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QUESTION #02

Introduction:

The 1973 constitution of Pakistan was adopted by the parliament on 14th August, 1973. The constitution established as a federation, with mechanism of division of powers between the center and the provinces. Provincial autonomy was given to provinces under **Article 140A** which recognized the division of economic, legislative, and administrative powers between center and units. **Article 141, 142, and 143** provided mechanism for division of legal powers; **Article 146, 147, and 148** for administrative division; **Article 160** for NFC awards, and **Article 153** for addressing disputes by CCI. In order to have smooth functioning of relations, it is important to have complete decentralization, enhanced provincial autonomy, balance of powers, and clarity of influence of powers. All these recommendations are already implemented under 18th amendment to the constitution of Pakistan.

Federal Structure of 1973 Constitution of Pakistan

The constitution of Pakistan was promulgated on 14th August, 1947. According to **Article 1**, Pakistan is a federation, comprising of 4 provinces; Punjab, Sindh, Balochistan, and KPK, along with federal administered areas.

The name (پاکستان) ^{Khyber Pakhtunkhwa} was adopted under 18th amendment to the constitution of Pakistan.

- Provincial Autonomy

The constitution of Pakistan provided the framework for the division of powers between centres and units. According to **Article 140 A**, administrative, legal, and economic powers to be divided between centres and provinces.

Division of legal powers

The constitution provided a framework for legislative division of powers.

(a) Territorial division

The constitution

provided distinction for territorial jurisdiction. Article 141 says that provincial legislation would be implemented to entire province.

(b) Exclusive legislative authority

Article 142 of the constitution give provinces the exclusive authority to make legislation on criminal matters. This can be different from federal laws.

Administrative division

Concurrent and Federal Legislative List

The 1973 constitution of Pakistan distributed authority between center and units. The federal legislative list contained subjects exclusively under the center control, while concurrent list comprise comprised of subjects that were under the control of both center and provinces. However, 18th amendment to the constitution abolished concurrent list, and transferred majority of its subjects to provinces.

Division of resources

National Finance Commission (NFC)

The 1973 constitution of Pakistan established NFC, according to Article 150 of the constitution. NFC was made to decide the mechanism of distribution of resources from centre to units.

Previously, the provincial share was around 47%, however, 18th amendment increased provincial share to 57.5%.

Measures for smooth relations between the centre and provinces

(a) Clarity of autonomy over subjects

In order to have good relations between the centre and the units, it is very important to have clarity over control of subjects. Prior to the 18th amendment, both centre and provinces had control over subjects in concurrent list. However, 18th amendment abolished concurrent list and transferred majority of subjects to provinces. All these subjects that are currently not under federal legislative list, they explicitly fall

under the domain of provinces.
This clarity is important for smooth relations between centre and units

(b). Constitution-guided clarity over legislation

To avoid legislative conflicts, there needs to be proper framework for legislation affairs. Article 141 says that provincial law would only be applicable to that province, while federal law would apply to the country. In case of conflict between the two, according to Article 143, federal law would prevail over constitutional law.

(c). Mechanism of cooperation between centre and units

There needs to be a mechanism by which centre and units can cooperate to avoid gridlock. Article 146 and 147 says that centre and units can transfer their subjects to each other. And Article 148 of the constitution makes it mandatory for centre and units to extend lawful cooperation. This is critical for smooth relations.

(d). Framework for dispute resolution

For smooth relations, it is important to have a mechanism through which centres and units can resolve their disputes. Article 153 of the constitution constitutes an institution, called CCI. The full form of CCI is Council of Common Interest which is responsible to resolve disputes between the centres and units.

Conclusion

In conclusion, the 1973 constitution provided a comprehensive framework for a federal government. The constitution divided the powers between centres and units, and provided extensive framework for decentralization of power in legal, administrative, and financial domains. Centres and units can have smooth relations when there is clarity of influence of over subjects, territory, resources, and a mechanism for dispute resolution. Only then, the federation can work smoothly.

QUESTION #03

Introduction

Since the fall of Dhaka, the country's democratic system has experienced various transitions between autocracy and so-called democracy. Since 1971, the country's democracy has been marked by political instability and frequent military interventions. These interventions have been direct through military coups, as well as indirect control. On the other hand, the constitutional amendments that have been important in this trajectory are 8th amendment, 13th amendment, 17th amendment, 18th amendment, and 25th amendment to the constitution of Pakistan. Pakistan's political culture has been consistently characterized by the influence of religion, dynastic politics, military establishment, and ethnic orientations. Despite of the diverse political culture and a number of constitutional amendments, the democratic system is utterly controlled by the military establishment. Since Dec 8, the military has been exercising 'controlled democracy'.

