

Q: How does 26th amendment in the constitution of Pakistan affect balance of power among legislature, executive and judiciary? Explain.

26th Amendment In The Constitution Of Pakistan

The 26th amendment in the constitution of Pakistan, also known as Constitutional Package, is passed by the Parliament of Pakistan on October 24, 2024. This amendment has disrupted balance of power among legislature, executive and judiciary by abridging the suo-moto authority of supreme court, subjecting the judicial appointments to special parliamentary committee and constitutional benches and enhancing the role of legislature and executive in handling judicial cases.

1. Factors showing how 26th amendment affects balance of power among legislature, executive and judiciary

Following factors including appointment of chief Justice of Pakistan by special parliamentary committee, abridging suo-moto powers of Supreme Court, potential for executive over-reach due to increased role of legislature

and executive in judicial appointments clearly show that 26th amendment affects balance of power among three branches i.e. legislature, executive and judiciary.

i. Appointment of Chief Justice of Pakistan by legislature

Through 26th amendment, a notable modification has been done to clause 3 of Article 175A. According to this amendment, instead of President appointing the CJP, the most senior judge will now be appointed by special parliamentary committee for three years. This committee consists of eight members of National Assembly and four members of Senate (Dawn, Appointment of CJP by special Parliamentary Committee, Oct 2024). This appointment process has made judicial appointments subjected to political whims, thereby disturbing balance of power ^{between} among legislature and judiciary.

ii. Abridging suo-moto authority of Supreme Court

Another tweak to Article 184 has abridged the suo-moto authority of Supreme Court. Supreme Court had^a function to act pro-actively in the matters of public interest without any formal petition ^{Suo-moto.} because of this authority of ~~Supreme Court~~

However, by curbing the suo-moto powers of Supreme Court the role of Supreme Court as a check on legislature and executive for preventing violation of human rights has been abridged. This amendment causes imbalance in power structure of legislature, executive and judiciary by forming a judicial committee to over-see use of these powers by Supreme Court against legislature and executive.

iii- Enhanced Role of legislature and Executive in Appointment of High Court Judges

Another factor which highlights that 26th amendment causes imbalance of power among legislature, executive and judiciary is the enhanced role of legislature and executive in the appointment of High Court Judges.

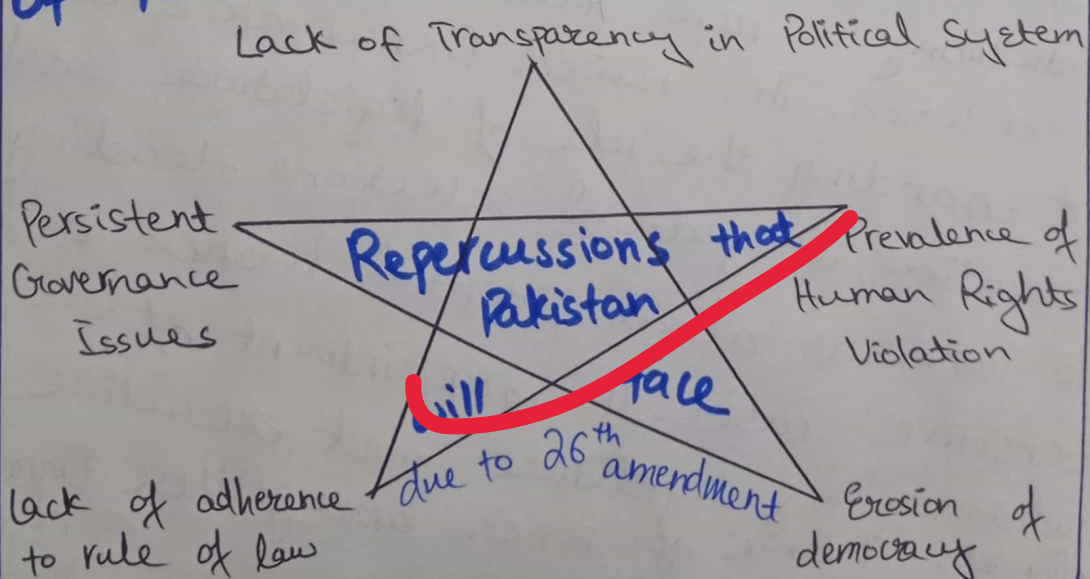
Through amendment to Article 175, the High Court judges will now be appointed by constitutional benches which are formed by introducing a new Article 191A in the constitution. This revised framework is aimed at expanding the role of legislature and executive in judicial selections, leading to concerns about potential biasness in sensitive cases. Thus, appointment of judiciary by legislature and executive disrupts balance of power among these branches.

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iv. Potential for Executive Over-reach

This amendment also has potential for executive over-reach which can lead to consolidation of power within the hands of ruling government by compromising the role of judiciary in decision-making. For instance, because of changes to Article 186A, "The Supreme Court can transfer cases from one high court to another high court or to itself." This change has increased the possibilities for delay in judicial proceedings that ^{can} go against executive. This executive over-reach undermines balance of power in state.

