

Part - II

Q # 2

Discuss the supremacy of
British Parliament -----
absolute in nature -----

Ans

Introduction

British parliament is considered supreme authority owing to its ambit of power. Historically events and acts passed by respective governments added to Britain's Parliamentary supremacy. These events include Magna Carta, Glorious revolution and Bill of rights, while in acts which increased parliamentary power include Act of settlement, Settlement act and Parliamentary act. All these acts and events made Britain's Parliament supreme. However, there are certain checks and balances that limit absolute power of British Parliament.

Supremacy of British Parliament

In uncodified constitution of Britain Parliament holds supreme position. It can amend and formulate laws without being subjected to judicial scrutiny as Judiciary in Britain cannot hold Judicial review. So, no law formulated by Judiciary of United Kingdom can be rejected as said by former Justice "laws made by parliament of UK cannot be rejected by judiciary as it has no right to reject law made by representatives of people".

AV Dicey "view of people about a law declaring it improper or not aligned with some principle cannot prevent parliament from formulating law. The only thing it cannot do is to bound its successors."

words of sir William "Power of British parliament is transcendental and absolute."

"British parliament can legislate on anything which not naturally impossible" said Blackstone

Historical examples of Empowerment of British Parliament

1) Magna Carta (1215)

In 1215, an act was passed by parliamentarians to hold monarch accountable to (judicial) parliament. Before this act monarch had absolute power and enjoyed impunity.

2) Glorious Revolution (1688-89)

Glorious Revolution holds important place in empowering British Parliament. England witnessed a year's long revolt which ended with significant changes in structure of government. Glorious Revolution took place after years long English war. In this revolution powers

of monarch further curtailed making him subject to parliament and increasing its ambit of powers.

3) Bill of rights (1689)

In 1689 bill of rights was passed which resulted in stronger constitutional monarchy. Now monarch and churches could not hold discretionary powers.

4) Act of settlement (1701)

Act asserted that no catholic can be monarch and it contends for increase in power of parliament by blocking route for catholics who were in favour of absolute monarchy.

5) Act Septennial Act (1716)

In septennial act tenure of Parliament was increased up to 7 years.

6) Act of parliament (1911 & 1949)

Under this act power of house of lords is reduced House

of commons.

British Parliament is not absolute in nature there are certain checks on its power

i) Public opinion's influence

Public opinion holds pivotal position when it comes to laws formulated by British Parliament.

It influence the decision of Parliament and act as check on acts of parliament.

ii) Media on watch dog

Media also act as spectator of parliamentary affairs. It plays essential role in ensuring transparency of parliamentary procedures -

iii) International law & treaties

International law and treaties are important vigilant of laws passed by parliament. They ensure that no law exceeds limits set by international law and treaties signed by the country.

Rule of law

rule of law is important to impose checks on parliament it make sures that no act is passed which violates principles of rule of law.

Hence, Power of parliament is not absolute in Britain certain system of checks and balance work to limits its power.

Conclusion.

To conclude the debate, Parliament holds supreme position in constitution of united Kingdom. Various historic events played essential part ensuring its supremacy. But certain system of checks and balance are present to limit absolute powers of parliament in Britain.

Q # 4Article 62 and 63

of ----- uncertainty and -----

AnsIntroduction

In 1973 constitution of Pakistan Article 62 and 63 deals with qualification and disqualification of member of parliament. These articles have provisions which generate a kind of uncertainty and obscurity as there is no concrete definition or details exist. These provisions in constitution of Pakistan have become tool to disqualify political opponents on their ^{own} definition of certain terms. Various political leaders in Pakistan have become victim to these prevalent obscurities in constitution of Pakistan. Article 62 and 63 of constitution of Pakistan are creating uncertainty in

Article 62 of constitution of Pakistan

Article 62 of 1973 Constitution deals with terms for qualification of parliament members. There are following clause in this article that produce obscurities regarding a person's qualification to be elected as member of parliament.

Article 62(1)(f) entails that a person must be sagacious, righteous, non-profligate, honest, and ameen without any declaration to contrary by a court of law.

Article 63 of constitution contends that with disqualifications of member of parliament which includes conviction for moral turpitude, propagating opinions prejudicial to Pakistan, dismissal from service on grounds of misconduct etc.

