**Exec-Legislature Assault on the Judiciary (Part I)**

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In all wisdom, the Constitution has bound the government, legislature, and judiciary in their respective spheres, and none is above or beyond it.

Every law enacted by the parliament is subject to interpretation by the supreme court in light of the ideals and purposes of the Constitution. It is the prerogative of the legislature to amend the Constitution and pass laws. It is the responsibility of the judiciary to determine whether such laws violate the fundamental structure of the Constitution.

Most countries settled the question of which pillar is superior to the other shortly after their establishment, but in Pakistan, forced by our vested interest, we bring up the issue whenever and wherever it suits the authorities. Even though the Constitution has assigned each pillar a distinct function, jurisdiction, and level of importance, it has not favoured one over the others. Parliament cannot pass a law that contradicts the fundamental structure of the Constitution until the Constitution is amended and the amendment is in harmony with the fundamental structure. Once a law is enacted, it enters the jurisdiction of the supreme court, which has the exclusive and final authority and is a last resort to evaluate it against the Constitution, The Constitution so zealously protects the independence of the judiciary that even the parliament cannot amend the constitution to clip the review powers of the judiciary. The matter was decided in the case of Minerva Mills Ltd. v. Union of India in 1980. The Indian Supreme Court was asked to decide whether the government had the power to amend the Constitution to curtail the power of judicial review. The court held that the power to amend the Constitution did not include the power to destroy its basic structure, which included the power of judicial review. The court held that the Constitution was supreme and that no branch of government, including Parliament, could override its basic structure. In Marbury v Madison (1803), the US Supreme Court was asked to decide whether a law passed by Congress was constitutional. The court held that it had the power of judicial review and that it could strike down laws passed by Congress if they were unconstitutional. The court also held that the Constitution was supreme and that no branch of government, including Congress, could violate its provisions. In this sense, the judiciary is seen as a co-equal branch of state with the legislative and executive branches.

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In India, there have been several instances where the Supreme Court has overruled decisions taken by the government or the legislature. For example, in 2016, the court struck down a law passed by the parliament that allowed convicted lawmakers to continue holding office. The court held that the law violated the constitutional principle of separation of powers and undermined the integrity of the political system.

Sadly, even after more than 75 years of this beleaguered nation’s existence, we continue to struggle to define and redefine the jurisdiction and superiority of the parliament over the judiciary, or the executive and vice versa, not based on merit, objectivity, national interest, or welfare of the people, but rather swaying now and then in the direction best suited to the vested interests. When in power, the parties conveniently pursue one position, but when in opposition, they perform a complete 180 and develop the exact opposite narrative. This war of imposing superiorities of one pillar over the other has taken an ugly turn in Pakistan, where the entire opposition sits outside the assemblies and the legislature has become an extension of the government. They, both motivated by the similarity and unity of their vested interests, have joined hands to arm-twist the judiciary, reduce it to a state of irrelevance, and erode its power to the point where it becomes an extension of the executive parliament incapable of making independent decisions.

Sadly again, Parliament and the Executive have adopted the same tone and tenor when criticizing the superior judiciary on trivial accounts and matters and questioning every action taken by the chief justice, including the formation of benches, allocation of business to the judges, and transfer of cases from one judge to the next, despite the fact that it is the sole prerogative of the chief justice to allocate business to the judges and run the superior judiciary as he or she deems appropriate. Perhaps this is only occurring in Pakistan, where we are unable to resolve fundamental questions about our existence and the purpose of our institutions. In Pakistan and everywhere in the world, the chief justice has the authority to form court benches to hear and decide cases, determine the composition and number of judges on each bench, transfer cases from one bench to another and assemble larger benches to hear cases of great public importance. In the United States, the Chief Justice has the authority to assign judges to different circuits and panels of the U.S. Courts of Appeals, as well as the power to temporarily assign judges from different circuits to sit on another circuit when necessary. In India, the Chief Justice has the authority to form Supreme Court benches, assign cases to these benches, transfer cases between benches, and refer cases to larger benches for hearings and decisions. In the United Kingdom, the Lord Chief Justice assigns judges to different cases and circuits in the High Court and Court of Appeal, transfers cases from one court to another, and establishes new courts or tribunals as needed.

The truncated and opposition-less parliament, which even perhaps lacks the moral authority or justification to make laws, is hell-bent on reducing the powers of the chief justice and handing them over to its hand-picked and cultivated judges without considering the grave and far-reaching consequences of removing the power, which is a crucial aspect of judicial administration around the world and plays a vital role in ensuring the fairness, efficiency, and independence of the judicial system. If the Chief Justice loses the authority to form benches and assign cases, there may be delays in the hearing and resolution of cases leading to confusion and inefficiency in the court system and resultant delay in the administration of justice for litigants. Without a central authority, benches will be formed with biases or favouritism based on personal or political affiliations rather than qualifications and experience.

In all established democracies however, in general, Parliament cannot overturn the decisions of the courts related to the allocation of funds for organizing elections if it is required by the constitution. The separation of powers principle, which is a fundamental principle of most democratic systems, means that the judiciary is an independent branch of the state with the power to interpret the law and make decisions based on it. Therefore, if a court decision is made in accordance with the Constitution, the Parliament cannot overturn it through legislative action. However, Parliament may have the authority to amend the constitution to change the provisions related to the allocation of funds for organization elections. This would, however, require a vote by a ? majority of members of Parliament.

(To be Continued)

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