

Critically evaluate how the ~~twenty~~ Twenty-six Amendment to the constitution of the Pakistan will affect the balance of power between the various pillars of the state.

Kindly mark it out of 20.
Give tips for improvement.

Introduction

Passed at 21st October on 6:30 AM by the President of Pakistan, 'the 26th amendment' has shifted the power towards the 'executive branch'. There had been many attempts by the executive branch to jeopordize the powers of Judiciary and for this purpose many amendments had been proposed to the '1973 Constitution'. Whereas the 26th amendment has proposed many necessary new clauses to 1973 constitution, like the right to healthy environment and some clauses relating to social work. However, our main concern is to discuss the clause or 'Article 175' of this amendment.

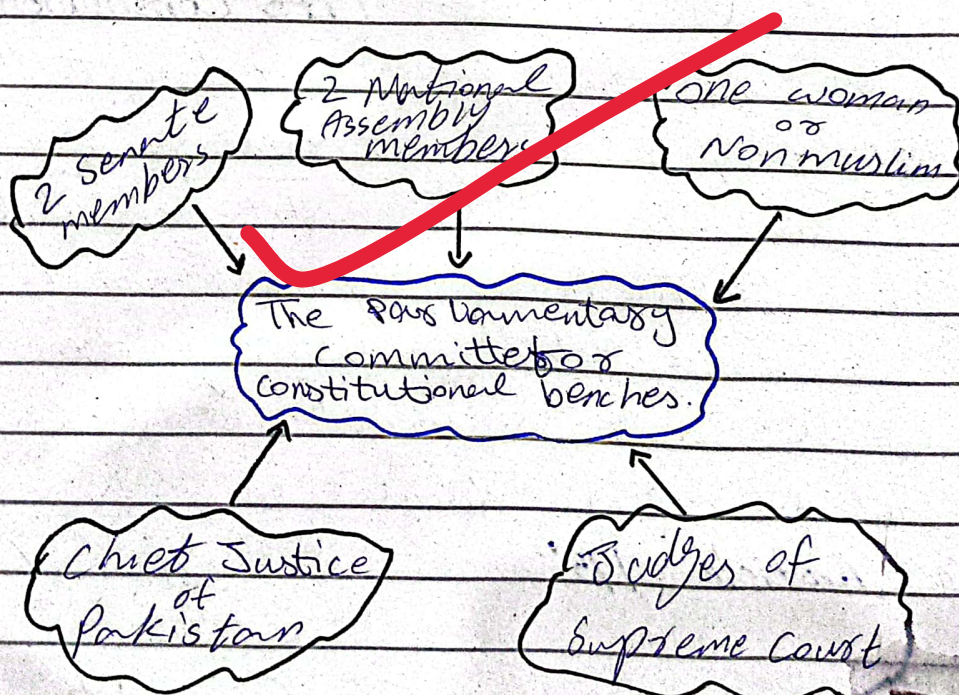
Give the main heading first

The establishment of Constitutional benches

According to the twenty six amendment, there should be new constitutional benches with specific

elected judges presiding them to resolve the cases relating to the constitution.

These judges would be selected ~~by the~~ special parliamentary committee. The members of this ~~parliamentary~~ committee would include the members from parliament, Senate, ^{CSP} President and Judges of Supreme court respectively.



The nature of cases under Judicial Constitutional Benches

The nature of

cases that would be petitioned in the constitutional benches include Constitution Cases, matters of Public Affairs, and Fundamental Rights.

The Selection of Chief Justice of Pakistan:

Prior to the twenty six amendment the chief Justice of Pakistan was selected by President of Pakistan with consultation of Chief Justice from the list of senior most judges.

