

Mention the full qs statement for proper evaluation; without that these are just notes and cannot be awarded marks

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(137)

QUESTION No. 3:

Constitutional Amendment:

The Constitution 26th Amendment Act 2024 also known as the Constitutional package, is legislation that takes away the Supreme Court's **Suo motu** powers, sets the Chief Justice of Pakistan's terms at three years and empowers the prime minister to appoint the next CJP from among the most senior supreme court judge. The 26th Amendment introduces several significant changes aimed at modernizing Pakistan's Judicial system, reinforcing governance framework and addressing environmental and financial issues but they also raise concerns about the implementation, impact on judicial independence and potential long term socio-economic implications.

Major provisions of 26th Amendment

Although there are many different provisions under the umbrella of 26th Amendment but major changes are introduced in the article (175A) clauses and other articles related to judiciary which are center of concern formation. Some of the major provisions and their effects on the political system of Pakistan are as below:

1. New Environmental Rights (Article 1A):

According to this article every citizen is entitled to a clean, healthy and sustainable

environment. It is a positive change as Pakistan is the 5th largest country vulnerable to climate challenges.

2. Ban on interest based practices (Article 38(f)):

Riba (interest) must be eliminated completely by January 1, 2028, enforcing the interest free financial system.

Minimum description under a heading should be 5 lines

3. Limiting Court inquiries into Government decision (Article 46(4)):

Courts and tribunals cannot question the advice given to the president by the prime minister or the cabinet.

4. Election expenses added to budget (Article 92):

Funding of elections to the National Assembly, senate and local governments is now included in the budget.

Judicial Appointment Reforms (175A)

Major changes of 26th amendment are made in the clauses of Article (175A) i.e. Judicial appointment Reforms. These clauses are as:

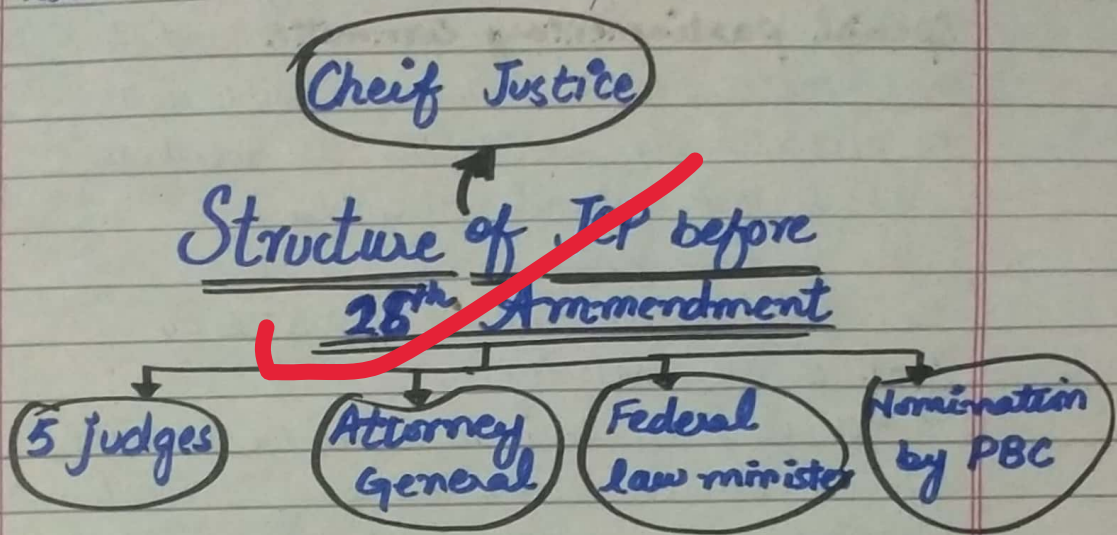
a. Performance Evaluation of Judges:

This clause now includes evaluation of High Court Judges along with the existing process.

