

Q No. 1

## 26<sup>th</sup> constitutional amendment and Independence of Judiciary

### 1. Introduction

The 26<sup>th</sup> constitutional amendment, has introduced significant changes to Pakistan's constitutional framework, particularly in judiciary. Amendments to the constitution have historically been pivotal in shaping Pakistan's democratic and legal systems.

This recent amendment focuses on reforming the judiciary's structure, powers and appointment processes. While its proponents argue that it restores balance among state institutions, critics believe it undermines judicial independence, a cornerstone of a

functional democracy.

## 2- Key Provisions of the 26<sup>th</sup> Amendment

### I. Changes in appointment of Chief Justice of Pakistan (CJP)

One of the most notable changes brought by the 26<sup>th</sup> amendment is the alteration in the process of appointing the Chief Justice of Pakistan (CJP). The amendment replaces the traditional seniority based system with a process involving a 12-member special Parliamentary Committee.

This committee nominates the CJP from among the three most senior judges of the Supreme Court, with the CJP serving a fixed term of three years. This move aims to ensure a more structured and balanced selection process but raises concerns about potential political interference.

### II. Reconstitution of the Judicial Commission of Pakistan (JCP)

The amendment also reconfigures the Judicial Commission of Pakistan, which is

responsible for judicial appointments. By altering its composition and powers, the amendment increases the influence of the executive and legislature in judicial matters. Critics argue that this could compromise the judiciary's autonomy by making it susceptible to political pressures.

### III. Restriction on *Suo Motu* Powers

Another significant provision of the amendment is the limitation of the Supreme Court's *suo motu* powers, which allow it to initiate cases on its own. Under the new framework, the authority to exercise these powers has been transferred to a judicial committee established under the Practice and Procedure Act. This curtails the judiciary's ability to act as a check on the executive and legislative branches, potentially diluting its role as a guardian of fundamental rights.

### IV. Creation of Constitutional Benches

To streamline the handling of constitutional matters, the amendment establishes

dedicated constitutional benches within the Supreme Court. While this move aims to enhance efficiency, it may also centralize decision-making, affecting the diversity of judicial opinions.

### 3- Implications for Judicial Independence

#### I. Potential Erosion of judicial autonomy

The amendment has sparked fears of an erosion of judicial independence. By granting greater influence to the executive and legislative in judicial appointments and limiting the judiciary's powers, it creates the perception of political encroachment on judicial functions. This could undermine public trust in the judiciary as an impartial and independent institution.

#### II. Balance of power

Supporters of the amendment argue that it addresses the issue of judicial overreach and restores a balance

of power among the three branches of government. They view the reforms as necessary to ensure that the judiciary does not operate without checks and balances. However, critics counter that such measures may tilt the balance in favor of the executive and legislature weakening the judiciary's role as a neutral arbiter.

#### 4. Public and expert reactions

##### I. Support for the amendment

Proponents, including members of the ruling government, have lauded the amendment as a step toward enhancing the accountability and functionality of the judiciary. They argue that it curbs judicial activism, which has often been criticized as exceeding the judiciary's mandate.

##### II. Criticism of the amendment

The amendment has faced strong criticism from opposition parties, legal experts, and international organizations.

Critics argue that it compromises judicial independence, a fundamental principle of democracy. The International Commission of Jurists described the amendment as a significant blow to the judiciary's autonomy, warning of long-term repercussions for the rule of law in Pakistan.

## 5. Conclusion

The 26<sup>th</sup> Constitutional Amendment marks a turning point in Pakistan's legal and political landscape. While it seeks to restructure the judiciary and address concerns about judicial overreach, it raises serious questions about judicial independence and separation of powers. The long-term implications of these changes remain uncertain, but they highlight the ongoing tension between maintaining institutional balance and preserving the judiciary's autonomy. It is crucial for stakeholders to engage in constructive dialogue to ensure that any reforms

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strengthen, rather than weaken, the  
foundations of democracy in Pakistan.

Q No. 2

# Federal Structure and Parliamentary form of government in Pakistan

## 1. Introduction

Pakistan's political system is based on a federal structure combined with a parliamentary form of government. This dual system was chosen to address the country's unique socio-political context, which includes a diverse population and varying regional interests. Federalism allows for greater representation of distinct regional groups, while the parliamentary system ensures that the government remains accountable to the people. Given Pakistan's historical challenges, including ethnic and political diversity, these systems are often considered appropriate, though not without their challenges.



