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Elucidate 26th Constitutional amendment to the 1973 constitution of Pakistan and discuss its impacts on Pakistan's political system.

① INTRODUCTION:

The 26th constitutional amendment which was passed with Presidential assent on October 21, 2024, marks a significant milestone in the country's discourse on judicial reforms. This amendment consists of 27 clauses, aims to redefine the balance of power between the judiciary and the parliament. The core objective of the amendment is to introduce greater parliamentary oversight on judicial matters, curbing the influence of the Supreme Court and expanding the role of elected representatives in the Judicial Commission of Pakistan.

This development arises from a long standing history of judicial activism and tension between the judiciary and legislature. The amendment not only reconfigures the dynamics of judicial appointments but also echoes the famous Roman question, "Quis custodiet ipsos custodes!" (Who will guard the guards?)

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HISTORICAL POWER STRUGGLE BETWEEN THE JUDICIARY AND THE PARLIAMENT:

Pakistan's parliament has passed 26 constitutional amendments of which 13 amendments (50%) are judicially focused. By contrast, India has passed 106 constitutional amendments with only 11 (10%) related to the judiciary. Pakistan's amendments reflect a persistent power struggle between the executive and the judiciary.

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MAJOR PROVISIONS OF THE 26th CONSTITUTIONAL AMENDMENT:

Provisions	Articles
Reconstitution of Judicial Commission of Pakistan	175-A
Performance Evaluation of High Court Judges	175-A
Appointment of Chief Justice of Pakistan by a special parliamentary committee	175-A
End of suo moto jurisdiction of Supreme Court	184
End of suo moto jurisdiction of High Court	199

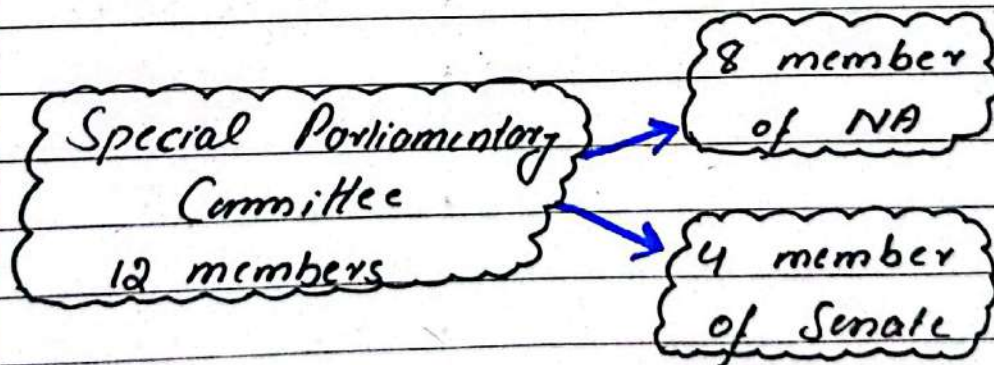
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Provisions	Article
Establishment of Constitutional benches in Supreme Court	191-A
Retirement Age of Judges SC empowered to transfer cases from a High Court to itself.	179
Right to Clean and Healthy Environment	9A

(3.1) Appointment Process of Chief Justice of Pakistan:

According to Article 175-A the Chief Justice of Pakistan will be nominated by a special parliamentary committee consisting of 12 members



(3.2) Fixing the Term of the Chief Justice of Pakistan:

The term of CJP is fixed at 3 years according to Article 179. The retirement age is also fixed at 65, whichever comes first.

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(3.3) Restructuring of Judicial Commission of Pakistan

The judicial commission of Pakistan is restructured according to Article 175-A, introducing greater parliamentary oversight

Previous JCP	Amended JCP
CJP	CJP
4 senior judges	3 senior judges
Federal minister of Law & Justice	Federal minister of Law & Justice
Attorney General	Attorney General
Nominee by Pakistan Bar Council	Nominee by Pak Bar Council
Former Chief Justice or SC judge	1 judge of constitutional bench
	2 member of Senate
	A women or non-muslim other than member of NA

(3.4) Reducing Power of Suo Moto of Supreme Court and High Court

Article 184 and 199 has reduced the power of suo moto of the Supreme Court and high court respectively.

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(3.5) Formation of Constitutional Benches in the Supreme Court and High Court:

Article 191-A and 202-A introduced the formation of constitutional benches in the Supreme Court and High Court respectively.

Only constitutional bench can exercise the following jurisdiction.

- ↳ original jurisdiction
- ↳ Appellate jurisdiction Article 185 (3)
- ↳ Advisory jurisdiction.

(5) IMPACTS OF THE 26th CONSTITUTIONAL AMENDMENT ON PAKISTAN'S POLITICAL SYSTEM

The 26th Constitutional amendment has significantly restructured the balance of power in the highest echelons of power. It has impacted the political system of Pakistan as follows.

(5.1) Increased Parliamentary Oversight in Judicial Appointments:

The increase in parliamentary oversight reflects a broader trend towards democratic accountability.

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(5.2) Dilution of Supreme Courts Power:

The Article 175 A has limited the Supreme Court's influence, especially regarding its self-governance and its role in judicial appointments.

(5.3) Limiting Judicial Activism:

The limitation of suo moto powers reduces the court's ability to intervene in political matters, thereby limiting judicial activism.

Separate constitutional benches limit the role of CJP in taking suo moto as happened excessively in the past.

(5.4) Undue Political Influence in Judicial Commission of Pakistan:

The amendment introduces political figures into the Judicial Commission of Pakistan, reducing judicial members into a minority.

(5.5) Compromising Judicial Independence and Impartiality:

JCP is now empowered to nominate "constitutional benches" with exclusive jurisdiction over

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politically sensitive cases. This could lead to creation of politically motivated benches, undermining judiciary's impartiality.

(5.6) Political Interference in the Appointment of Chief Justice of Pakistan:

The Special Parliamentary Committee nominates the CJP from the three most senior judges. But the lack of transparency clear criteria or transparency for the SPC's decision increases the chances of politicization of the judiciary.

(5.7) Violation of International Standards and Fair Trial Rights:

The amendment violates the International Covenant on Civil and Political Rights (Article 14) and Pakistan's Constitution (Article 10A) by compromising the right to an independent judiciary and fair trial.

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CRITICAL ANALYSIS :

The introduction of greater parliamentary control on judicial matters increases political control over the judiciary which contradicts the separation of power and international standards of judicial independence.

Similar Courts exist globally such as Germany's Federal Constitutional court. However, these courts operate independently without executive interference, while the proposed constitutional benches appointments are heavily influenced by the executive.

The International Court of Justice criticized the amendment

“It is a blow to judicial independence, rule of law and human rights”

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CONCLUSION:

In a nutshell, the 26th constitutional amendment was passed to introduce greater parliamentary oversight on the judiciary, and reduce the role of judiciary in political matters through judicial activism.

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On the one hand, it strengthened executive influence in the judicial matters, while on the other hand it impaired the independence of the judiciary. It ~~ends~~ contradicts the separation of power raising concerns of executive dominance over the judiciary.
