

MOCK PA PART II

Q2

An Analysis of 26th Amendment

Introduction

The 26th amendment, also known as the constitutional package, was passed in the senate and National Assembly on 21st October, 2024. This amendment is a set of judicial reforms comprised of limiting the term of Chief Justice of Pakistan to three years, curtailing the power of *Suo Moto* and authorizing the Prime Minister to choose the Chief Justice of Pakistan. These reforms, proposed by the legislation in order to overhaul the judiciary and resolve the issue of pendency in Supreme Court and High Court, have been the centre of debate among the lawyers and the civil society. It has directly altered the balance of power between the legislative, executive and judicial pillars of the state.

HOW DOES THE 26th AMENDMENT

ALTERS THE BALANCE OF POWER

a) Alteration in Chief Justice Appointment through Article 175a

The Chief Justice, earlier the most senior judge of Supreme Court, will now be selected by a Parliamentary Committee.

From among the three most senior judges.
This empowers the legislation in judicial appointments and raises concerns about political interference in judiciary.

(b) Fixed tenure of CJP through Article 179
The amendment has proposed for a fixed three-year term of CJP through Article 179 which ensures leadership predictability in judiciary.

(c) Limiting the *Suo Moto* powers through Article 184

The Supreme court can not initiate *Suo Moto* cases which prevents judicial overreach in legislative and executive domains. While it tends to balance power, it bolsters the legislation and executive to abrogate human rights bypassing court intervention.

(d) Potential for executive overreach

With fewer checks of judiciary on executive, the executive can overreach its jurisdiction and this situation becomes even grim when the judges are appointed by the parliament.

(e) Formation of constitutional benches within the Supreme court through Article 191A

A constitutional bench has been proposed at the federal level to hear political

and constitutional cases. This has been critiqued for being a gateway for the political elites to evade justice, owing to the fact that the constitutional bench judges are also hand-picked by the parliament, ~~but~~ shifting the power to executive and legislative.

(f) Modifications in the role of JCP

The Judicial Commission of Pakistan now will nominate a panel of three senior judges and the final selection will be done by the parliamentary committee. This empowers parliament and increases the risk of politicized judicial appointments.

~~Curbing the powers of~~

(g) Empowering President through Article 48

This mandates the President to act on the advice of Parliament and Prime Minister and the advice can not be subjected to any review from court.

(h) Reduced judicial autonomy

This amendment has limited the SC powers of *Suo moto*, meaning that judicial review can not be initiated by the Supreme Court. This further limits the autonomy of judiciary by involving parliament in judge selection, potentially influencing the impartiality of judges.

2) Periodic Performance reviews of judiciary
The parliament and judicial commission of Pakistan will not only appoint judges but would periodically evaluate their performance. While the parliament calls this measure to improve productivity of judges, this further subjects the judiciary to executive and legislative oversight, weakening the judiciary.

Critical Analysis

The preamble of constitution 1973 of Pakistan mandates the independence of judiciary and a parliamentary form of government with balance of power among the executive, legislative and judicial tiers. However, the 26th amendment has been criticised as "the blow to judicial independence" by ICT. This has unprecedently strengthened the executive and legislative, and weakened the judiciary.

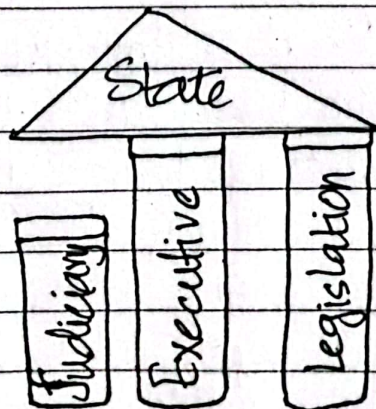


Figure depicting the balance and separation of power post 26th Amendment

In a federal state, there is a pertinent role of judiciary in the mediation of conflicts between the federal and Provincial units. Post 26th amendment, the reduced judicial autonomy also jeopardises the federalism of Pakistan.

Furthermore, judiciary's reduced autonomy will undermine the **Rule of Law**, threatening the fundamental rights.

India Case Study

In India, the Chief Justice of India is appointed based on the seniority among the Supreme Court judges, ensuring impartiality and fairness in the appointment of Chief Justice. This also safeguards the independence of judiciary and autonomy, unlike that in Pakistan, which allows legislative involvement in judicial appointments.

Lawyers Critique: Moiz Baig (Lawyer) insights on 26th amendment

Moiz Baig, spoke on the behalf of the legal community, criticised the reforms in the 26th amendment. He iterated that the parliamentarians may not be the best people to review judges performance and competence and the constitutional cases coming to the constitutional

bench will involve government of the day, further raising the concerns of politicization of the constitutional bench. Furthermore, he said that the judges of the SC will now ingratiate themselves to the government of the day, will not pass any controversial decisions unpalatable to the government.

