

Part - II

Question-2

Critically evaluate how the 26th Amendment to the Constitution will affect the balance of Powers between the various Pillars of State.

"The Constitution was made to guard the rights of all"
(John Adam 2nd President of US)

Introduction

The 26th amendment of Constitution of Pakistan is officially known as 26th Amendment Act 2024. which was introduced by the law minister of Pakistan Azam Najiz Tarar in the National Assembly on 21 October 24 and came into force on the same day with Presidential assent. The amendment contains 27 clauses, which effect the change in Judicial, Parliamentary and executive frame works. Modifying the Judicial appointments, powers and adjusting legal procedures. These include removal of Suo Motu prerogative of Supreme Court, the Capping of

Chief Justice of Pakistan's tenure to three years, formation of separate Judicial Commission of Pakistan, separate Judicial Bench, limiting the ability of Courts to question recommendations from Cabinet and establishment of 12 members special Committee to nominate the Chief Justice of Pakistan with 2/3 majority from the three most Senior Judges.

26th Amendment focuses on the Judicial Reforms:

Suo Moto removed

CJP tenure Increased

Formation of JCP

Separate Constitutional Bench

Appointment of CJP by 12 members

Nomination from 3 Senior JC Judges

Basic Pillars of State:

Executive

Legislative

Judiciary

According to the Constitution of Pakistan the Power distribution is between the three basic Pillars:

1- Executive - Article 41

President and Prime minister who implement the laws and Policies.

2- Legislative - Article 50

National Assembly and Senate which make the laws of Country.

3- Judiciary - Article 175

Supreme Court, High Courts and other Courts which Interpret the laws and ensure Justice.

How the 26th Amendment affect the Balance of Power between Pillars of state.

1- Composition of Judicial Commission of Pakistan Article 175(A)(2):

Before 26th Amendment 8 members:

- 1- Chief Justice
- 2- 3 Most Senior Supreme Court
Judges
- 3- 1 Retired Judge
- 4- 1 Attorney and Law Minister
- 5- 1 Member from the Bar Council
of Supreme Court

After 26th Amendment:

The same above eight members are being retained and five new members included and all are Parliamentarians. Two from the Government Bench and two from the opposition and 1 member would be appointed by the Speaker of National Assembly.

Critique:

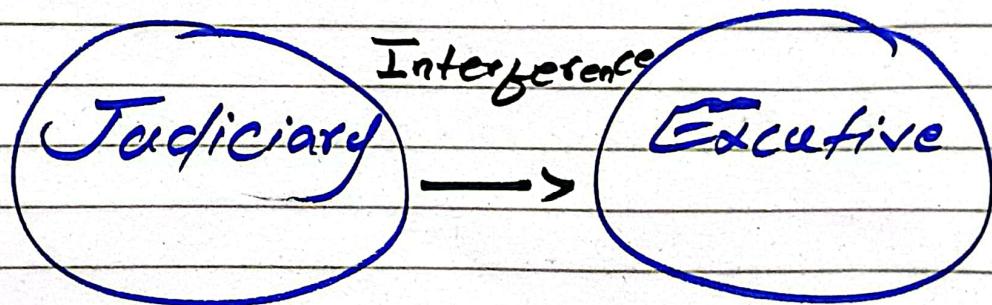
Before 26th amendment Supreme Court was powerful in Judicial Commission of Pakistan and Government had only two members; law minister and Attorney General but after the 26th Amendment power shifted to favor of Government led parliament. There would be seven members from the Parliament now. Normally the Government also control the Supreme Court Bar Council. The role of Supreme Court has been made secondary in decision making process of JCP.

Earlier the bench formation was the ultimate power of Chief Justice of Pakistan but after the **Practice and procedure Bill** passed in 2022, power was given to JCP under CJP and 2 Senior most Judges but now the power given to Judicial Commission of Pakistan which is the major power in the formation of bench. Also given the power of reviewing the performance of Supreme Court and High Court Judges. Earlier Supreme Judicial Council had power to review the cases against Supreme Court and High Court Judges on the advice of President. Now the JCP led by Parliament is powerful to review the performance of Supreme Court

and High Court Judges.

