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The 26th Amendment to the Constitution of Pakistan: A Step Towards Judicial Reform or an Erosion of Judicial Independence?

a- Introduction:

Thesis Statement:

Although some hold that it is a step towards judicial reform, the 26th Amendment to the constitution of Pakistan is indeed an erosion of judicial independence, effectively placing the judiciary under legislative control.

b- Understanding Judicial Independence

c- The 26th Amendment As an Erosion of Judicial Independence

1- End to the Principle of Seniority and Establishment of Special Parliament

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mentary Committee

i- Paving the way for
Judiciary to secure
Political favours

2- Inclusion of Political
Representatives in the
Judicial Commission

3- Political Sway over
Constitutional Bench
Formation

4- Removal of Judges
on the Grounds of
Inefficiency

i- The Term "Inefficiency"
Deliberately left
undefined

5- Curtailment of Sui
Mater Power

i- End to Protection
Against Executive
Overreach

6- The Authority of
Supreme Court to
Transfer Cases

i- A Means to Protect

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Malicious Political
Agendas

7- Shortening the Tenure
of Chief Justice

i- Stability and Contin-
uity in the Apex
Court Denied

ii- Position of CJP made
susceptible to Political
Manipulation

d- The 26th Amendment As a Step Towards Judicial Reforms - A Counter Narrative

1- The Amendment Eased
Judicial Workload

i- The introduction of
New Benches

2- It Hindered Judicial
Activism

i- The Limitation on
Suo Moto Power

3- It Rendered the
Parliament Sovereign

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e- Addressing the Counter Narratives:

1- Mere Expansion of Benches Does not Solve Judicial Backlog

i- Procedural Delays and inefficient case Management Remain Unaddressed

2- Parliament cannot claim Absolute Sovereignty

i- The Constitution should Remain Sovereign

f- Conclusion:

Introductory Paragraph:

The 26th Amendment to the constitution of Pakistan, enacted in October 2024, is a sweeping reform. It significantly altered the nation's judicial and Parliamentary landscape. The Amendment introduced profound changes across multiple domains of governance, sparking debate.

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confrontation, and legal scrubbing. Some people believe the Amendment is a step towards judicial reforms. According to them, it eased judicial workload, hindered judicial activism, and rendered the parliament sovereign. However, the 26th Constitutional Revision has, in fact, dealt a severe blow to the independence of judiciary. The end to the principle of seniority and establishment of Special Parliamentary Committee, inclusion of political representatives in the judicial commission, political sway over constitutional bench formation, removal of judges on the grounds of inefficiency, curtailment of *Suo Moto* power, the authority of Supreme Court to transfer cases, and shortening of the tenure of Chief Justice of

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Pakistan (CTP) lend credence to this concern. Therefore, although some hold that it is a step towards judicial reform, the 26th Amendment to the Constitution of Pakistan is indeed an erosion of judicial independence, effectively placing the judiciary under legislative control.

"Body Paragraph"

Judicial independence is the principle that courts and judges must be able to decide cases free from improper influence, whether from the executive branch, legislature, or private interests. This autonomy ensures that justice is administered impartially and in accordance with law. It is not merely a legal guarantee, but a practical necessity for protecting individual rights.

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ensuring fairness; and maintaining public confidence in the rule of law. This principle is deeply intertwined with the doctrine of separation of powers. This doctrine divides the functions of state into three distinct branches—legislative, executive, and judicial—each with its own powers and limits. Judicial independence is a cornerstone of this separation: it ensures that the judicial branch is not subordinated to the legislature or executive. It preserves checks and balances so that no institution accumulates unchecked power. Judicial independence and separation of powers are most famously linked to Montesquieu, who expounded them in his work, "The Spirit of the Laws (1748)".

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Conclusion:

Ultimately, while some people believe the 26th Amendment is a measure to improve the judiciary in truth, it has undermined judicial independence by subordinating the judiciary to the legislature. The champions of the Amendment argue that it facilitated judicial backlog, curbed judicial activism, and made the legislature sovereign. Nevertheless, the 26th constitutional restructuring has, in reality, curtailed the independence of judiciary. The termination of the seniority principle and the creation of Special Parliamentary Committee, involvement of political actors in the judicial commission, political influence over constitutional bench formation, removal of judges on the basis of inefficiency, restriction of

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Suo Motu power, and the authority of the Supreme Court to transfer cases stand testimony to that fact. It is hoped that the lawmakers would realize the reverberations of this Amendment and would work to restore the judicial independence. After all, it would be in the best interest of Pakistan and its people.