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Describe the main changes made in the Constitution of Pakistan through 26th Amendment. What effects shall it have on Political system of Pakistan. Elaborate.

## I. Introduction

On October 21, 2024, the Parliament of Pakistan passed 26th Constitutional Amendment. It introduced far-reaching changes in the judicial appointment process and the balance of power among state institutions. This legislation has been framed as a move toward strengthening democratic accountability that has sparked significant debate regarding its potential impacts on judicial independence and state governance.

## II. Historical context of the Amendment

The 26th Amendment was introduced amidst tensions between the judiciary and the executive, particularly in the aftermath of the February 2024 general elections. Allegations of election rigging and subsequent judicial interventions had intensified conflicts, leading to demands for reform. The Amendment was presented as a

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solution to these issues, redefining judicial roles while promoting legislative oversight.

### III. Main changes made in the Constitution through 26th Amendment

#### i. Enhanced role of the Parliament in judicial appointment of Chief Justice

This amendment relates to the Article 175 A of the Constitution. According to the amendment, a new twelve member parliamentary committee will nominate the Chief Justice of Pakistan from a panel of three most senior judges. This committee requires a two-thirds majority to confirm its nominations. The proposed Chief Justice of Pakistan's name will be submitted to Prime Minister for endorsement, who will forward it to President for final approval. The seniority principle, which was previously the sole criterion of the selection of Chief Justice, is no longer to be followed.

#### 2. Change in the term of Chief Justice

According to this amendment,

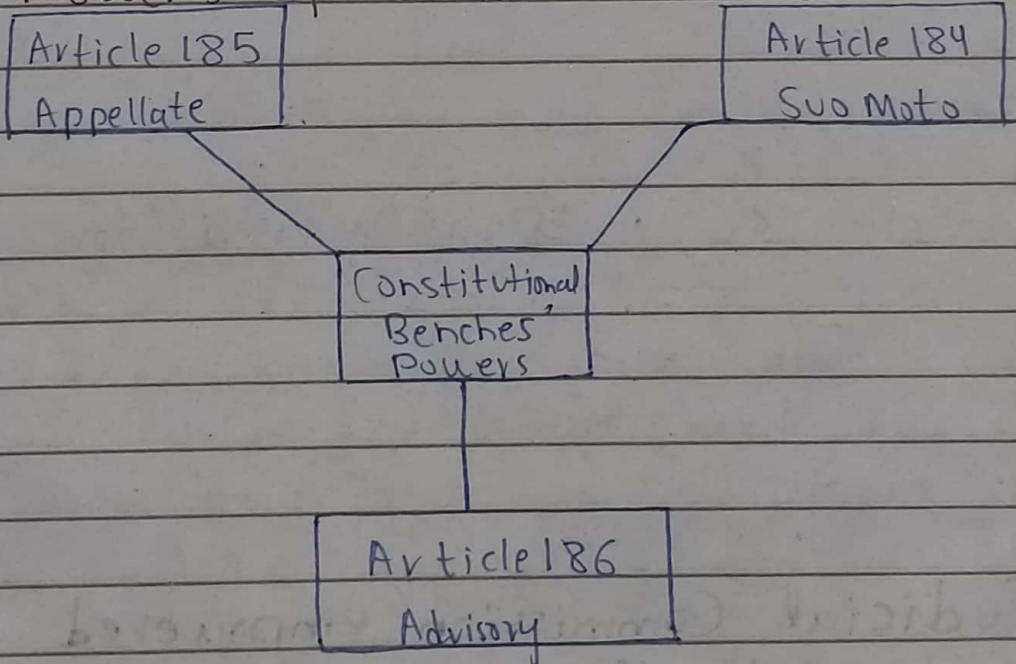
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the tenure of Chief Justice of Pakistan has been fixed at maximum three years <sup>of service</sup> or sixty-five years of age, whichever ~~is~~ is ~~comp~~ reached first.

### 3. Creation of Constitutional Benches in both the Supreme Court and High Courts of Pakistan

The Constitutional benches have been created in both Supreme Court and High Courts across all provinces of Pakistan. This has been done via ~~the~~ addition of Article 191A in the Constitution.

#### 3.1 Powers of constitutional benches



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## i. Article 184, Sui moto jurisdiction

Sui moto power is transferred from the Supreme Court of Pakistan to the Constitutional benches. The order has to be within the contents of the application.

## ii. Article 185, Appellate jurisdiction

Previously, if the question in hand was worth Rs. 50,000, its appeal could be sent to ~~Supre~~ from High Court to Supreme. This has been changed to Rs. 10,00,000. However, if the decision requires an understanding regarding the constitutionality of the decision of the High Court given under Article 199, the ~~power~~ appellate power ~~#~~ will lie with constitutional bench of the Supreme Court.

## iii. Article 186, Advisory jurisdiction

The power of advisory jurisdiction has also been transferred to the constitutional bench of Supreme Court.

## 4. Judicial Commission empowered to do judicial review

The Judicial Commission,

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comprising of 13 members, will assess the performance of high court judges. If a high court judge is found to be performing underpar, a certain time will be given to that judge to rectify the mistakes. In case the performance remains underpar, even after the said time, the matter will be sent to Supreme Judicial Council.

#### IV. Effects of the Amendment on political system of Pakistan

It is too early to predict the exact implications of the 26th Constitutional Amendment. However, it holds both the potential positive effects and the negative effects on the country's political system.

##### 4.1 Potential positive effects on political system of Pakistan

###### 4.1.1 Greater legislative role in governance

The amendment enhances Parliament's role in overseeing judicial appointments, strengthening its authority within the democratic framework. This shift aligns with the principle of parliamentary sovereignty, reinforcing the legislature as the central

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pillar of governance. United Kingdom, whose constitution also functions centrally on the principle of parliamentary sovereignty, consists of <sup>15-member</sup> commission for judicial appointment. However, this commission consists only three judges. Hence, a reduced role of judiciary in judicial appointments is not something not unique to Pakistan.

#### 4.1.2 Stable political environment

By creating specialized constitutional benches to handle cases under Article 184(3), the amendment seeks to streamline judicial processes. This reform could foster resolution of politically sensitive cases, reducing delays that often hamper governance and policy implementation. This efficiency would contribute to a stable political environment.

#### 4.1.3 Reduction in judicial overreach

The amendment curtails the judiciary's ability to review executive decisions, particularly those involving the Prime Minister and Cabinet. This could help reduce the friction between the judiciary and executive, allowing the

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government to implement policies without fear of constant judicial intervention. This rebalancing of power may create a harmonious relationship between state institutions

## 4.2 Potential negative effects on political system of Pakistan

### 4.2.1 Threat to judicial Independence

By placing judicial appointments under parliamentary oversight, the amendment risks compromising the judicial autonomy. If the process is influenced by political biases, it may erode the judiciary's ability to act as a neutral check on the legislative and executive, thereby undermining the separation of powers.

### 4.2.2 Politicization of the judiciary

Involving politicians in judicial appointments introduces the risk of favoritism and politicization. Judges selected under these circumstances may feel indebted to political actors, which could lead to biased rulings in politically charged cases. This undermines public trust in the judiciary and may destabilize the political

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system.

## V. Conclusion

The 26th Amendment represents a major recalibration of power within Pakistan's political system. Its potential benefits include fostering a stronger legislature and reducing conflicts between state institutions.

These are counterbalanced by risks and threats to judicial independence and ~~to~~ risks of judicial politicization. The ultimate impact on Pakistan's landscape will depend on the amendment's implementation. It will depend on whether it respects the principles of accountability, transparency and democratic balance.