## 2. Federal Structure in Pakistan

### I. Diversity and regional Representation

Pakistan is a multi-ethnic country with significant linguistic, cultural, and geographical diversity. Federalism is a logical choice for ensuring that the various regions, such as Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan, have a voice in the national decision-making process. This structure helps address the regional disparities that could arise if power were concentrated in the central government. For example, the creation of Balochistan as a province with equal representation in the national parliament ensures that the concerns of this historically marginalized region are heard.

### II. Historical context and need for federalism

The creation of Pakistan as a multi-ethnic state made federalism a necessary tool for political stability. In a unitary

system, the larger provinces, like Punjab, could dominate national politics, sidelining smaller provinces. Pakistan's early history, especially the issue of East Pakistan, underscored the need for federalism to prevent regional discontent and ensure that all provinces had autonomy. Federalism was seen as a way to maintain unity despite regional differences.

### III. Autonomy and resource management

A federal system grants provinces greater control over local resources, allowing them to manage their economic affairs and make decisions that align with local needs. In Pakistan, issues like water distribution have been contentious, particularly between Punjab and Sindh. A federal system allows provinces to negotiate and manage resources at the regional level, potentially reducing conflicts over resource allocation. For instance, the Indus Waters Treaty, a crucial water sharing agreement, involves provincial input

to ensure that each region's needs are considered.

#### IV. Challenges to Federalism in Pakistan

While federalism is theoretically suited to Pakistan, the practical implementation has been challenging. One of the ongoing issues is the centralization of power in Islamabad, often at the expense of provincial autonomy. For example, Balochistan has historically felt underrepresented and neglected by the central government, leading to tensions. The perception that the federal government prioritizes the interests of larger provinces, particularly Punjab, has contributed to regional dissatisfaction, calling into question the effectiveness of Pakistan's federal system.

### 3. Parliamentary System of government in Pakistan

#### I. Accountability and representative government

Pakistan's parliamentary system ensures that the executive branch is directly

accountable to the legislature. The Prime Minister is elected from the National Assembly, which represents the people. This setup makes the government more responsive to the electorate since the Prime Minister must maintain the confidence of the Assembly to remain in power. A recent example is the ousting of Prime Minister Imran Khan in 2022, where a no-confidence motion in the National Assembly led to his removal, demonstrating the system's ability to hold leaders accountable.

## II. Flexibility and Stability

The parliamentary system allows for the removal of a Prime Minister without the need for a complete overhaul of the government. If the Prime Minister loses the confidence of the National Assembly, they can be replaced, as seen in the cases of Prime Minister Nawaz Sharif in 1993 and Yousaf Raza Gillani in 2012. This flexibility helps maintain political stability, as it provides a

Peaceful, constitutional way to address leadership crisis without resorting to extreme measures.

### III. Political Instability and Challenges

However, the parliamentary system in Pakistan has not been without its problems. Frequent changes in government and coalition politics often lead to instability. For instance, Pakistan has seen many changes in leadership due to internal political crises, corruption, and weak party discipline. These issues sometimes lead to a lack of continuity in governance, as different coalitions may instabilities is further compounded by military interventions, such as the three instances of military rule, which have undermined the democratic process.

## 4- Compatibility between federalism and parliamentary government

### I. Synergy between federalism and parliamentary democracy

The combination of federalism and parliamentary democracy can provide a balanced system of governance that accommodates both regional autonomy and national coherence. By allowing provinces to have a say in national policy while ensuring that the executive is accountable to the legislature, both systems work in tandem to create a more representative government. For example, the distribution of seats in the National Assembly ensures that smaller provinces like Balochistan have adequate representation alongside larger provinces like Punjab.

### II. Challenges of Integration

Despite their potential synergy, federalism and the parliamentary system can sometimes conflict in practice. One challenge

is balancing the power between provincial and central governments, particularly when political parties in the provinces may not align with the central government. This can lead to tensions as seen in Balochistan, where demands for greater autonomy have occasionally clashed with the central government's policies.

## 5- Conclusion

The federal structure and parliamentary system are, in many ways, appropriate for Pakistan due to its regional diversity and the need for accountable governance. While these systems offer significant advantages, such as ensuring regional representation and responsive government, they are not without challenges. Political instability, centralization of power, and conflicts between provincial and central governments have hindered their effectiveness at times. To fully realize the potential of these systems,

Pakistan must focus on strengthening democratic institutions, improving resource allocation, and promoting political cooperation between the federal and provincial governments.