This specific amendment curtailing the powers of Judge as his tenure protection may be undermined by Govt led JCP. For Instance if the particular Judge give the tough time to Government may face the case in JCP which undermine the performance of Judges and the balance of power disturbed by one Pillar.

2- 26th Amendment and the Suo Moto Power



Suo Moto was the exclusive power of Chief Justice of Pakistan and High Courts under **Article 183(3)** was misused by the interference in the and legislative affairs from 2008 to till today 2022. Supreme Court practice and procedure bill made check over the unprecedented powers of CJP as he alone would not take Suo Moto. This was comparatively better legislation

as it did not disturb hierarchy of powers. But 26th Amendment took the power of CJP to exercise *Suo moto* and gave it to Constitutional Bench. International Courts Jurist interpreted it as an attack on Chief Justice's powers.

3- 26th Amendment and the formation Constitutional Court:

Idea → new one

Exist → Iran and EU

Civilian Supremacy → Civilian Cases resolved on Priority

loopholes → JCP decide Bench



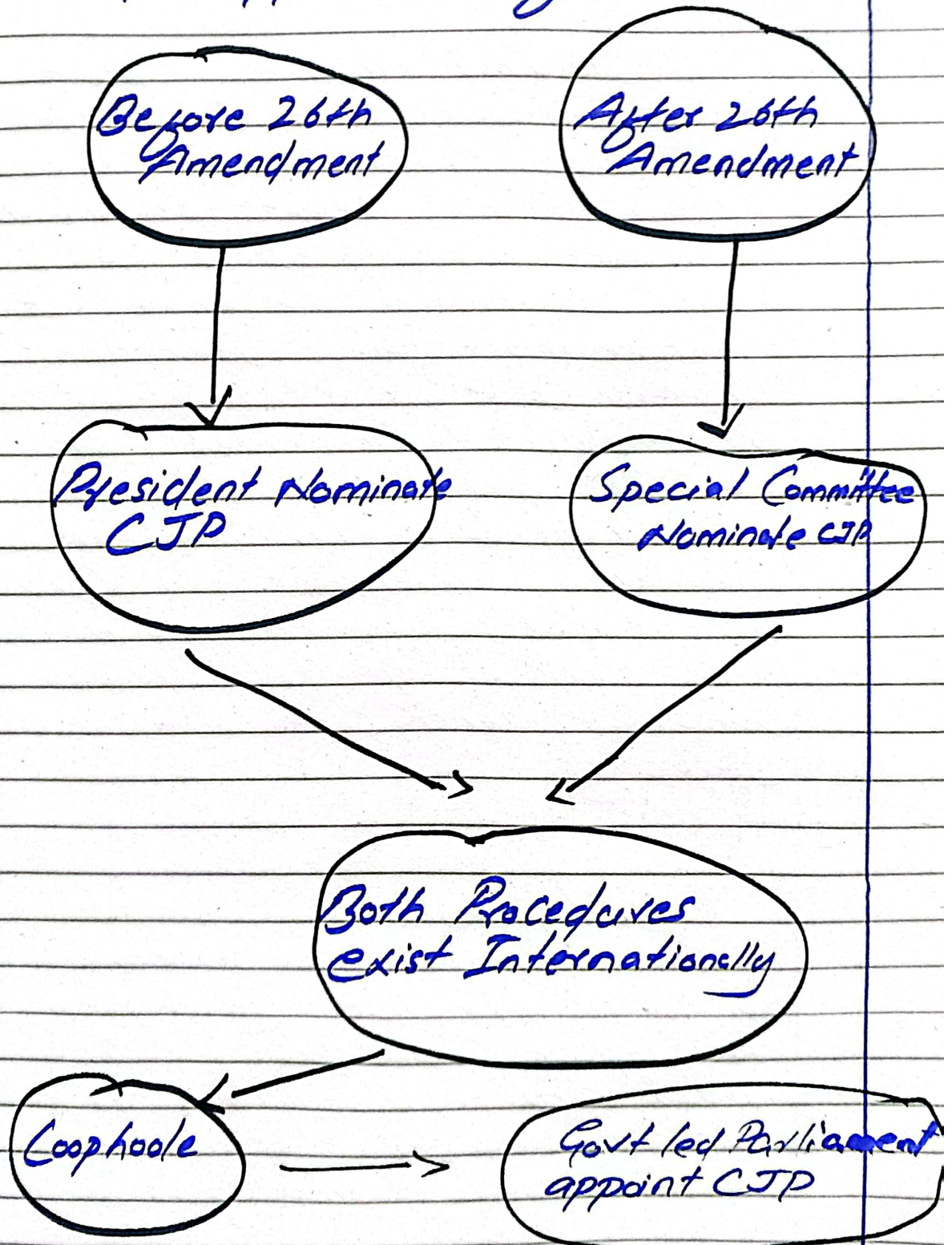
Interference in Judiciary

The Concept of Constitutional Bench is not new but it already exist in nearby neighbour Iran and EU. also in India. As Per the 26th Amendment Constitutional Court would comprise upon minimum 5 Judges of Supreme Court and maximum could be 7 to 9 or more. Judicial Commission of Pakistan will decide same Constitutional Benches and all legal matters would be decided by this bench.

Supporters of Constitutional bench claim is step towards Civilian Supremacy as their legal matter will be dealt on priority basis. But the opponents of Constitutional bench have strong argument that CB would be formed by JCP where Judges are outnumbered by Government led Parliamentarians. Normally the Government is behind any major legislation that would dominate the JCP that would Constitutional bench which may give decision in the favor of Government and may not uphe'd the role of

