

26<sup>th</sup> Constitutional Amendment is a hot topic in Pakistan now-a-days. Write down the salient features of 26<sup>th</sup> amendt. Analyze that it undermines the judicial independence in the country.

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## 1) Introduction:-

The 26<sup>th</sup> constitutional amendment is a topic of discussion now-a-days in Pakistan. It was passed from Parliament on 22<sup>nd</sup> October, 2024. Owing to hurry in process, it has become a bone of contention between the ruling party and the opposition. The government and allays exclaimed with joy and claimed it a supremacy of parliament, while opposition termed it ~~is~~ a dark chapter of Pakistan's political history. The Federal Minister of Law and Justice said while commenting in Senate,

"Parliament is a supreme institution, and 26<sup>th</sup> constitutional amendment has ensured it supremacy"

Several article regarding the functioning of

sup superior judiciary The opposition leader of National Assembly said,

"26<sup>th</sup> amendment has marked as a black day of for the judiciary of Pakistan, as the country has never witnessed such draconian amendment, challenging the spirit of judicial independence"

## 2. Salient Features of 26<sup>th</sup> Amendment

i) Clean Environment: a fundamental Right

Article 9A has been added which entitles every citizen to of Clean Environment as a Fundamental Right.

ii) Abolition of Riba from the Country

Article 38 has amended which says,

"Riba will be removed from country as much as possible by 1<sup>st</sup> January 2028"

### iii) Appointment of Chief Justice of Pakistan:

Chief Justice of Pakistan will be appointed from top most three judges of supreme court by the recommendation of Parliamentary committee.

### iv) Parliamentary committee to nominate CJP:

A parliamentary committee will be formed, consisting of 12 members from both houses. Four members from Senate and eight will be from National Assembly. Members will be chosen on the preponderant majority of both ruling party and opposition. Nomination of CJP required two-third majority of members of committee.

### v) Appointment of judges of high courts:

The procedure of appointment of judges of high court has also amended in 26th amendment.

## vi) Restructuring of Supreme Judicial Council:-

GJC has also restructured with following features.

- a) CJP as a presiding member
- b) Three most senior judges from Supreme Court (SC)
- c) The Law Minister of Pakistan
- d) Attorney General of Pakistan
- e) Two members from National Assembly and two from Senate
- f) Member of Supreme Court Bar
- g) A non-muslim nominated from Parliament

## vii) Formation of a separate Constitutional Bench within Supreme Court:

a) According to Article 191(A) of Constitution, a Constitutional Bench will be formed in the Supreme Court for the hearing of constitutional cases.

b) All cases of constitutional

matkars will be moved of constitutional Bench.

### viii) Suo Motto Power of Supreme Court:

Article 184(c) has been amended and suo moto powers have been devolved to constitutional Bench.

### ix) Appointment of Chief Election Commissioner:

According to amended 225 article of the constitution, the outgoing Chief Election Commissioner will continue his/her duties until appointment of new CEC.

### x) Evaluation of Efficiency of Judges of Supreme Courts

The commission will ~~const~~ consistently evaluate the efficiency of judges of Supreme Court and High Courts.

### 3) How 26<sup>th</sup> Amendment Undermines Judicial Independence.

i) Appointment of CJP will  
harm merit meritocracy.

It is likely that government may appoint favorite CJP among top three judges. It will also harm judicial independence of judges in order to gain favor.

ii) Contentious decision whether  
whether which case falls  
under constitutional question.

It will become to decide whether which question case falls under constitutional question.

iii) Intervention of parliament in  
judges appointment.

In order to gain from government, judge may

compromise their judicial independence.

#### iv) Risk of rise in favouritism in appointment of Constitutional Bench:

Constitutional Bench is the most powerful bench with supreme court. It is risk of rising favouritism is formation of bench, which will be reconstituted after every three months.

#### v) Curtailing of suo motu powers:

Curtailing of suo motu powers may harm the provision of fundamental right to the people.

#### 4) Reaction of international institutions

International institutions have condemned this amendment.

UN High Commission for Human Rights says,

"This amendment will seriously undermine the judiciary and its independence."

## 6) Conclusion:-

The 26<sup>th</sup> amendment has become a bone of contention between the ruling elite and opposite parties.

The hurry in procedure has raised questions of intention behind this amendment.

It is need of hour to take all stakeholders onboard and develop a consensus between all political parties.

The judicial independence of the country must not be compromise at any cost, as it will give rise to different centrifugal forces and erode trust in judiciary.

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