

Pak Affairs

The 26th Constitutional Amendment is seen as a move toward 'Parliamentary Supremacy' by some and a 'Blow to Judicial Independence' by others. Critically evaluate its impact on Separation of Power in Pakistan.

Introduction

The doctrine of Separation of Power is a cornerstone of Pakistan's Constitutional framework, designed to maintain a balance of power among the legislature, executive and judiciary. The 26th Constitutional Amendment has reignited debate over this balance, it as a restoration of parliamentary supremacy and critics condemning it as an erosion of judicial Independence. A critical evaluation reveals that while the amendment aims to enhance democratic accountability, it significantly alters that equilibrium of Institutional power raising serious concerns for constitutionalism in Pakistan.

① Background

① 1950-1990^s

Executive (Dominant Branch)
Doctrine of Necessity



② 2008-2024

Judiciary Do. Branch
Suo Motu Art (184/3)



③ Current (2024-2026)

Parliament (Dominant)
26th Amendment

~~SUBJECTOR 1~~

Substantial Recalibration of Judicial Appointment.

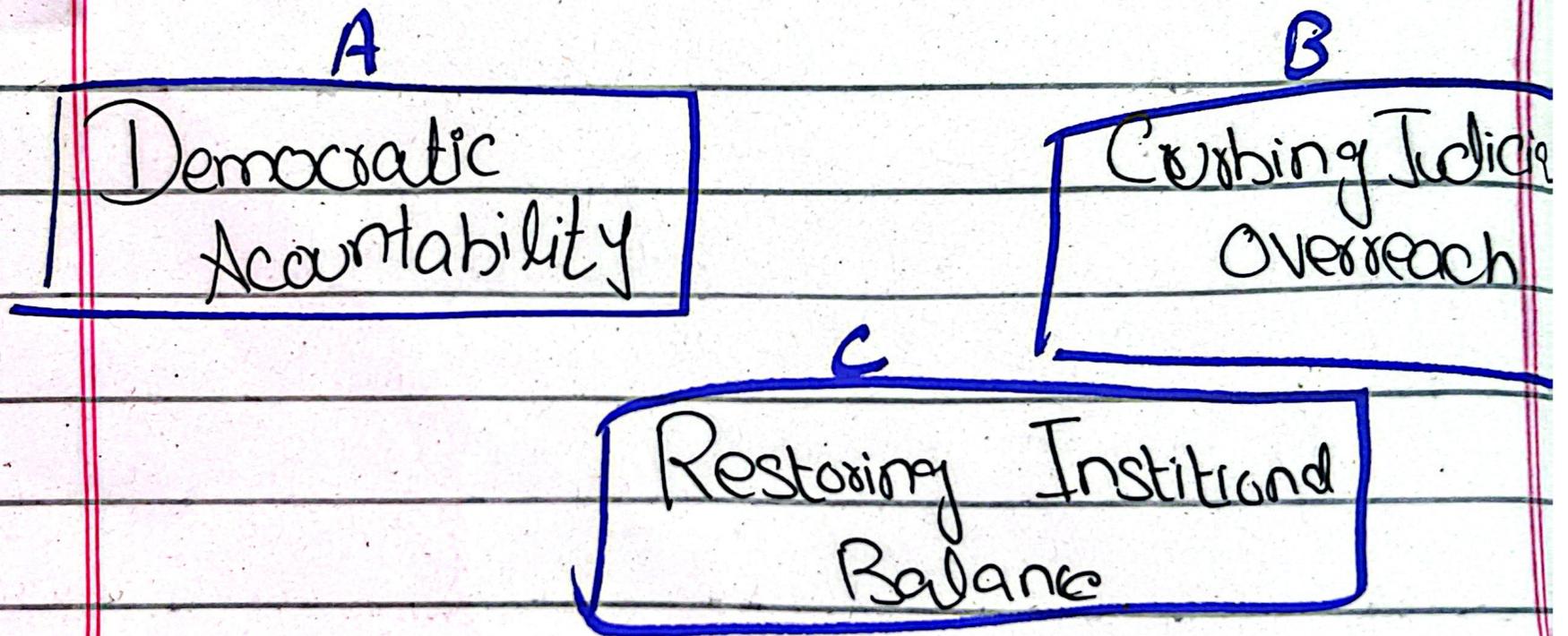
The amendment abolishes the "Seniority Principle" for appointment of Chief Justice of Pakistan (CJP) replacing it with a selective process.

a. The Special Parliamentary Committee.

A 12 member cross-party committee now selects the CJP from a panel of the three most senior judges.

b. Article 175-A Revisions. The Judicial Commission of Pakistan has been reconstituted to include a higher proportion of political members,

② The Case for Parliamentary Supremacy



A Democratic Accountability.

Parliamentary involvement in judicial appointments is defended as enhancing democratic legitimacy, as elected representatives represent the will of people.

B Curbing Judicial Overreach

Restrictions on *sub-motu* power are seen as necessary to prevent the judiciary from encroaching on legislative domains.

(C) Restoring Institutional Balance.

The unchecked judges exercising unchecked authority undermines representative governance and the amendment restores equilibrium in favour of Parliament.

The Case Against the Amendment

A Politicisation of Judicial Appointment

B Weakening of Checks and Balance

c

Insecurity of
Judicial
Tenure

d

Erosion of
Public
Trust

a Politicisation of Judicial Appointments.

Expanded Parliamentary influence over judicial selection risks transforming appointments into political bargaining, undermining merit and impartiality.

b Weakening of Checks and Balances.

Curtailing *quo-motu* jurisdiction reduces the judiciary's capacity to act as a guardian of fundamental rights, particularly when executive and legislative institutions fail.

c Insecurity of Judicial Tenure

Changes affecting tenure and leadership continuity may indirectly pressure judges to align with political preferences, compromising independence.

②

Erosion of Public Trust

Perceptions of judicial subordination to political forces weaken confidence in courts as neutral arbiters.

Impact on Separation of Power

The practical impact of 26th Amendment has been a shift in power toward the legislature and executive, disturbing the delicate balance envisioned by the Constitution. While parliamentary oversight has expanded, judicial autonomy as an independent check has been diluted. Instead of fostering inter-institutional harmony the amendment risks institutional confrontation and constitutional instability.

Recommendations

To restore equilibrium while preserving accountability.

① Judicial appointments should be governed

governed by transparent, merit-based criteria with minimal political discretion.

② Suo motu powers should be procedurally regulated.

③ Security of tenure for judges must be ensured to protect decisional independence.

④ Major constitutional amendment should be preceded by broad political and institutional consensus.

Critical Evaluation.

Parliamentary supremacy is not inherently incompatible with democracy; however, in Pakistan's context, marked by executive dominance and weak accountability mechanisms, a strong and independent judiciary remain indispensable. The amendment addresses the symptoms of Judicial activism but fails to tackle the root causes, such as ineffective governance and

Weak parliamentary performance. Consequently,
the reform appears imbalanced, prioritizing
political control over constitutional
safeguards.