Judiciary as protector of Constitution.

4- 26th Amendment and the appointment of CJP.



Judiciary Power effects

Before 26th Amendment most Senior Supreme Court Judge was appointed by the President of Pakistan after 26th Amendment Parliamentary Committee comprise of 12 members would recommend one name out of three most Senior Judges of Supreme Court and PM would advise the President to nominated member as CJP. Both Procedures Internationally exist. Majority in the Committee is member of Government and they appoint their favourite one and take decisions of their favour which influence state pillar Judiciary.

Conclusion:

Government has practically controlled the Judiciary through the Judicial Commission of Pakistan and Parliament Committee, the dichotomy has been destroyed and most important pillar has been effected. Balance of Power

between main three also distributed.
Now the executive has the most powers.
Checks and balance would be avoided.

Question-3

New wave of Terrorism
exposes Pakistan's policy failures
To combat menace. Evaluate.

"Terrorism takes us back to ages we thought were long if we allow it free hand to do what it does."

"Benazir Bhutto"

Introduction

During different eras operation against terrorist were launched in the Pakistan. In 2008 military operation **Rah-e-Roast** was launched in Malakand and in 2009 **Rah-e-Rijaf** was launched in South Waziristan. In 2014 series of **Khyber operations** and the mother of military operation after APS attack in Peshawar **Zarb-e-Azob** was launched in North Waziristan and finally in 2017-18 operation **Raaf-ul-Fatah** was launched across the country. Resultantly militancy was defeated in the ex-Fata, Malakand division, KP and Balochistan as thousands of militants were either being captured

as they infiltrated into Afghanistan. The Government and other law makers thought they have defeated TTP and other terrorist organizations, but unfortunately the defeat was temporary as there has been dangerous revival of militancy in war zones in Pakistan.

The Revival of Militancy in Pakistan?