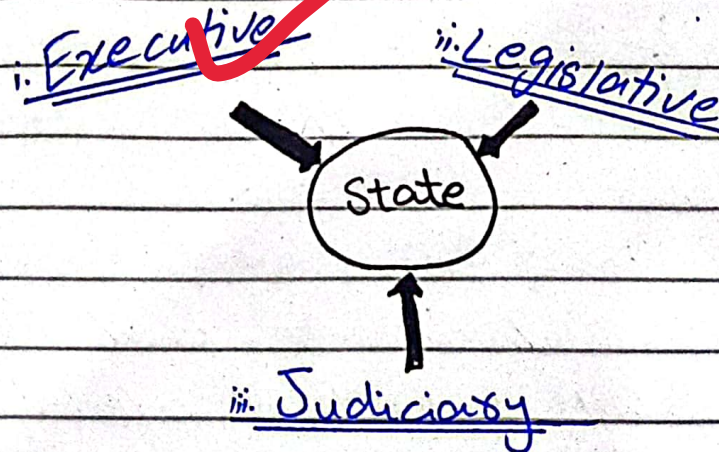
However, now, according to the 26th amendment the chief Justice of Pakistan would be selected by the special judicial parliamentary committee. The age of chief Justice of Pakistan has been limited to 65 years. The judicial Parliamentary committee would select the chief justice from the three judges of three senior judges.

Mention the article number amended as reference

does not satisfy the requirement then a chief justice would be selected from the retired judges.

Impact of 26th amendment on Balance of Powers among state pillars:

According to the current political theories, a state has three pillars: Executive, Legislative and Judiciary.



The Legislative: The legislative branch deals with the legislation. It makes laws.

The Executive: The executive branch executes the laws made.

by the legislative branch

The Judiciary: The judiciary works as an interpreter, protector of constitution and checks on the other two.

Shifting of balance of power towards executive branch:

The 26th amendment has tilted the balance of power towards the executive branch.

With the 26th amendment, the executive branch is presiding the judiciary. ~~The chief justice~~

Executive branch selecting the CJP

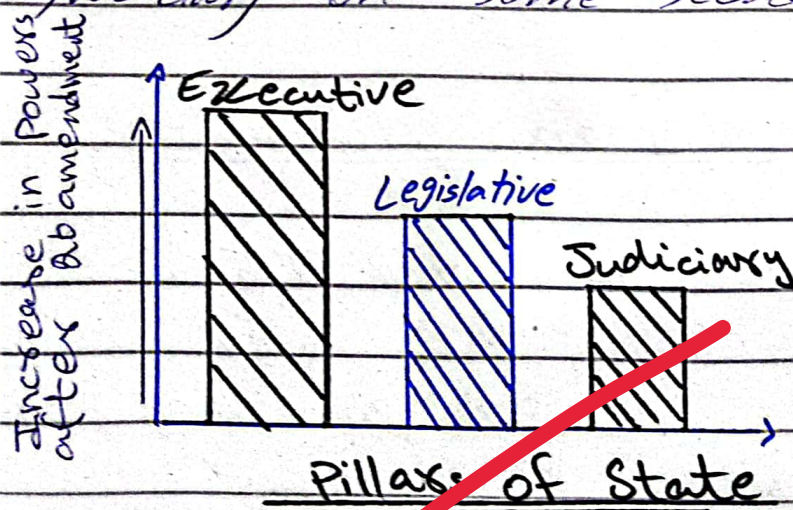
With the article 175 of 1973 constitution, the chief justice of Pakistan which is the supreme judge with much authority has to be selected by the President. President is a member of executive branch. Through this article president is controlling

Add and highlight references/examples against these arguments

the judiciary to some extent.

Executive branch over the legislative branch:

As the constitution benches has been formed in supreme court and their judges would be selected through the parliamentary benches. This has given strong position to executive branch over the legislative branch. Moreover, the legislative and executive are to some extent in alliance against the judiciary on some scenarios.



The 18th amendment has significantly strengthened the executive branch of Pakistan.

The Impacts of 26th amendment on Judicial System

Compromised independence of Judges:

This amendment will undoubtedly compromise the independence of judges. According to Vuk ~~Tus~~, the UN High Commissioner of human rights, this amendment will undermine the independence of judges.

Non interference of Supreme Court in Constitutional cases:

The constitutional benches are responsible for constitutional cases not the chief justice of Supreme court.

Favouritism in judicial system

Since the judges would be chosen by the parliamentary bench and there is no rule of seniority therefore favouritism would be

be used to select judges.

Conclusion:

At last, whereas the government says the making of constitutional benches will enhance the process of completion of constitutional cases but, this, abt amendment has significantly increased the executive powers and has undermined the judiciary's sole and powers. This will increase the favouritism and will undermine the integrity of honest judicial proceeding.