

## STUDY OF THE JUDICIAL APPOINTMENT IN PAKISTAN

<sup>1</sup>Amanullah Shah and <sup>2</sup>Bahadar Shah

<sup>1</sup>Law College, Gomal University, Dera Ismail Khan (NWFP) Pakistan

<sup>2</sup>Department of Public Administration, Gomal University, Dera Ismail Khan (NWFP) Pakistan

### ABSTRACT

The appointment of judges is of paramount importance to ensure independence of the judiciary because it is primarily the human being that makes or mars the institution. It is the integrity and competence of the judges that ensures the credibility and public confidence in the judiciary. Pakistan, in its very first constitution in 1956, adopted the system of judicial appointment prevalent during the time of British India. The same system has been retained in all constitutions of Pakistan. All appointments of Judges in the superior judiciary are made by the executive, i.e. by the President of Pakistan after consultation with the Chief Justice of Pakistan in case the judge is appointed in the Supreme Court and if a judge is appointed in a High Court, in addition to the Chief Justice of Pakistan, the Chief Justice of the concerned High court and the Governor of the concerned Province are to be consulted too. The Chief Justice of Pakistan is appointed by the President and the Chief Justice of a High Court is appointed by him after consultation with Chief Justice of Pakistan and the Governor of the concerned province. This paper is limited to the appointment of the superior courts' judges. This study will discuss the constitutional provision as well as the practice of the judicial appointment in Pakistan. The judicial appointments in the various phases of Pakistan's Constitutional will be studied. The system of judicial appointment to the superior courts has been manipulated repeatedly to bring about appointments on political considerations or due to favoritism or nepotism. It is rare that merit is taken into consideration. The appointment of the judges to the superior courts without merit is one of the major factors caused decline in the standard and independence of the judiciary.

### INTRODUCTION

On independence, Pakistan inherited a healthy judicial system with a reputation for integrity and competence. This was mainly attributable to a fair system of appointment of judges in the superior judiciary wherein appointments were generally made on merit alone. There were two channels of such appointments – from the Indian Civil Service and from amongst the leading lawyers. In spite of the fact that executive had tremendous power of appointment in the superior judiciary under Articles 200 and 220 of the Government of India Act 1935 but the appointment to the superior courts during the time of British India were made rather carefully. Due to this care in the appointment, the judges of the superior courts in British India, with few exceptions, had a reputation for integrity and competence.

It was in this perspective that Pakistan, in its first Constitution in 1956, adopted the system of judicial appointment prevalent during the time of British India. Under the 1956 Constitution of Pakistan, the Chief

Justice of the Supreme Court to be called the Chief Justice of Pakistan was to be appointed by the President of Pakistan and other judges of the Supreme Court were to be appointed by the President after consultation with the Chief Justice (Article 149). The Chief Justice of a High Court was to be appointed by the President in consultation with the Chief Justice of Pakistan and the Governor of the concerned province. Other judges of the High Court were to be appointed by the President after consultation with the Chief Justice of Pakistan, the Governor of the concerned province and the Chief Justice of the concerned High Court (Article 166). These provisions of the Constitution of 1956 were more or less repeated in the Constitutions of 1962, and 1973.

The presumption behind this system is that all the constitutional functionaries in the process are fair, impartial, and committed to the independence of the judiciary. Unfortunately, our historical experience in this behalf establishes that such rational or presumption have eroded or ceased to exist