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← PART-II →

Question No. 4

How 27th Constitutional Amendment affected ~~trichotomy~~ of power in Pakistan?
Discuss

INTRODUCTION:

The 27th Constitutional Amendment to the 1973rd Constitution of Pakistan has surfaced as one of the major amendment to the country's supreme book since the 18th Amendment (2010).

The amendment has restructured key national institutes concerning internal and external security, & Supreme judiciary and mechanism for the appointment of judges to the superior judiciary. The massive reforms in the constitutional framework have said to also impact the trichotomy of power in the country and would have a long-lasting impacts in the coming years as the country copes with rising external threats to its sovereignty and territorial integrity, and internal instability which

stemming from political chaos. The amendment, the supporters say, would provide stability to the country by fortifying the command structure of its armed forces, and enhance the performance of the superior judiciary by establishing a special federal court for constitutional cases, lessening the burden on the Supreme Court. However, the critics fear that the massive amendment to the key in functioning and structure of key national institutes could centralize power, and compromise the independence of judiciary due to enhanced executive oversight and control.

A. Major Reforms in Armed Forces:

The 27th Constitutional Amendment has introduced key reforms to the command and structure of the national armed forces, which play an inevitable role in defending the country's frontiers against external aggression. The reforms comes at the offset of the May conflict between India and Pakistan, which is said to be the most fierce since 1999. Pakistan secured ~~major~~ decisive victories in the 4-day war, but also realized some crucial restructuring which

was required to enhance the coordination between the three armed forces during war, improve preparedness across the spectrum, strengthen control over the strategic national assets.

The major reforms include the new office of Chief of Defense Forces (CDF), disbanding of the office of the Chief of Joint Chief of Staff Committee (CJCSC), and the office of the National Command Strategic Command.

4) Chief of Defense Forces (CDF):

By introducing a major amendment to the Article 243 of the Constitution, which concerns within the armed forces of the country, a new office of the Chief of Defense Forces (CDF) has been established with an objective to enhance the performance of the three armed forces under the chief of army staff. Under this amendment, the chief of army staff (COAS) would also perform the responsibilities of ensuring active coordination between army, navy and the air force during war scenarios. A similar office also exists in the neighbouring India, and many other countries in the world. The critics have

argued that the appointment of a chief of army staff to the office of CDF could compromise the operational command and structure of the naval and air forces. But the supporters contend that the three forces would maintain their independent command structures, operational ability, and defence tactics, and the office of the CDF would only streamline coordination and enhance response readiness between the three armed forces.

Chairman

ii) Abolishment of Chief of Joint Chief of Staff Committee (CJSC) office:

Under the amendment, the office of the chairman of the joint chief of staff committee was abolished and replaced with the office of the CDF. The office was established in the 1990s and its chairman used to be a four-star general from either of the ~~armed~~ three armed forces. The office was headed by an officer who was not chief of any of the armed forces and its objective was to ensure inter-services coordination.

iii) National Strategic Command:

Under the 27th Amendment, a new office of the commander of the National Strategic Command has been established which would be headed by a four-star military officer. The National Strategic Command (NSC) is designed to oversee the strategic assets of the country including its nuclear arsenal to maintain high level of deterrence against any foreign aggression which could pose an existential threat to the country's sovereignty. Earlier, the control of the nuclear assets was under the National Command Authority (NCA), which was chaired by the country's prime minister and participated by senior civil and military officials. The restructuring of the body is reportedly done after realizing the enhanced threat to the country's security and the rapidly transforming dynamics of modern warfare, where conflicts can escalate to the tipping point in the matter of moments.

B. Major Reforms in the Judicial System

The second major reforms introduced in the 1973 Constitution of the country one related to the jurisdiction of the constitutional cases in the higher judiciary, and methods of the judges' appointment. Under the amendment, the new federal court with the jurisdiction to hear constitutional cases has been established. The critics have argued that the amendment has undermined the judicial independence by enhancing executive control over the appointment while the supporters contend that it does not aim to erode independence of judiciary but to uphold the supremacy of the parliament, which is the mother of all the institutions.

i) Establishment of the Federal Constitutional Court (FCC)

The establishment of a specialized Federal Constitutional Court (FCC) is the unprecedented development in the country's judicial and constitutional history. The establishment of the FCC is said to be the done under the extension to the 26th Constitutional Amendment (2024),

which had established a special constitutional bench within the Supreme Court of Pakistan. Under the amendment, the power of the supreme court to hear the constitutional cases has been transferred to the FCC, which would be headed by its own chief justice, supported by constitutional judges.

a) criticism:

i) The critics of the ~~const~~ FCC have expressed their concerns over the appointment of the judges to the top court under executive watch. According to the amendment, prime minister would be empowered to pick the chief justice of FCC which appointments of other judges to the court would be made in consultation between the two. They fear that the direct executive control over appointments could undermine independence of judiciary and like-minded judges could be appointed.

ii) They also argue that the innate powers of the Supreme Court (SC) to hear the constitutional cases ~~have~~ ^{has} been clipped, and has rendered the apex court only able to hear cases of criminal and

civil nature.

b). supporters:

i) The supporters of the establishment of the FCC assert that the development was not a novel event in the judicial history of the world and many advance nations like Germany, Hungary, South Africa and numerous others had specialized supreme courts to with specified jurisdictions to hear constitutional, civil, and criminal cases. They also contend that the amendment was proposed long ago in the country and was not a "knee-jerk" decision.

ii) Regarding the appointment method, the supporters maintain that the appointments of judges to the top courts were also made by executives in the most developed part of the world, including in the United States of America. They posit that sufficient safeguards were in place to ensure that independence of the judiciary was upheld under the democratic principles, adding that the composition of the Supreme Judicial Council (SJC) ensured that executives were not usurping the judicial autonomy in decision-making.

Trichotomy of Power in Pakistan after 27th Amendment:

Trichotomy of power is the hallmark of the democratic system which aims to ensure check and balances of legislative, executive, and judicial institutions over each other. The 27th Amendment to the Constitution stands at a critical juncture in the country when external threats to the national sovereignty necessitate strong coordination between the armed forces ^{while} internal political instability and constitutional crises demand fair and balanced judicial body to overcome the challenges.

The 27th Amendment has undoubtably ~~des~~ redefined the power structures in the country which consolidates command of the armed forces, transfers constitutional jurisdiction of the Supreme Court and to the FCC, and provides executive with the powers to have a key role in appointments to the constitutional court.

Conclusion:

In short, the 27th Amendment to the Constitution would long be

Date: _____

Day - _____

remembered in the constitutional history of the country which redefined the power structures in the key national institutes ranging from armed forces to the strategic assets and the constitutional jurisdiction ~~to~~ of supreme judiciary. Although critics have raised their concerns over some long term implications of some amendment which reinforce executive control over the appointment of judges to the FCC, the legislation has aimed to achieve an ~~equil~~ equilibrium by strengthening external defense and ensuring internal stability, both of which are important for national sovereignty and progress.