

Mention the full qs statement for proper evaluation. Without that, these are just notes and cannot be awarded marks

Date:

Q. NO. 02:

Twenty-Sixth Amendment.

Introduction:

The twenty-sixth Amendment Act, 2024 was passed by the Parliament in October 2024. It represents a significant development in the country's constitutional framework. It aimed at redefining the balance of powers ~~bet~~ among various pillars of the state. The amendment has sparked a widespread debate regarding its implications on numerous aspects of executive and judiciary. However, despite the severe criticism on ~~some~~ the impacts of this amendment, there are also positive implications of the amendment. A thorough discussion on the positive and negative implications of the amendment ~~can~~ ^{can} be given ~~as~~ ^{as} ~~under~~ ~~stands~~

Main Changes Incorporated In

The Constitution by Virtue of 26th

Amendment:

Following changes have been incorporated in the constitution by the

virtue of the 86th amendment:

1. Amendment to the Procedure of Judicial

Appointments:-

According to Article 175-A of the constitution, ~~the~~ a 12 member parliamentary committee will select the new Chief Justice from a panel of three most senior judges in line. The committee shall nominate one of the three judges to be the next CJP based on their seniority or as deemed fit by the committee.

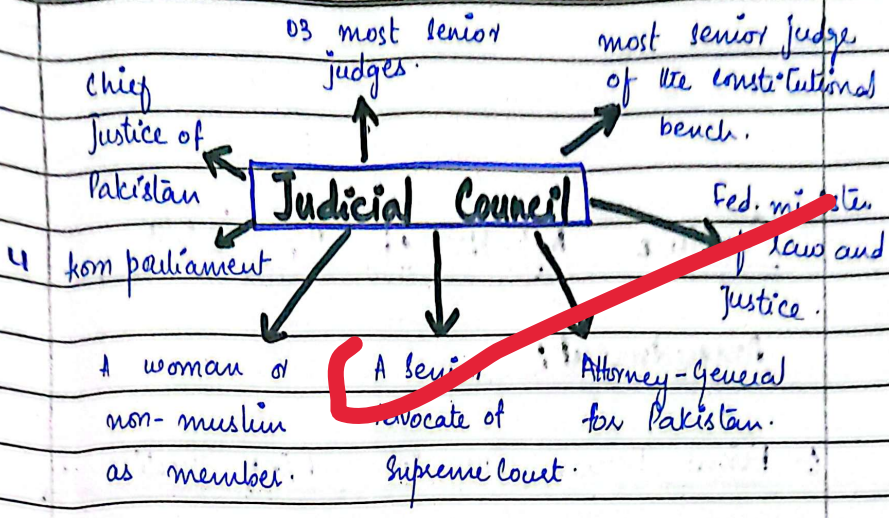
2. Parliamentarians Included as the

members of the Judicial Council:-

The amendment has changed the composition of the Judicial Council for the appointment of Judges of the Supreme Court. The Council comprises of members from both executive and legislature. ~~The~~ from which at least five members shall be from the majlis-e-shoora.

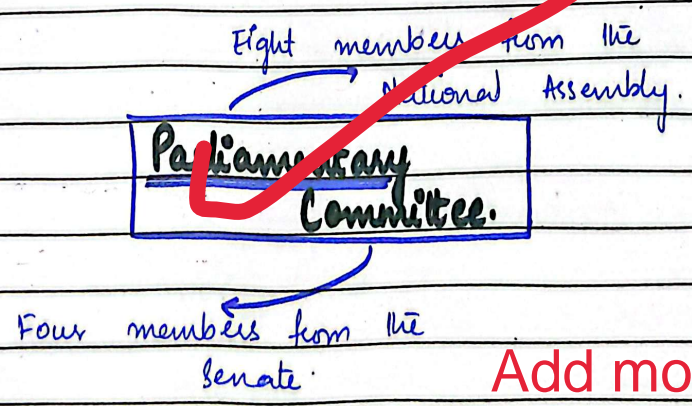
Also mention the article numbers amended as references

Date: _____



3- Formation of Parliamentary Committee:-

A Parliamentary committee shall be formed to nominate the Chief Justice from the three most senior judges of the Supreme Court under Article 175-A of the constitution.