Criticism on Article 62 and 63

No concrete definition of "segarious" and "rituous" enshrined in article 62(1)(f).

1st reason to criticize article 62 and 63 is that they do not possess clear definition of terms given in them. In article 62(1)(f) if a person is not segarious (sachq) and rituous (ameen) he or she is entitled to disqualification but there is no description of who is called segarious and rituous. Terms have subjective definitions.

Political tool against opponent

In history of Pakistan there have been instances where these articles have been used by political leaders to disqualify opponents accusing them of not meeting the vague and subjective standards of these articles.

Example:

Disqualification of Nawaz Sharif in 2017.

Disqualification of Imran Khan in 2023.

Remarks of Justice Asif Saeed Khosa

" Clause (f) of article 62 of the constitution provides legal feast and obscurities. They relate to state of mind and cannot be properly encompassed. why ^{have} such requirements in constitution that ~~do~~ cannot be defined".

So, Article 62 and 63 of Constitution of 1973, particularly some of their clauses such as 62(f)(1) create uncertainty and obscurity in constitution.

Conclusion

To conclude, Article 62 and 63 of 1973 Constitution of Pakistan deal with qualifications and

disqualifications of member of parliament. Due to their vague and subjective nature they merely create obscurity and uncertainty in constitution.

~~Q#5~~

--- salient features of India Act of 1935, ---

Ans

Introduction

Indian Act of 1935, was formulated by British ruler in 1935. The act granted provinces autonomous power. With regard to provincial powers act was a step towards improvement of ^{then} existing status of provinces. Along with delegation of certain powers to provinces act was designed to hold strong center. British government kept powers of accountability of governor generals, control of department of police and other such powers. The

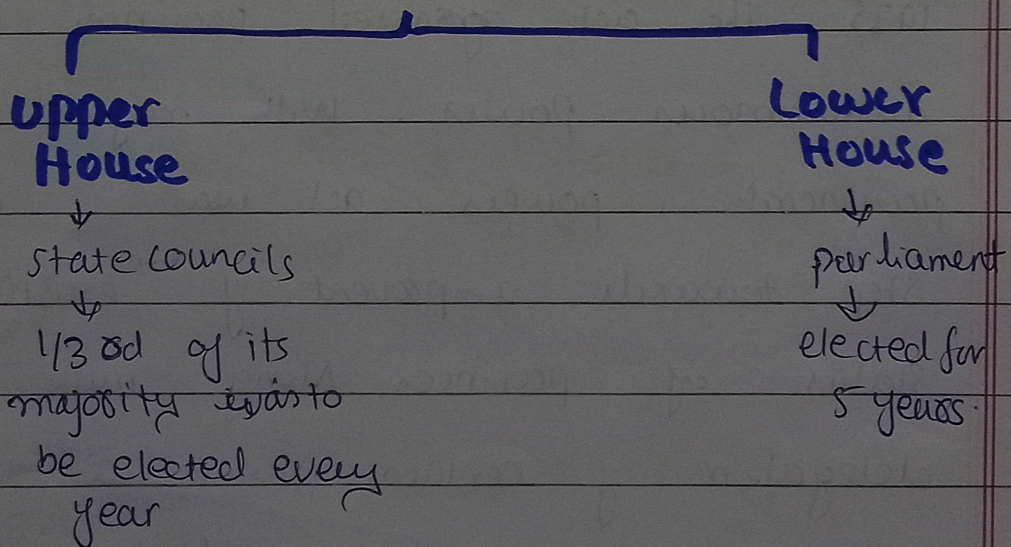
act due to its colonialistic nature
garnered criticism from almost all
parties of india.

Salient features of 1935 Act

Written Act of 1935 was
written in nature. It included
14 parts and 6 schedules.

Federalism

Act was federal in
nature. it was bicameral:



Provincial autonomy

provinces were delegated responsibilities
of education, health, transport
etc.

Legislative lists

3 legislative lists i.e. federal legislative list, provincial legislative list and concurrent list was made.

Inconsistencies

In case of inconsistency between federal and provincial lists law of federal center will dominate.

In concurrent list federation and provincial both could legislate.

