiciary's role as the guardian of the constitutional rights and a check on executive power, potentially eroding public confidence in the rule of law and leading to a long-term democratic instability

(E) Parliament vs Judicial Independence - The Ongoing Battle

- (i) Friction between legislative ambitions and judiciary's assertion of independence,
- (ii) Proponents argue that the amendment brings clarity and accountability, while detractors contend that it subverts constitutional guarantees of an independent judiciary
- (iii) Involvement of politicians in the appointment of CJP leads to politicization of judiciary

(iv) The constitutional bill ^{will} leads to politicization of judiciary, making it a huge blow for judicial autonomy

(v) Judicial capture will result in democratic backsliding.

(F) Conclusion