

DATE: \_\_\_/\_\_\_/20\_\_\_

How does Pakistan's 26<sup>th</sup> constitutional amendment change the separation of powers doctrine in Pakistan and impact judicial independence and democratic accountability?

## Introduction

21 October 2024 marked an important day in the history of Pakistan as a landmark constitutional amendment to redefine the balance of power between the judiciary and parliament received the assent of President of Pakistan. Given the country's longstanding history of judicial activism and tension between the two major organs of judiciary and legislature, the reconfiguration of dynamics holds immense significance for the historic doctrine of separation of powers, judicial independence and future of democratic accountability in the country.

(1)

26<sup>th</sup> 26<sup>th</sup> Amendment: An Effort to reaffirm the separation of powers

The doctrine of separation of powers given by philosopher Montesquieu has been one of the most important political philosophies guiding political systems from the superpower USA to Pakistan. It is broadly based on three pillars which as the name suggests aim to separate powers among the organs of government. A brief explanation as follows:

Pillar	Main Idea
Division of power	State power divided into three branches: Legislative, Judiciary and Executive
Independence of powers	Each branch operates independently to ensure autonomy and prevent interference.
Checks and balances	Mechanisms to limit a abuse of power and promote accountability.

An analysis of changes incurred by the 26<sup>th</sup> amendment on these three broad pillars of the famous doctrine of separation of powers can give a nuanced idea of the reaffirmation of the doctrine.

### Division of Powers: Strengthening the Judiciary - Parliament Relationship

26<sup>th</sup> amendment seems to be strengthening the relationship of Judiciary with the legislative organ in the following manner:

#### a) Increased Parliamentary involvement in Judicial appointments

Unlike the 19<sup>th</sup> amendment which shifted the tilt of judicial appointments towards Judiciary similar to the pre-10<sup>th</sup> amendment process, the 26<sup>th</sup> amendment has expanded the role of parliament in the Judicial Commission of Pakistan (JCP). Not only the number of elected members have been increased in JCP but also their powers to ensure a greater

democratic legitimacy.

### b) Reducing judicial autonomy in Political matters

The 26<sup>th</sup> amendment has made an effort to encourage cooperation between the judiciary and legislature. The judicial autonomy granted to judiciary by the 19<sup>th</sup> amendment has been neutralized to avoid abuse of power by judiciary.

### Independence of Powers :

Clear delineation of responsibilities between branches

26<sup>th</sup> amendment has been a landmark event in the pathway towards clear delineation of responsibilities between the organs specifically Judiciary and Legislature. The amendment emphasizes the independence of each organ while ensuring accountability.

Add the article numbers amended as references

### a) Preventing overreach by any one branch

The amendment has strengthened the idea of independence of three organs by limiting judicial involvement in other branches. It also strengthens the oversight function of the parliament over judiciary to ensure the latter's actions fall solely within the judicial domains and not interfere with other organs jurisdiction.

### Checks and Balances :

Addressing Judicial Overreach and

Accountability

The 26<sup>th</sup> amendment reaffirms the doctrine of separation of powers by revising the current system of checks and balances. It does this in the following manner:

The  
where  
proce:

### a) Limiting Suo Motu Powers

the  
can  
and  
also  
help

Given the rise of Judicial activism and Suo Motu <sup>from</sup> cases of public interest, the 26<sup>th</sup> amendment has acted timely in reducing the scope for unilateral judicial actions. This will not only ensure non-interference and independence of organs specifically Legislature and executive but also prevent judicial overreach in areas of government and redirect judiciary to its main purpose.

By  
unde

### b) Judicial Performance Evaluation

unde  
ele  
cre  
deme  
app  
acco  
and  
pub  
ha.

26<sup>th</sup> amendment has worked to strengthen the system of checks and balances by introducing the mechanisms for assessing performance of judges with an aim to increase transparency in judiciary. An objective evaluation process to hold judges responsible for their actions and promotion of able, just and efficient judiciary has enhanced the system of checks to further enhance the applicability of separation of powers in Pakistan.

