

Critically analyze the proposed 27th constitutional amendment in the light of 26th amendment. How these reforms reshape balance between parliament and Judiciary in Pakistan?

Answer:

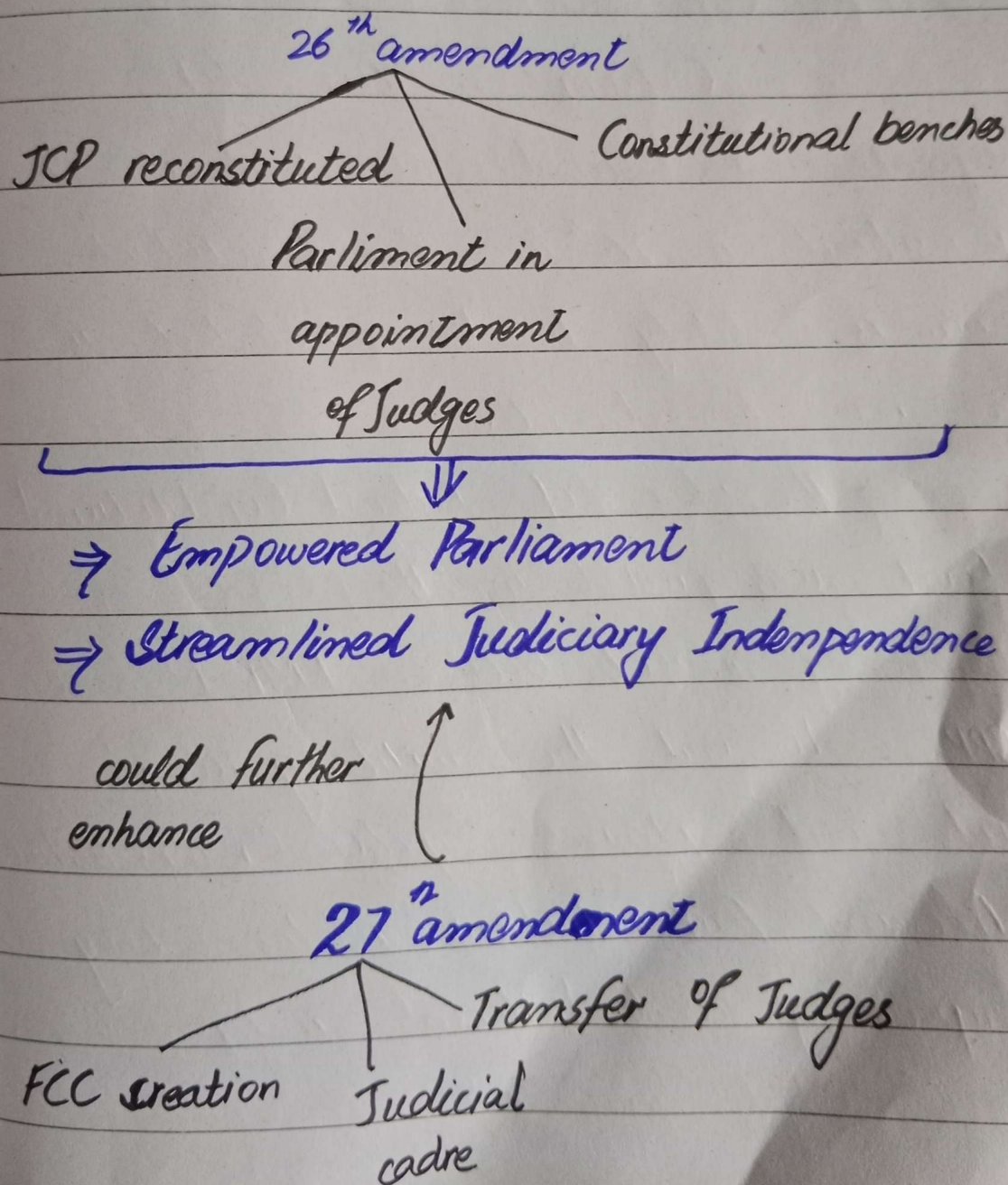
Introduction:

Constitutional amendments have always been the controversial and tug of war between institutions.

26th amendment passed on October 21, 2024 changed the structure of Judiciary which sparked criticism over Judiciary independency. With 26th amendment still in controversial debate, the power corridors in Islamabad

abuzz with talk of 27th amendment, which according to insiders further fine-tune the structuring and functioning of the Judiciary.

Flow Chart:



Proposed Reforms:

Although, recently in a consultative stage, several reforms are under discussions;

1. Federal Constitution Court:

Certain matters like separate constitutional court were remained unresolved in 26th amendment, which now is likely to be included in a new amendment.

⇒ The idea of Federal Constitutional Court was rooted in the Charter of Democracy in 2006 between PML-N and PPP to end the military compⁱ rule and emphasizes; "political reconciliation, free and fair elections, parliamentary supremacy and Judicial independence."

⇒ Proposed in 26th amendment:

This idea of establishing federal constitutional court was included in 26th amendment but it could not pass due to lack of 2/3rd majority.

⇒ Expected in 27th amendment:

Now, the government has majority of reserved seats allocated by 26th amendment, it may be a part of 27th amendment.

For this purpose, **Article 175** would be amended and FCC would be placed after the Supreme court.

2. Judicial Cadre - Seniority:

The new amendment is likely to address the lingering question of "inter se seniority", an issue sparked controversy within the

Islamabad High court.

The constitutional amendment may include the creation of "Judicial cadre" which addresses the appointment of judges on basis of seniority rankings. The seniority list of all the Judges would be maintained and seniority would be estimated by appointment date and age.

3. Increase in age of Judges:

The amendment may include a proposal for upward Revisions in age of retirement of Judges by amending Article 179.

4. Transfer of Judges:

Another key provision for new amendment (between) is Article 200, which governs the transfer of

judges between high courts.

At present, judges are transferred on the basis of judge's consent and the consultation between President, CJP and chief justices of high courts. New amendment would likely to remove the "consent" of judges for their transfer and could vest transfer authority in JCP.

"This reform was included in the ref. draft bill of 26th amendment but was excluded from the final report."

Recently, Islamabad High Court Bar Association President Syed Wajid

Ali Shah demanded the transfer between judges of high court to ensure transparency and exposure.

Future Implication:

Following would be the implication, if government passed the 21st amendment:

1. Criteria for ^{Transfer} appointment of Judges:

^{Transfer} Appointment of Judges on the (date) basis of seniority determined by seniority appointment age and date may ignore merit and competence fueling internal rivalries.

Fears of being reassigned as "Junior" would lower morale and independence.

2. FCC implications:

Creating FCC could generate jurisdictional conflicts.

FCC may be perceived as a political court.

It may dilute the authority of Supreme court.

3. Loss of Judicial Consent:

Removing the requirement of judicial consent for transfers would undermine the principle that judges should serve without external pressure.

Conclusion:

The 26th amendment marked a turning point by expanding parliament control over judiciary, 27th

amendment aim to structure it further through a FCC, new transfer mechanism and seniority reforms, it suggest a political encroachment on Judicial independent.

If not balanced, these amendments may undermine the very spirit of the constitution.
