

Question.no-3

07

Introduction:

Amendments in constitutions are made to ensure inclusiveness, transparency and rule of Law. In constitution of Pakistan, the executive powers and parliamentary committee has made 27 amendments till date. The debate over 27 amendment has surfaced in November 2025. This amendment has two main subjects. On judicial aspect, creation of Federal Constitutional courts, the executives role in appointment of judges has covered. While on the other hand, it has created new oath of Field Marshal and its procedure. In this question, we critically evaluate role of 27th amendment in curtailing judicial powers, judicial activism and implications for trichotomy of power in Pakistan.

27th Constitutional Amendment:

1) Creation New Federal Constitutional Court

Under 27th constitutional Amend, Federal Constitutional court has been established. All the matters that related to constitutions are shifted to FCC. Now SCP left with civil and criminal matters.

Appointment of Chief Justice:

The appointment of chief justice of FCC would be elected by President of Pakistan on the advise of Prime Minister of Pakistan. However, other judges would be transferred from SLP.

Scholarly exegesis:

Numerous scholars have argued that 27th amendment has largely increased the role of executive in judiciary. When executive chooses the same-minded person, the transparency and judicial powers would be curtailed according to vested interests of executives.

Transfer of Suo-moto and appellate, advisory powers from SCP to FCC:

Under 27th amendment, role of ~~SCP~~ has altogether changed. The Suo-moto powers under Article 134, 135, 136 are now shifted from SCP to FCC. Therefore, SCP have no longer powers of advisory opinion, appellate and oversight related.

Critique:

Constitutional experts and law persons have largely condemn this action as transfer of these powers means more role of executive in guiding the judicial decision. Therefore, it undermines the judiciary transparency in equitable decision, hence disabled rule of law. Moreover, it undermines the role of SCP to a session court holding only civil and criminal powers related judiciary.

~~Head of FCC~~

Who will head the Judiciary:

The senior most judges of SCP and FCC would be considered as head of judiciary.

However, Age limit for Chief Justice of FCC would 68 year unlike as of SCP 65 year.

Rising concerns:

The debators have raised concern that influence of senior judge of FCC would automatically increased due to age aspect.

Thus, senior CJ of FCC will primarily more influence and may rise conflict ^{blw Justice & SCP}

Merits of 27th Constitutional Amend:

- 1 Un-burdenised SCP
- 1 Curtail Judicial Over-reach
- 1 May Bring Political Stability
- 1 Rapid Resolution of Constitutional matters

De-Merits of 27th Constitutional

1 It can curb inclusive decision making and independence of Judiciary

1 It has increased Role of executive blurring power separation

1 Reduce Accountability of ^{real} executors
Comparative Analysis:

Pakistan is not alone whom separated constitutional bench from SCP but numerous other countries like South Africa, North Korea has implemented it and surfaced as transparent government-judicial system. On the other hand, US, UK and similar developed nations have their constitutional bench ~~from~~ within their SC as joint and leading transparent stable governing structure.

What is Judicial Activism and how it is affected by 27th Amendment:

Judicial activism means active role of judiciary and their independence in giving advisory opinion and employing inclusive suo moto powers. In 27th amendment, suo-moto powers and other judiciary related powers constitutionalized in 184, 185, 186 article has been shifted to FCC. But in FCC, there is executive role that guides the judicial decision curtailing its activism.

What is Judicial Restraint and its co-related with 27th Amendment:

Judicial Restraint means sanctions on judiciary in employing its powers in decision making. Since in

27th amendment, The ~~ACS~~ of FCC would be appointed on the advise of PM, it gives vacuum to influence the judicial decision according to the will of executives. Thus, judicial restraint is correlated to it.

Implications on the trichotomy of Powers in Pakistan:

In Past, Judicial suo-moto powers have employed to legalised military coups and restrained to privatize assets like Karachi still mill. ~~Now after the~~ These overreach of judiciary has caused political instability through many years. It is also proposed in charter of democracy in 2004. Thus there may chances to enhance political instability. On the other hand, involvement of executives in appointment judicial

commission has raised serious serious question about separation of powers and blurring the judiciary independence.

Creation of New Military Oath:

In past, there has been a oath of chief joint chiefs of forces which is eliminated and chief of Armed Military Force would be consider the head of naval and air forces. Moreover, Lifetime oath of Field Marshal has been initiated whose responsibilities will be declared by federal govt.

Conclusion:

The whole discussion can be encapsulated that 27th constitutional Amendment has raised serious questions about activism of judiciary. However, if executives remained this initiative to bring political stability, it can be proved instrumental but allowing judiciary to play its inclusive role. But scholars have argued, it is unlikely to happen.