Judging on the basis of the three pillars of separation of doctrine, the 26<sup>th</sup> amendment has reconstructed the current system in an efficient manner. It has changed the doctrine in Pakistan for the better.

in c  
of

(2)

inc  
str

Impact on Judicial Independence:  
A Move Towards Democratization

ju  
mr

The latest constitutional amendment in Pakistan has aimed for a greater parliamentary oversight on judiciary. The reconfiguration of judiciary was an effort to prevent the abuse of power and concentration of power in one organ by expanding the role of elected representatives in the JCP. The impact on judicial independence is a product of increased inclusivity, stringent checks and reduced concentration of power.

Add and highlight references against these arguments

### a) Democratization and Inclusion

26<sup>th</sup> amendment has ensured a broader representation in judicial decisions. The increase in parliamentary representation in judicial appointments will increase public trust and reduce judicial potential of becoming a self serving entity. Moreover, the involvement of diverse stakeholders like women and minority groups will pave the way for judiciary as an organ to work for societal values.

### b) Stringent Judicial Evaluation Process

By creating a mechanism of objective evaluation of judicial performance and regular review and accountability processes, the judges performance will increase with broader improvement for the judicial system itself and public.

### c) Reduced concentration of power

The latest amendment has strategically handled the problem of power abuse by devolving the power of one person or organ to a more collaborative mechanism involving elected members of parliament. By limiting the hold of disproportionate amount of power by one individual in the light of the idea: 'Power corrupts and absolute power corrupts absolutely.'

DATE: \_\_\_/\_\_\_/20\_\_\_

the amendment has sought to create a balanced and cooperative system.

By evaluating the 26th amendment on the three main parameters of increased democratization, stringent evaluation system and reduced concentration of power, one can observe that the independence of judiciary has been upheld if not increased. In the domain of increased democratization, the ~~more~~ image projection of judiciary will be improved and public trust can be regained in the long term. Secondly, by evaluation system meritocracy will increase and the ills of excessive ~~politicization~~ and personal favours will decrease. Lastly, by delineating powers and reducing judicial roles in legislative and executive matters not only the work pressure and backlog will decrease but overall productivity will also be enhanced. The current amendment in no way restricts the working of judiciary, it only recapitulates and refocuses its jurisdiction while echoing the essence of 'Quis custodiet ipsos custodes'.

(3)

Impact on Democratic Accountability:  
A reaffirmation of democratic ideals

The clear delineation of powers of each organ and efforts to end the judicial overreach by 28th amendment has reaffirmed the clear goals and aims of the three organs. The reiteration of organ's roles will increase the accountability and transparency.

a) Democratic Accountability in Judiciary

DATE: \_\_\_/\_\_\_/20\_\_\_

The evaluation system will improve meritocracy in the system where every individual will be accountable in their review processes. Secondly, by limiting the overreach and restating the actual jurisdiction of Judiciary, more accountability can be observed in its actual domain. The selection of CJP and judges of Supreme Court and High Court by JCP will also be through a much organized processes which can help evaluate judicial ambitions.

### b) Democratic Accountability in Legislature

By decreasing the judicial overreach, the matters initially under domain of legislature and executive will again be solely under the latter which can increase the accountability of elected leadership. Moreover, their role of legislature and executive in JCP has been enhanced and by virtue of democracy, any decisionmaking regarding judicial appointments will now be in the radar of public and accountability will be enhanced. The power sharing mechanism and more responsibility of legislature effectively increases public scrutiny and debate. Hence, democratic accountability has actually been increased by the 26<sup>th</sup> amendment.

### (4) Conclusion

In summation, 26<sup>th</sup> amendment is a landmark event in contemporary Pakistan. It not only reaffirms the separation of doctrine power doctrine but also upholds judicial independence and democratic accountability. It will strengthen the relationship between legislature and judiciary - a very well needed event for progress and improvement.