

Erosion Of Pakistan's Judiciary

Mains: GS II - Comparison of the Indian Constitutional Scheme with that of Other Countries

Why in News?

Recently, Pakistan's National Assembly and the Senate passed the 27th amendment which introduces new provisions in the military command structure, it has far-reaching implications for Pakistan's judiciary.

What is the 27th amendment of Pakistan?

- **New Court** - The amendment has created a new Federal Constitutional Court (FCC).
- **Supreme Court's role curtailed** - The amendment has curtailed the role of supreme court as the custodian of the Constitution, thereby reducing the judiciary's independence.
- **Reaction from the judges** - 3 judges from the Supreme and High Courts have already resigned in protest against the 27th amendment, while four judges from the Islamabad High Court have appealed against it.

How the 27th amendment reduces the independence of Pakistan's judiciary?

- **Curtailing the original jurisdiction of SC** - The creation of a new FCC to address issues relating to the Constitution and federal-provincial relations would mean that the Supreme Court would no longer have its original jurisdiction.
- Thus, the Supreme Court would not hear cases relating to the interpretation of the Constitution, fundamental rights, or questions of federal-provincial relations.
 - **For instance**, In recent years, the Supreme Court had used its original jurisdiction to deliberate on a few high-profile political developments including the Panama Case.
- **Powers to executive** - The 27th amendment provides the executive with the power to transfer judges without their consent.
- Critics of the amendment argue that this provision would enable the executive to transfer judges who do not toe its line.
- Though the executive has to follow certain procedures, in effect, it could transfer judges to secure its choice or to penalise those who disagree with it.
- This would significantly undermine the judiciary's independence at the higher level.
- **The hidden agenda** — Though the executive is trying to justify it in terms of necessity, the real reason is to pick those judges who will be amenable, especially with respect to constitutional matters.

- The critics argue, is part of a plan to subvert the Supreme Court's "over reach" on constitutional matters.
- **Divided and weakened judiciary** - The FCC already has a Chief Justice and a few other judges; it has also started entertaining cases in the first week of its existence.
- **Unbalanced power** - Overall, the 27th amendment gives the executive and the legislature an edge over the judiciary, thereby undermining the essence of the balance of power in a constitutional democracy.
- **Undermines the successes of the 18th amendment** - The 18th amendment aimed to depoliticise the judiciary and make it independent.
- The 18th amendment, passed in 2010 by the PPP government, provided for a *Judicial Commission of Pakistan (JCP)* to recommend the names of new judges, thereby giving more space to the judiciary, the 27th amendment makes it redundant.

What is the amendment's history?

- **18th amendment(2010)** - It had mandated that the JCP be comprised of judges from the Supreme Court and High Courts.
- **26th amendment** - It altered the composition of JCP by bringing in more members from the executive, thereby undermining the selection of judges for the higher courts.
 - The JCP now has more members from the political side.
 - It also granted the JCP the power to appoint constitutional benches, thereby removing the Chief Justice of Pakistan's power to appoint benches.
- The 26th and 27th amendments are not the first time that the executive in Pakistan has attempted to undermine the judiciary.

What lies ahead?

- Given the political and societal issues facing Pakistan, and the questions of accountability, especially in higher institutions, as the recent International Monetary Fund report highlighted, an independent judiciary is essential for Pakistan.
- Separation of powers and an independent judiciary are essential for any constitutional democracy, especially Pakistan.
- Political parties of Pakistan should know this, given the challenge from the Establishment (Pakistan's military complex) to democracy and its institutions.
- An independent judiciary will remain the only institution that could protect, if at all, overreach from the Establishment.
- The real motivations of the Pakistan Muslim League (N) (PML-N) government are to clip the wings of the Supreme Court and reduce it to a Court of Appeals by removing its original jurisdiction.

Reference

[The Hindu| Undermined Pakistan's judiciary](#)