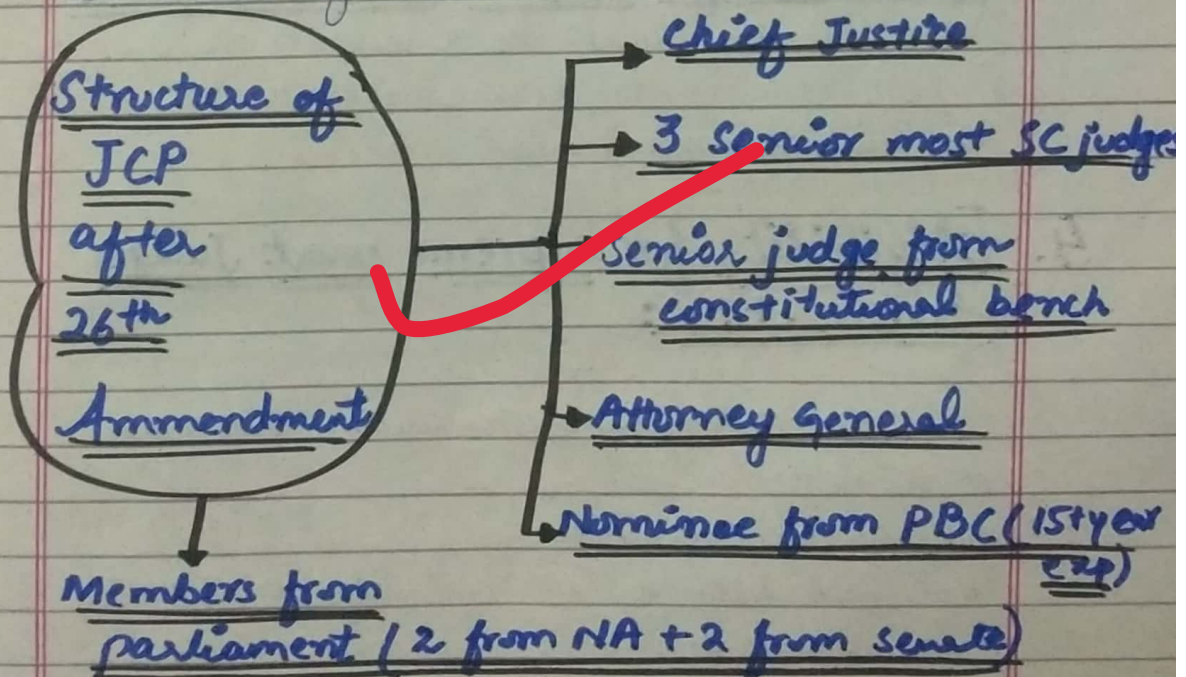
b. Restructuring of judicial commission

of Pakistan:

Before 18th ammendment all the weight was with judiciary that is the judiciary was autonomous with maximum powers



But now after the restructuring of Judicial commission of Pakistan the structure is as:



The structural change before and after clearly indicates the overshadowing of the role of Judiciary

6. New parliamentary Nomination process:

In 26th Amendment the condition of seniority has been changed. Now the Chief Justice will be appointed out of top 3 names by a

Special parliamentary Committee and if the nominee declines, the next judge will be appointed. The committee has 12 members

a- 8 from National Assembly

b- 4 from Senate

The Chief Justice will be appointed by

$\frac{2}{3}$ rd of the majority.

Moreover, the 12 members of the committee will be elected on the basis of proportionate distribution. The committee must nominate CJ 14 days before their retirement.

4. Inclusion of women and minorities:

One member must be a woman or a non-Muslim to ensure diversity in the judicial commission.

5. Eligibility for supreme court Judges (Article 177):

A person to be eligible for supreme court judges must be:

a- A Pakistani citizen

b- Have been a high court judge for at least 5 years or

c- Practiced as an advocate of high court for 15 years.

6. Fixed term for chief Justice (Article 179):

According to this amendment, the chief Justice of Pakistan will now serve a fixed three years term, unless they resign, reach 65 years of age or removed under constitutional rules. After completing 3 years, the chief Justice will retire automatically.

b) Performance evaluation of judges:

The commission will conduct annual performance reviews of High Court judges. If a judge performance is deemed inefficient, they will be given a chance to improve. If performance remains poor, the commission will notify the Supreme Judicial Council.

7: Limits on Supreme courts jurisdictions (Article 184):

One of the most important amendment is that the Supreme Court cannot act on its own direction or issue direction **Suo motu** unless an application has been filed.

8. Monetary jurisdiction increased (Article 185)

The claim threshold for appeals is raised from **Rs 50,000** to **Rs. 1 million** expanding the jurisdiction of high courts.

9. Supreme court's power to transfer cases (Article 186 A):

The supreme court can transfer cases between High Courts in the interest of justice.

10. Clarification on Supreme Court Orders (187)

Orders issued by supreme court must align with its jurisdiction

11. Creation of constitutional benches in Supreme court (Article 191A):

Special constitutional benches will be formed, comprising judges from each province to handle constitutional cases. These benches will have exclusive authority over:

- Original jurisdiction
- Appeals related to constitutional interpretation
- Advisory jurisdiction

12. Eligibility for High Court Judges (193):

A judge must be at least 40 years old and either have 10 years of practice as an advocate in a high court or have held a judicial office in Pakistan for 10 years.