He also pointed out that if the parliament seeks to bring judicial reforms to resolve the pendency of cases, how will it be solved if the same judges appointed in the SC will be the judges of the constitutional bench.

Conclusion

While the 26th amendment was brought to overhaul the judiciary, resolve pendency of cases in the SC and HCs, it raises serious concerns about the independence of judiciary and balance of power. The Human Rights Commission of Pakistan (HRC-P) labelled it as an 'impracticable solution to complex institutional challenges.' It threatens the balance of power by centralizing power in executive and legislative tiers.

Q3 Terrorism Wave in Pakistan

Introduction

Terrorism, also known as the weapon of poor and incapable against the strong elite, has multidimensional aspects when it comes to Pakistan. The recurrence of terrorism can not be understood without ~~under~~ expounding upon its historical context of emergence. Samuel Huntington in his book "The Clash of Civilization" propounded that the primary source of conflict in the post-cold war world would be cultural and religious identities and not ideology. However, in Pakistan, the idea of Samuel Huntington about conflicts doesn't fully explain the multifaceted nature of terrorism.

Historical Context: Roots of Terrorism in Pakistan

In 1979, a culture of Kalashnikov and militarization prevailed with the onset of Afghan Jihad war, proclaiming the Pashtuns of FATA and Balochistan as 'Mujahideen'. In 2001, post 9/11, Pakistan's soil was again used by the West to overthrow ~~the~~ Taliban and eradicate the alleged terrorists of Al Qaeda in

War on terror. Air bases in Pakistan were used to launch attacks in Afghanistan. This divided the Taliban into Pro-Pakistan Taliban and anti-Pakistan Taliban who were aware of the safe havens within Pakistan to sponsor terrorist activities. This represents a ~~bka~~ broader picture of militarization onset in Pakistan and weak will of the state to contain terrorism.

Reasons behind Resurgence of Terrorism in Pakistan

(a) Unresolved border issues with Afghanistan
The porous Durand Line facilitates the free movement of militants between Pakistan and Afghanistan.

"55% of attacks were linked to Afghan based militants, particularly TTP." (PIPS, 2023)

(b) Failure to consolidate military gains
Pakistan has always tried to contain terrorism through kinetic means like Operation Zarb e Azam which lead to miscalculations and casualties. They lacked a comprehensive strategy based on diplomacy for long term stability.

"Post Zarb e Azam, TTP regrouped in Afghanistan, escalating attacks in 2022."

(c) Weak Implementation of National Action Plan (NAP)

The NAP of 2015 aimed to counter terrorism but faltered in areas like curbing hate speech, madrassah reforms and choking terror financing.

"FATF also flagged Pakistan's limited progress in preventing terror funding in 2022."

(d) Reemergence of TTP post-US withdrawal

The Taliban return to power emboldened groups like TTP, causing terror attacks in Pakistan.

"The Afghan Taliban's rise has given ideological and logistical support to militants in Pakistan." PIPS

(e) Socioeconomic Grievances

Chronic marginalized in Balochistan and KP, driven by poverty, lack of resources, gives rise to resentment among them.

BLA (Balochistan Liberation Army) is an example of uprising against the state. Missing persons also exacerbate the grievances. **Pashtun Tahaffuz Movement** also underscores the struggle of Pashtuns against the state.

"Poverty rates in KP exceeded 65%." (LUNDP)

(f) Inadequate counter-narrative against terrorism.

Terrorism in Pakistan is most often led by religious and fundamentalist entities, alluding terrorism to Jihad. Pakistan lacks a counter-narrative to this and fails to promote peace of Islam.

(g) Flawed Afghan policy

Pakistan's foreign policy and security policy is not made by political stakeholders, it is not discussed in the parliament rather a political institution and military formulates policy. This has led to lack of transparency in policies and difference of two Afghan policies in different governments, making Taliban even stronger.

(h) Sectarian Extremism

Groups like Lashkare Jhangvi, Lashkare Taiba and Sipah Sahaba continue to exploit sectarian divides.

"21% of terror attacks in Pakistan were sectarian."

South Asia Terrorism Portal (2022)

(i) Terror financing and Lack of Accountability

Hawala networks and unregulated Madrasas remain conduits for terror funding.

"10 billion dollars annually is

channeled through informal financing systems in Pakistan."
(FATF)

(i) Weak judicial Prosecution

The low conviction rate of terrorists renders a sense of impunity among the terror groups

"Only 5% of terrorism-related arrests led to convictions in 2022." (PIIDAT)

(ii) Political Instability and poor governance

Divided political priorities and inconsistent policies have hampered a unified response to terrorism.

"Without political will, counter terrorism policies remain ineffective."

Dr Moed Yusuf

Conclusion

The new wave of terrorism in Pakistan underscores systematic policy failures, from border management to institutional reforms. To combat this menace effectively, Pakistan needs a multipronged strategy with strict implementation of NAP, economic upliftment and regional cooperation.