The trajectory of Pakistan's democratic system

Since 1971, and even prior to that, the country's democratic system has been marked by various transitions between the military regimes and civilian governments. The democratic system has historically been characterized by heightened political instability during civilian governments. This trajectory can be analyzed in view of political and constitutional developments.

(a) The trajectory of Pakistan's democratic system in view of political and constitutional developments since 1971

Various political governments have taken various initiatives to consolidate the democracy, with little or no success.

(a). The Bhutto's era

After the fall of Dhaka, Zulfikar Ali Bhutto became the prime minister, who developed a democratic constitutional process, and aimed to decentralize the power.

However, the Bhutto's era was short lived, as Zia imposed military coup and suspended the constitution.

(b) Zia's dictatorship and 8th amendment

Zia took charge of the country through military coup in 1977. He ruled for 11 years. Zia imposed his dictatorship by suspending the constitution, abrogating the Local Government Act, and enforced 8th amendment. The 8th amendment to the constitution granted President the right to remove the prime minister and dissolve National Assembly.

(c) Benazir Bhutto and Nawaz Sharif's governments

After Zia's death in 1988, Benazir became the prime minister. After Zia's dictate, the democratic system was marked by varying degrees of political instability. An important constitutional amendment that took place during his time was 13th amendment. 13th amendment balanced the powers between President and prime minister.

(d) Returned to military coup, Mushraf's ^{post}
Pervez Mushraf
dismissed the government of prime
minister Nawaz Sharif through
a military coup. Although he
was a dictator, yet he looked
for democratic framework. Local
Government Ordinance was introduced
by Mushraf that decentralized
the power. Mushraf also brought
17th amendment to the constitution
to enhance President's power.

(e) Back to democracy: 2008-to present
Since 2008, Pakistan
has been a so-called democracy.
The most important constitutional
amendment which strengthened
democracy was 18th amendment.
18th amendment returned the
democratic framework to 1973 constitution
and enhanced democracy. It also
contains provisions by which constitution
cannot even be suspended.

Analytically, this
time period is marked by
'controlled democracy' in which
military controls the politics through
back-deers.

Influence of Pakistan's political culture on democratic institutions

Pakistan's political culture has had a significant influence over the evolution of its democratic institutions.

Pakistan's political culture is characterized by the influence of religion, dynastic politics, military establishment, and ethnicities.

(a) Re Influence of religion.

Pakistan's ideological and constitutional framework is based on the Islamic ideology. The religion in politics was mainly ^{introduced} influenced by Zia-ul-Haq. Zia's islamization influenced the democratic institutions in an unparalleled way. Similarly, the recent government of PTI, led by Imran Khan, envisioned Pakistan as 'Nizam-e-Medina'. Since Zia, the politics and religion have been interconnected.

(b) Dynastic Politics

With exception of PTI, the country has been either ruled by military or dynastic politics,

with two private-limited parties.
This culture has created monopolistic
influence and seriously hindered democratic
institutions.

(c). Politics dominated by ethnic influence

Pakistan has an heterogeneous societies, having diverse cultures and ethnicities. The provincial governments, especially underprivileged societies, are driven by ethnicities. Ethnic identities have a major influence in democratic institutions. Since governments are ^{often} formed on ethnic orientations, like in Sindh, the democratic functioning of the respective governments are influenced by ethnicity.

(d). Military establishment, the driver of Pakistani politics

The most dominant prevailing political culture which has entrenched its influence in all the state institutions is of the dominance of military establishment. The military has directly ruled for about 30 decades, and indirectly part of every political regime. The democratic institutions were

abandoned by military in direct control of the power. Currently, through controlled democracy, military influences democratic institutions. The current situation of central media, selective accountability, deprived freedom of expression, violation of human and constitutional rights, and limited influence of ^{independence} judiciary and election commission manifests the erosion of democratic institutions by the military establishment.

Conclusion:

In conclusion, Pakistan's democratic system has undergone various transitions between military and civilian governments. 13th amendment and 18th amendment to the constitution were main constitutional amendments for consolidation of democracy. Politically, no such considerable efforts have been done for democratic stability. Pakistan's political culture is mainly driven by religion and a military establishment. Despite of heterogeneous society, and diverse political culture, and several transitions with constitutional amendments, the military has entrenched its influence on all democratic institutions, which are therefore, no more democratic.