Federal list (59 items)

provincial list (54 items)

concurrent list (36 items, almost)

Appointment of governor generals

Governor general were appointed in provinces who were accountable to British government only.

Council of ministers to

Council of ministers was established who would assist governor generals.

Council of ministers was accountable to parliament as well as Governor general

Powers of Governor general

Governor general were not accountable to parliament but only to British government.

Federal Court

Federal Court was established under 1935 Act.

Princely states

Princely states were given choice to join federation but they did not while provinces it was compulsory to join federation.

Representation in parliament

Elected representatives were not representatives of province in parliament but only those nominated by rulers were the true representatives.

Diaschy Diaschial form of government existed.

Rigidity

Constitution under 1935 Act was rigid in nature. People had no power to propose amendments.

Criticism

Act of India 1935 was formulated to improve the autonomous status of provinces. But its biasness towards strong center made it subject to wide criticism.

Almost all parties in Indian subcontinent criticised it. M. Ali Jinnah called it completely unacceptable. Gandhi also criticised and rejected this.

Grounds on which criticism

arose:

- ① Strong center made provincial autonomy merely a toy.
- ② Discretionary powers were given to governor generals who were not

even accountable to parliament
 ③ Rigid nature of constitution never allowed its people to propose any amendment

Conclusion

To conclude, 1935 Act of India ensured provincial autonomy and established a federation in India. However, in this act center remained powerful which did not allow provinces to have complete autonomy. The Act received complete India wide criticism from all major parties.

Q#7

The principle of judicial review ----- criticism ----- Pakistan.

Ans

Introduction

Judicial review

is a legal doctrine which grants Judiciary power to interpret and define law along with declaring law passed by legislature null and void. It is legal right of judiciary which originates from decision of Justice Coke of United States in a landmark case of *Marbury vs. Madison* in 1803. In Pakistan the doctrine of judicial review often remains subject of criticism in legal circles due to its overreach and unintended impacts on country's judicial system.

Legitimacy of Judicial review

Judicial review is a legitimate right of judiciary it has to protect and define laws.

Judicial review as necessity to ensure check and balance

Judicial review is important

part of system of checks and balance. It ensures that legislative branch may not exceed its constitutional bounds.

Protection of fundamental rights

Judiciary has power to protect fundamental rights from any kind of infringement through judicial review.

Interpret and define Constitution

Under doctrine of judicial review judiciary holds status of interpreter of constitution of a country.

Safeguard of constitution

Judiciary, by ensuring right implementation of constitution, act a safeguard of constitution.

Judicial review grants authority to safeguard constitution of the country.

Under 1973 Constitution of Pakistan "Judicial review"

Article 184(3) of constitution of Pakistan grants judiciary authority to interpret constitution of Pakistan. It is discretionary power of appellate court.

Reasons for criticism in Pakistan

Judicial activism in exercise

When any judiciary exercise power of judicial review extensively it is called judicial activism. In Pakistan highest court which enjoys this power frequently use this power and over step its constitutional bounds which garner criticism.

Impacts of judicial activism

Breaching sovereignty of Parliament

In Pakistan Judiciary overreaches and breaches sovereignty of parliament by interfering parliamentary proceedings. This leads to the breach in sovereignty of parliament which built ground for criticism on judicial review.

Compromise of neutral image of judiciary

When Judiciary excessively interferes with working of other organs of state it perceived as biased toward other institutes. This compromises the neutral image of judiciary in Pakistan.

Politicisation of Judiciary

Frequent interference of Judiciary leads to the politicisation of Judiciary. which tarnish independent image of judiciary and create

tussle between institutes - it further leads to instability in country.

As Ayesha Iqbal in her book

"Judging the State" write that "Judiciary of Pakistan multiple times involves deliberately in politics of Pakistan which leads to its politicisation".

Hence, frequent interference of Judiciary in political affairs by judicial review leads to its politization.

Delay in other cases

When judiciary becomes excessively involve in interpreting and declaring legislative law null and void. it deviates from its primary purpose of providing justice to public and the justice delayed means justice denied. So, judicial activism shifts judiciary's focus from its primary purpose, which entails criticism across country.

Conclusion

Judicial review is the legitimate right of judiciary in multiple democratic country. In Pakistan due to its overreach it remains subject of criticism.
