

Independence of judiciary is a sacred principle of constitutional governance so is supremacy of the parliament. Evaluate the statement in the light of recent constitutional amendments.

1) Introduction:-

Independence of judiciary and supremacy of parliament are two sacred principles of constitutional governance. Together both of these institutions ensure that the laws passed are in line with the limits drawn by the constitution and according to the popular demand of the people. A delicate balance between the two ensures constitutional governance. In light of the constitutional amendments made recently; however, it seems that the independence of both of these institutions is under threat. The amendments put a cap on court's powers for judicial review. The principles of freedom of tenure and protection against retaliatory action (for judges) has also been changed. The involvement of civilian government in wartime affairs has been reduced and the role of non-judiciary members

in judicial appointments and transfers has been increased. All of these changes signal a dangerous trend for constitutional governance in Pakistan. Lamenting the same thought, Ayesha Jalal in The Struggle for Pakistan says:-

"The principle hurdle in the way of a united Pakistan was not a disagreement on constitutional matters but the transfer of power from military to civilian hands."

2) Judicial Independence as a Sacred Principle of Constitutional Governance:-

Judicial independence is one of the most important principles of a constitutional governance system. It ensures

a) Checks and Balance for Legislature and Executive

An independent judiciary ensure that none of the other two pillars of the state exceed their constitutional limit. In this way, a free judiciary protects the state from the authoritarianism of executive and legislature.

b) Protects Fundamental Rights of Citizens in Light of Constitution

Free judiciary protects the fundamental rights of citizens by interpreting the laws and order passed by the government.

"Remember that the scrupulous maintenance of law and order are the pre-requisites of all progress."

— Quaid-e-Azam

3) Supremacy of Parliament as a Sacred Principle of Constitutional Governance :-

Parliament represents the ultimate will of the people in a democratic rule. It ensures that the law-making occurs not through executive orders or courts but through elected officials.

"Parliament is the true voice of the people, and extra-constitutional measures will not be allowed to hinder its functionality."

— Ayaz Sadiq, Former Speaker NA.

4) Recent Constitutional Amendments:

Here are a few changes the recent constitutional amendments have introduced -

a) Introduction of Vague ^{Evaluation} Performance Criteria for High Court Judges

A vague criteria for performance evaluation of high court and supreme court judges has been introduced on the basis of which they can be scrutinized and even removed from their posts.

b) Changed Composition of Judicial Commission of Pakistan

26th amendment has changed the composition of JCP and it now consists of eight non-judiciary members. This clearly means that the influence of politicians is going to increase.

c) Transfer of Judges without Their Consent

27th amendment now allows JCP to transfer high court judges

without consultation from chief justice or consent of the judge.

d) Creation of Federal Constitutional Court (FCC) Parallel to Supreme Court.

With 27th amendment, the jurisdiction of supreme court has been reduced to civil and criminal cases. FCC will not deal with cases concerned with constitution and centre-province clashes.

e) Lifetime Immunity for President and Military Officials

27th amendment also confers lifetime immunity to president and 5-star military officials. This is a clear hindrance in the way of accountability.

f) Parliamentary Committee to Choose Chief Justice of Pakistan.

Another area where parliament has altered the balance of power is the selection criteria for chief justice of Pakistan. A parliamentary committee of 12 members will now choose CJP out of the three top judges of Supreme Court.

5) Impacts of These Changes on Judiciary and Parliament :-

a) Deter Unbiased Functioning of Judiciary

These amendments change the principles of security of tenure for the judges allowing government to punish the judges who fail to ^{follow} ~~take~~ the line.

b) Increase Political Interference in Judicial Matters

As Lord Acton said - "Power corrupts, absolute power corrupts absolutely." The same is feared in Pakistan where balance of power has been skewed.

c) Create Impunity for Non-Elected Individuals

Commenting on the lifetime immunity clause of 27th amendment, Lahore-based lawyer, Rida Hossain says: "Democracy does not survive where impunity is made a constitutional right."

6) Conclusion:-

Independence of judiciary and supremacy of parliament are two inviolable laws of constitutional governance. In Pakistan, both of these principles are being compromised and the results of these regressions can be disastrous.