2. Explicating the Repercussions that Pakistan Will Face due to Disruption of Balance of Power Caused by 26th amendment



i- Lack of Transparency in Political System

By diminishing the role of judiciary as a check on legislature and executive through 26th amendment, the possibility for lack of transparency in political system has been increased. Because it is the judiciary that keeps ^{illegal} activities of politicians under check. For instance, in Feb 2018 Justice Sagib Nisar took Suo-moto on alleged laundered money of politicians in Swiss accounts (Dawn, Suo-Moto of Justice Sagib Nisar against Money laundering, Feb 2018). So, by curbing Supreme Court's authority to take suo-moto the risk of lack of transparent political system has increased.

ii- Prevalence of Human Rights Violation

In Pakistan, for several decades it is the judiciary that takes an action against human rights violation and ensures accountability in state. For instance, Justice Sagib Nisar took suo-moto notice of delay in implementing the sentence of conviction in Zainab rape case of Kasur (Tribune, Supreme Court's Suo-moto in Zainab Rape Case, Oct 2017). However, the authority of Supreme Court to take suo-moto has been curtailed through 26th amendment and disrupted balance of power among legislature, executive and judiciary, thereby increasing

the risk of human rights violation in Pakistan.

iii- Persistent Governance Issues

By disrupting balance of power among legislature, executive and judiciary through 26th amendment the predisposition of state to governance issues has been increased. Because judiciary used to express the dismay of public toward governance issues. For instance, in 2017 CJP took suo-moto on poor hospital conditions of Sindh (Dawn, Suo-Moto On Poor governance in Sindh, March 2017) and in 2019 CJP took suo-moto on poor health facilities provided by Punjab. However, by restricting judiciary to take suo-moto there are increased possibilities for persistent governance crisis.

iv- Erosion of Democratic Principles

In 2024, Pakistan has been downgraded from a hybrid political system to an authoritarian political system, falling by 11 places in global rankings to 118th in Democracy Index (Dawn, Erosion of democracy in Pakistan, Nov 2024).

It is mainly because of imbalance of power structure among legislature, executive and judiciary within Pakistan.

However, by 26th amendment the balance of power among these three branches is further deteriorated so the risks for erosion of democratic principles in Pakistan are increased.

✓ Lack of Adherence to Rule of Law

Another repercussion that Pakistan will face due to ~~26~~²⁶th disruption of balance of power caused by 26th amendment is lack of adherence to rule of law. Pakistan already stands as the third-worst country in terms of rule of law (World Justice Project, Index for Rule of Law, 2024) due to imbalance of power in state. By further subjecting the judiciary to politics, the country will even more suffer from the lack of adherence to rule of law.

3. Solutions for Mitigating ^{the impacts of} Imbalance of Power Among Legislature, Executive and Judiciary

By strengthening adherence to constitution, ensuring over-sight of legislature over executive, promoting judicial independence, promoting awareness in civil society about politics and promoting political stability and ethical leadership the impacts of imbalance of power in

Pakistan can be mitigated.

Strengthening adherence to constitution

Promoting Judicial Independence

Ensuring Over-sight of legislature over executive

Promoting Political Stability and Ethical leadership

Promoting awareness in public about politics

This part is not asked, so keep it brief

i- Strengthening adherence to Constitution

According to Christophe Jaffrelot, validation of unconstitutional actions like military interventions and frequent constitutional amendments reflecting political interests rather than broad consensus is the main cause of imbalance of power among legislature, executive and judiciary

(Christophe Jaffrelot, Pakistan: The Paradox,

2015). Thus, imbalance of power among these branches can be prevented by ensuring adherence to constitution.

ii- Ensuring Over-sight of legislature over Executive

There is a need to ensure over-sight of legislature over executive for mitigating the impacts of imbalance of power among legislature, executive and judiciary. According to David Arter, one of the main reasons behind incredible governance and perfect balance of power among state organs in Scandinavian countries is the over-sight of legislature over executive (David Arter, Scandinavian Politics Today, 2008).

iii- Promoting Judicial Independence

The repercussions of imbalance of power among legislature, executive and judiciary can be mitigated by promoting judicial independence in Pakistan. For instance, in US the Supreme Court can nullify any law passed by the House of Commons of the US on the ground of violation of human rights. Recently, US Supreme Court has passed anti-abortion bill in favour for protecting fundamental rights. Pakistan also needs to promote judicial autonomy for ensuring balance of power

among state organs.

iv. Promoting Political Stability and Ethical Leadership

According to Dr. Ishrat Hussain, lack of political stability and ethical leadership is the main cause of imbalance of power among legislature, executive and judiciary (Dr. Ishrat

Hussain, *Governing the Ungovernable*, 2015).

Thus, by promoting political stability and ethical leadership the impacts of imbalance of power among legislature, executive and judiciary can be mitigated.

v. Promoting awareness in Civil Society about Politics

Another solution for mitigating the impacts of imbalance of power among legislature, executive and judiciary is to promote political awareness in public about their political rights. According to Thomas Jefferson:

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An informed citizenry is the heart of dynamic democracy."

Thus, by promoting awareness in civil society about politics impacts of imbalance of power among state organs can be mitigated.

Conclusion

26th amendment in constitution of Pakistan has disrupted balance of power among legislature, executive and judiciary by altering the judicial appointment process of Pakistan. It has increased the potential for executive over-reach. This imbalance will cause long-term repercussions for Pakistan. However, the impacts of imbalance of power among legislature, executive and judiciary can be mitigated by effective remedial measures.