1. FTK merged districts

Banu Division

Malakand division

Other Parts of Country

1- FTK merged districts:

Dangerous number of increase of militants like TTP and others in South and North Waziristan, Awaran, Bajaur and Teera region of Khyber, where Taliban has established their training

and recruitment centers. Majority of their attacks on Paramilitary (FC) Military (Army) and Police in these areas.

2- Bannu Division:

District Lalkhi Marwat of Bannu Division is worst hit. Repeated attacks on military troops and police especially ex-Frontier Region there are number of militants, attacking military, paramilitary and Police.

3- Malakand Division:

Attacks in Swat, Chitral, Upper and lower Dir. Majority of attacks are carried out by Swat Chapter of TTP. Security forces are their prime targets.

4- Expansion of attack in other parts of Country:

Dangerous increase in attacks in Southern Punjab primarily Mianwali because it is adjacent to Lalkhi Marwat. Attacks in DG Khan and Bahawal as they are near to D-I Khan. Attacks in Islamabad, Lahore, Faisalabad

and Karachi as well. All attacks are carried out by TTP and BLA, BLF.

Prime Targets of Militants:

Security Personnel

Chinese Citizens

CPEC, FWO
NLC

Shia Population

Variety of Terrorist Organizations Operating in Pakistan

Terrorist Organizations:

37 Small Groups: of TTP in North and South Waziristan, Malakand Agency, Khyber, Momand in Malakand Division.

Qari Gulbadan Group: in North Waziristan and Bannu Division
Islamic State of Khyber Province (ISKAP) Bases in Afghanistan.

Separatist Organizations in Balochistan:

- 1- Baloch Liberation Army (BLA)
- 2- Baloch Liberation Front (BLF)
- 3- Mojadd Brigade
- 4- Baloch Republican Army (BRA)

All these militants groups using Guerrilla war fighting techniques. They kid, hit and see also use IED and Suicide Bombing.

Policy Failures of Pakistan to Combat the Terrorism:

1- Ambiguous thought of Government:

No Government accept the responsibility. They flowed negotiations with TTP only blaming each other. Speeches on the floor of Parliament both by Government and opposition benches, the crux of which is Pakistan allowed the TTP and Gulbadan Group militants to come back.

their homes but without weapons. Unfortunately weapons were available in the merged districts of Malakand. Pakistan Taliban demanded the reversal of 25th amendment or FATA reform bill also wanted Malakand version of Shariah Bill that was promulgated in 2008. Such demands were never to accepted by Government of Pakistan and Resultantly TTP started Terrorizing Pakistan once again.

2- Serious loopholes in Policing System and overall Security Apparatus responsible for TTP revival

Till 2008 there was no formal policing system in the merged districts. Security Personnel were not allowed to enter the villages and houses as per Frontier Crimes Regulation (FCR). In 2018, when the Police act was extended to ex-FATA local Police still does not enter the houses of people. Resultantly they cannot implement the writ of State. Whenever military vacated the operation areas, policing vacuum was created there. TTP and other militant groups enter those areas and established their strong

hold- Policing problems specially in KP and Balochistan resulted the spreading of militancy.

3- Rise of Armed Insurgency:

When the Socio-economic rights of people are not fulfilled by the State, and State adopts Coercive measures instead of Socio-economic engagement creates an environment for the rise of armed insurgencies.

Almost All Baloch Nationalist leaders have this opinion. And held is responsible for the armed Insurgency.

4- Invitation to Foreign Powers:

When insurgency spreads across the country, it provides an opportunity to foreign invasions or foreign agencies to fuel up the crisis. Such operations have economic cost on hand and social cost on the other hand.

Conclusion:

Recently the gear up in the activities of militant groups in different areas, against Security Personnel, on foreigners specially Chinese Citizens is the responsibility of Government and their policy failure. Revise in the militancy failure of uncontinued Government policy det it is time plan Intelligence based operations like Zarb-e-Azab and Rah-e-Raast and Comprehensive Strategy to wipe-out the militancy either through operations, Policy reforms, Negotiation with militant groups, de-weaponization, Socio-economic development and institution building.