13. Suo Moto jurisdiction restricted (199):

High courts cannot initiate action suo motu beyond the content of an application filed.

14. Creation of constitutional benches in High Court (202A):

High courts will now have constitutional benches with having powers similar to those of supreme court's constitutional benches.

15. High Court Petitions and Transfers (199 and 202A):

Petitions filed in the High Courts before amendment will now be transferred to Constitutional benches.

16. Amendment to Federal Shariat Court (Article 203 C and 203 D)

Judges of Federal Shariat Court can now be eligible for the Supreme Court. Appeals against the decisions must be resolved within 12 months unless the Supreme Court suspends the decision.

Impacts of 26th Amendment on Political System of Pakistan (Critical Analysis)

As 18th Amendment was passed on **April 8, 2010** as a motto to purify constitution. It was passed to ensure accountability mechanism. But for 26th amendment apart from introducing progressive changes aimed at judicial reform, environmental protection and economic restructuring, it also contains several critical flaws. This amendment unfortunately seems to be passed for stabilizing government instead of state. Following are the impacts of 26th Amendment on political system of Pakistan:

→ Politicization of judicial appointments:

The inclusion of parliamentary committee in appointment of judges increases the risk of political interference in judiciary. Judges could be appointed on the basis of political loyalty rather than merit, undermining judicial impartiality.

Moreover, this will overshadow the role of judiciary. Judiciary has been made controversial and political repeating the history.

→ Judicial independence at risk:

By granting parliament greater oversight in judicial appointments through special parliamentary committee, the reforms might blur the separation of power.

→ Risk of Bureaucratic overreach:

Continuous performance evaluation of judges may lead to an undue focus on performance matrix rather than justice delivery. The possibility of dismissal on inefficiency or misconduct could discourage judges from making bold decisions.

→ Suo Motu Restrictions:

Limiting the suo motu powers of the judiciary could hinder its ability to act swiftly on human rights violations and other pressing matters. The reduction in suo motu is seen as curbing the judicial activism which has held the governments accountable in the past. For example **Sahiwat incident** where killings were made by police. At that time judiciary emerged as the custodian of the rights of the people and take suo motu decisions but because of 26th amendment judiciary will not have power to intervene if executive is not performing.

→ Environmental and financial reforms: Ambitious but challenging:

The right to the inclusion of a clean and sustainable environment in article 9A shows Pakistan's concern over environment sustainability but it has not clarified the implementation strategy raising concerns about clarity of enforcement.

Secondly without promoting legislation and concrete policy frameworks, ensuring a clean and healthy environment may remain a symbolic promise.

→ Elimination of Riba (Interest):

While the complete elimination of Riba by 2028 aligns with Islamic financial principles yet it presents significant challenges. Pakistan's financial system is deeply intertwined with global interest based markets so such a shift might bring economic instability and decline in foreign investments.

→ Constitutional governance and bureaucratic efficiency:

This amendment strengthens governance by formalizing local taxation powers and adding election expenses to national budget but it may cause certain structural challenges like:

1. The inclusion of local taxes, fees and tolls in cantonment areas empowers local government but could lead to over-taxation and public resentment if not managed carefully.
2. Similarly the establishment of constitutional benches is a step towards the centralization

of the judicial powers but management of these required administrative powers and resources which the current judiciary lacks.

3. The pending cases which will be handed over to these special benches will face further delay because until the resources are enough to run these.

→ Accountability and transparency a double edged sword:

Empowering the president and supreme judicial council to remove the judges may create vulnerability to executive interference. Judicial accountability should not compromise judicial independence.

→ Hatred and anger among people:

At present 26th amendment is adding fuel to fire in terms of nation. People already have been facing plenty of challenges like unemployed youth, economic crisis etc. So with these challenges the government's focus was to be the efforts for overcoming these challenges rather than bringing more challenges. The 26th amendment is giving nothing to the common man, rather than covering up the illegal steps of government. So the person who is already suffering from challenges will become aggressive.

The government should have utilized its brain to improve IT sector, energy crisis, water crisis rather than focusing on such amendments.

Add and highlight references against these arguments

Conclusion:

The beautification of the constitution is that it is not stagnant. It keeps on growing and evolving as the matters of human beings evolve. During 18th Amendment, changes were made to resolve problems but in 20th amendment it does not seem so. Rather it is creating more problems. For an instance the amendment of the selection of Chief Justice of Pakistan from 3 nominees will automatically force the judges to start lobbying so that the government of the day might select them. Our main focus was to ensure separation of powers by making all the three institutions autonomous but unfortunately, the things have become more complex. The essence of separation of powers is deteriorated because now executive is all and all. This amendment will expectedly create chaos.