

✓ Q. No. 6.

The Constitution of Pakistan, 1973 asserts for upholding the independence of the judiciary. To maintain such independence, the procedure of appointment is of great concern. In this context, critically analyze, the constitutional mechanism as provided under Article 175-A for the appointment of judges of Supreme Court including Chief Justice of Pakistan.

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The Constitution of Pakistan, 1973 provides fundamental rights comprehensively.

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b) Risk of secessionist movements. e.g. Quebec's in Canada demand for a separate state.

c) Uneven growth across the country. Wealthy provinces develop due to resources presence, while weaker or poor provinces lag in development.

e.g. Punjab, a developed state, v.s. Balochistan, underdeveloped state.

d) Two-tier bureaucracy demands expenditure and also leads to red tapism.

C. Conclusion:

Unitary and federal are forms of government with almost opposing features. Countries adopt one of the two based on their local needs, geography, demography, and history.

Q no: 06: (2025) "C. Law"

The constitution of Pakistan, 1973 asserts ^{for} ~~the~~ upholding the independence of the judiciary. To maintain such independence, the procedure of appointment is of great importance. In this content, critically analyse the constitutional mechanism as provided under article Article 175-A for the appointment of the judges of the Supreme court including chief justice of Pakistan.

A. INTRODUCTION:

Montesquieu is attributed as the first person to mention judiciary as a separation and called the independence of judiciary "the most important." Montesquieu believed ^{that} an independent judiciary is "the most necessary" component of a state because it checks governments abuse of power and upholds citizens rights. In Pakistan, with the enactment of 26th constitutional amendment, it is perceived that independence of judiciary has been abolished. Article 175-A of the constitution of Pakistan has been amended to increase the political oversight of judicial appointees and curb the rising judicial activism that Pakistan faced in the past decades. Moreover, the independence of judiciary depends upon its impartial judgements and not upon its appointee. Although, appointment may affect some judicial independence, on the broader view the independence of judiciary has been strengthened especially against the military establishment whose decisions have been rubber-stamped by the judiciary of Pakistan.

B. Constitutional mechanism for judicial appointment:

Under the 1973 constitution of Pakistan, the appointment of judiciary, especially the judges of the supreme court

of Pakistan, is dealt ~~with~~ under article 175-A and 177. These articles define the whole process of judicial appointment which is as follow:

i) Qualifications of a judge for Supreme court:
under article 177, for the appointment of a justice in Supreme court of Pakistan, the person should be at least 40 years old with minimum 15 years of service as a justice or a lawyer in the high court or Supreme court of Pakistan.

ii) Role of Judicial Commission of Pakistan:
The judicial commission is an independent institution under the Supreme court which fills the vacancy for judges of the high court and Supreme court. The judicial commission is composed of:

- a. Chief justice of Pakistan's Supreme court who is also the president of the commission.
- b. Three - senior most judges of the Supreme court.
- c. One judge of the constitutional bench.
- d. ^{one} Senior most lawyer recommend by the bar council.
- e. The federal law minister.
- f. The Attorney General of Pakistan.
- g. One technocrat from non-muslims or women member of parliament, appointed by the speaker.

- h. two members of the National Assembly, one from opposition while the other from treasury branch.
- i. two members of the Senate, one from opposition and the other from the government.

The judicial commission sends a list of three judges for the present vacancy to the parliamentary committee for judicial appointment.

iii) The Parliamentary committee:

The parliamentary committee for the judicial appointment is composed of proportional representation of the government and the opposition. It decides the judge to be selected from the recommendation sent by the judicial commission of Pakistan, and sends the name to Prime Minister for approval.

iv) President's approval:

After the approval by the PM, the recommendation is sent to the president for his assent.

This same procedure is followed for the appointment of chief justice of Pakistan.

C. Is this system an attack on judicial independence in Pakistan?

The speculation ~~trans~~ ~~arise~~

of undermining judicial independence have arisen since the 26th amendment. Although, this system of appointment has an excess of parliamentary involvement, it ~~is~~ ^{does} not undermine judicial independence.

1) Merits of this system:

a) Parliament as a representative of the population of Pakistan should have its say in the judicial appointment. The appointment under article 175-A establishes parliamentary sovereignty and supremacy, ^{two} important concepts of democratic governance.

b) Reduces judicial activism:

Pakistan has faced a turmoil because of judicial activism. Judges ~~based~~ Incompetent judges have undermined the popular sovereignty and have overreached their role. Chief justice Iftikhar Muhammad Chaudry's court is an example: how executive authority was undermined and parliamentarians were degraded.

c) Curbing judicial overreach:

Judiciary through its suo moto powers ~~have~~ taken actions that ~~are~~ ^{were} out of ^{its} their jurisdictional capacity. The sugar price case of 2011, Rental power case of 2012, and the CNG case of 2011 reflect how judiciary left its role as provider of justice and took up executives role.

d) Increased backlogs: official website of the court of Pakistan, there are 2.4 million pending cases in high courts and 60,000+ cases in the Supreme court pending. through competent appointees these backlogs can be reduced.

2) Demerits of this system and their rebuttal:

a) Affects separation of powers:

Excessive political oversight harms the separation of power principle with less room for judicial functioning.

Rebuttal: Separation of power implies division of power among the three branches of states with checks of one over other. The appointments under 175-A exactly reflect this ideology.

b) Parliamentary control on judicial appointments:

Excessive parliamentary control is seen as an authoritative parliamentary trend.

Rebuttal: Judges in the U.S.A are nominated by the president while approved by the Senate. The functioning of judiciary is not effected by parliamentary control and U.S. is a perfect example of it.

3) Need of the ~~article~~ system under article 175-A:

a) The history of Pakistan shows how

judiciary acted as the wing of the military establishment and enacted unconstitutional arrangements: Doctrine of necessity in *Dorso vs Federation of Pakistan*.

b) Indiciaries & undermining of genuine popular represents as seen in *Molvi Tamizuddin vs Federation of Pakistan* explicitly needed a check on judicial overreach.

c) Parliamentary oversight was really needed in judicial appointments so that the history ^{of Pakistan} does not repeat in the same manner as it is present from the time of independence, and the following incidents serve an example to make parliament sovereign and keep its oversight on judicial appointees:

- *Begum Nusrat Bhutto vs: Federation of Pakistan.*
- ~~Strikes of populates~~ *Zafar Ali Khan vs Federation of Pakistan.*
- Disqualification of PM Yousuf raza gillani.

D. The System under Article 175A is a balance between judicial excess and parliamentary excess in judicial appointments:

Case Studies:

1) India:

India follows a collegium system with only members of judicial branch having the powers of judicial appointments. The collegium nominates a judge for the vacancy and the committee has to accept its only nomination on judicial appointments.

In the collegium system, there is no room for parliamentary dissent. Even actions like forming a National committee on judicial appointments have been overpowered through Fourli's case.

2) United States:

United States, on the other hand, has total parliamentary control over judicial appointments. The President nominates a judge for the vacancy which the Senate approves.

Pakistan's judicial appointments under article 175-A is a balance between both extremes.

E Conclusion:

The independence of judiciary is less effected by the parliamentary oversight and more effected by its own actions. The judicial appointment process under article 175-A is a reflection of Montesquieu's separation of power. It is a balance between the two appointment systems found in the world.

This is my first attempted question
of ~~political science~~ ^{C. Law}. I don't know
if I have done it right or not.
Please thoroughly evaluate it and
guide me my weak points. Also
tell if the structure is right or
not, and does my answer satisfy the
question asked.

Please tell me what to do.
Totally confused!