Add more arguments

Impacts of the 26th Amendment

on Various Pillars of the State:

The twenty sixth amendment of the constitution has both positive and

negative implications. These have been further discussed as under:

Positive Aspects of the 26th

Amendments:

1- Fixed Tenure of the Chief Justice of

Pakistan:

~~Fixed~~ Tenure of the CJP has been fixed to 03 years, irrespective of his age. This has increased the prospects of judicial stability and ensured smooth dispensation of justice. This security of tenure protects judges from any interference by external or internal actors. Premature termination of a judge's mandate is a form of improper pressure on the judge and hinders the unbiased provision of justice. Therefore, security of tenure of judges is requisite for justice to prevail.

- Formation of the Constitutional Benches

to address the persistent issue of

Judicial Backlog:

The twenty-sixth amendment provides for constitution of the constitutional Benches of Supreme Court and High Courts. These ~~const~~ Benches can be a great asset in addressing the issue of judicial delays by ~~returning~~ disposing the piles of cases which have undermined the competence of judiciary.

3- Decreased interference of Judiciary

The curtailment of ^{the} ~~his~~ ~~moto~~ powers under article 184 of the Amendment Act, has restricted the judiciary from interfering in the matters of other organs of the state. By ensuring independence from the judiciary the amendment has strengthened the legislative and executive pillars of the country.

4- Allocation of Funds for Judicial

Empowerment:

An empowered judiciary is possible only when it is independent from all sorts of interference. The 26th amendment has ensured the financial independence of the judiciary by allocating funds for judicial bodies under Article 81 of

Add and highlight references/examples against these arguments

the constitution. This has added towards the independence and proper functioning of judicial offices.

Article 9-A: right to clean and healthy environment.

Article 38: Elimination of PISA.

Other changes

by 26th Amendment

Performance

Evaluation (Article 173-A).

Article 177:

Qualification for SCJ.

Negative Aspects of the 26th

Amendment:

1- Separation of Powers Compromised:

One of the most prominent features which has been criticized is the compromise of the doctrine of separation of powers. The legislative and executive branches have been given much authority over judiciary in numerous ways. Firstly, the inclusion of parliamentarians in judicial commission has greatly undermined the

merit in appointment of judges. Furthermore, the power of parliamentary committees to nominate ~~the~~ has increased the prospects of a biased judiciary. The foregoing changes have greatly compromised ~~the~~ independence of judiciary, thereby, risking fair dispensation of justice.

2- Accountability of Executive:

The amendment ~~has~~ in article 48 of the constitution states that the Cabinet and PM shall not be answerable to the Judiciary. Mr. Zahid in his Article ~~the~~ Constitutional Package ~~has~~ in Daily Dawn, October has greatly criticized this feature of the Amendment. According to him, this ~~is~~ change has rendered the executive undue advantage over major functions. ~~It~~ It has also exacerbated the issue of transparency in the executive organ of the country.

3- Purpose of Constitutional Benches:

Despite the formation of constitutional benches of higher judiciary, its purpose and criteria remains quite unclear. ~~These~~

amendment has failed to define a criteria or procedure for the transfer of cases from courts to constitutional benches. Ms. Asma in her article in Daily Dawn greatly criticized the unclear creation of constitutional benches, called it "the politicization of constitutional benches". Due to the lack of a criteria, these decision as to which cases shall be heard in which court is left on the wills of people and members of the court. This has resulted in politicization of benches and has compromised the transparency of the pillar.

Recommendations to Address

The Challenges posed by the

26th Amendment:-

Ms. Asifa, who is a lawyer and a social activist proposed certain measures which can be taken by the government to ensure the independence of various pillars of the state and restore their balance.

Reversal of amendments in article 175A.

Ensuring transparency in all institutions

Recommendations

Restore the accountability of executive to judiciary.

Providing explicit provisions for the a judicial appointments.

Conclusion:

The 26th constitutional Amendment Act of 2024 is a comprehensive instrument which entails major amendments with respect to numerous pillars of the state. It has both positive and negative implications. It has stabilized the judiciary, empowered the executive and addressed the issue of judicial backlog. However, it has undermined the independence of judiciary and compromised the doctrine of separation of powers. Overall, the discussion of the Amendments is quite extensive with both positive and negative implications.