

English Essay - NOA : 3/2

The Paralysis of Justice

in Pakistan

Outline

A. Introduction;

- a. Tug of war between parliament and judiciary in Pakistan
- b. Importance of 'Judicial Freedom'
- c. Thesis statement

B. Understanding the Importance of Judicial Freedom;

1. Judicial freedom is necessary for smooth running of government
2. ~~Judi~~ Rule of law uphold by free judiciary

C. Current Situation of Justice System of Pakistan;

1. Pakistan ranks 129 out of 142 countries in 'World Justice Project Rule of Law Index'

2. More than one lac cases pending: report of Human Rights Commission

## D. How Justice is Paralyzed in Pakistan;

1. 26<sup>th</sup> amendment - a blow to justice system;

1.1. Passage of 26<sup>th</sup> constitutional amendment threatened judicial freedom in Pakistan

1.2. Report of International Commission of Jurists over 26<sup>th</sup> amendment in Pakistan

2. No more 'Suo-Motu' power;

2.1. Suo-Motu power of Chief Justice<sup>is</sup> removed

2.2. Article 184 of 1973 constitution

3. Upholding of favouritism over meritocracy;

3.1. Controversial procedure

of appointment of top judge

3.2. Remarks of Aitzaz

Ahsan: 'The appointment procedure can be a threat to meritocracy'

4. JCP becomes a new political tool;

4.1. Judicial Commission of Pakistan (JCP) becomes political tool by increasing number of non-judicial members

4.2. According to 26th amendment, increase of parliament and senate members pushes judges into minority

5. Tailored-made constitutional benches;

5.1. Power of JCP to create judicial benches to hear cases

5.2. JCI report : It can seriously undermine free trial

6. Fear of removal of judges;

6.1. Ambiguous inefficiency clause allows Supreme Judicial Commission to remove judges

6.2. Quotation of Henry Maine, an English Jurist

7. More chances of pre-decided verdicts;

7.1. Unlimited power of Parliament provides way to political interference

7.2. Separation of Power between executive, judiciary and legislature: a concept of Montesquieu

**E. Conclusion;**

## Essay

Pakistan has a long history of political tug of war between its parliament and judicial arm, and this idea is also supported by Hamid Khan in his book 'Constitutional and Political History of Pakistan'. This expedition has caused a lot of problems to the Pakistan, fostering sense of social chaos and political instability. Currently, it seems that this tug of war ended with the victory of parliament, providing it an upper hand through 26th amendment and thus curtailing judicial freedom. Judicial freedom considers as an integral part of state affair, allows smooth

runing of state and upholds rule of law for proper functioning. Recently, this freedom recieves a big blow in Pakistan due to various reasons. To begin with, the ending of Suo-Motu power of supreme court judge stops it from taking action on matters of public good. Apart from this, the notion of meritocracy ended due to the new controversial procedure of appointment of top judge. In addition to it, 'Judicial Commission of Pakistan' becomes a new political tool by increasing numbers of non-judicial members. Furthermore, formation of tailored-made constitutional

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benches threaten judicial freedom and notion of free trial. Lastly, the ever increasing fear of removal from office by judges seriously undermine their power to give unbiased verdicts. Thus, in summation, the above arguments prove that regardless of their supreme position in state affairs, the justice in Pakistan has lost its authority and become paralyzed.

~~Coming towards main~~

To begin with, the passage of 26th constitutional in Pakistan is a great matter of concern over justice and judicial freedom. This amendment has not only challenged the judicial

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Freedom but also made it subservient to the parliament. A number of international watchdogs has raised their concern over liberty of judiciary. The recent published report of International Commission of Jurists has underlined the condition of judiciary and how the passage of 26th amendment would cause a blow to justice. According to the report, it may provides a way to the political interference which would have drastic impacts. All the controversial provisions like formation of JCP and other commissions have seriously rupture the notion of free and



fair trial. Thus, in one way or other this amendment stops judges and courts to freely exercise their constitutional jurisdiction.

Moreover, there is another provision that has paralyzed judiciary by giving way to favouritism and ending meritocracy. This provision is related to the appointment of top judge. This procedure of top judge appointment has become controversial due to ~~pro~~ involvement of parliament. In Pakistan, the top judge of apex court will be appointed by PM from the list of top three judges, result in promotion of favouritism

and ending meritocracy.  
In the past, judges were appointed on the seniority basis without any outside interference. Aitzaz Ahsan, a senior lawyer, says that the new appointment procedure is a serious threat to meritocracy. This new appointment procedure may undermine meritocracy and allows government to choose judges according to their will.

Another blow to judicial freedom is the tailored-made constitutional benches by JCP. The formation of constitutional benches was once the subject of Supreme Court Chief Justice. However,

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recently, 26th amendment has transferred the power formation of constitutional benches in the hand of new JCP. The new Judicial Commission of Pakistan is highly populated by non-judicial members. Now, the members of JCP are mostly from government, ~~the~~ pushes the judicial member into minority. These members have power to choose constitutional benches and what case they can hear even the cases of political significance. These tailored-made constitutional benches would provide already pre-decided verdicts due to the favouritism. Thus,

it will paralyze justice  
more than ever.