

Pakistan Affairs

Part - II

Q No. 2: Answer

1. Introduction

The twenty-sixth Amendment to Pakistan's constitution, has introduced significant structural changes to the balance of power between the executive, legislature and judiciary. It seeks to alter judicial appointments, limit judicial powers, and introduce new fundamental rights. While proponents argue that these changes promote accountability and efficiency, critics claim that they undermine judicial independence, disrupt the separation of powers and increase legislative and executive control over the judiciary. This analysis evaluates the key provisions of the amendments and their broader impact on Pakistan's constitutional framework.

2. Key Provisions of the Amendment

a) Appointment of the chief Justice of Pakistan

One of the most contentious of the Twenty-Sixth Amendment is the change in the process of appointing chief justice of Pakistan. Previously, the chief justice of Pakistan was appointed based on seniority, with the most senior judge of the Supreme Court assuming the role. The amendment now vests this power in a special Parliamentary committee composed of members from both the National Assembly and the Senate. The committee selects the CJP from a pool of the three most senior judges of the Supreme Court. This reform introduces a political element into the appointment process, as Parliamentary oversight may subject the selection to political interests rather than judicial merit.

b) Restructuring of the Judicial Commission of Pakistan (JCP):

The Judicial Commission of Pakistan (JCP) has traditionally been responsible for nominating judges to the Supreme Court and High Courts. The 26th Amendment modifies the composition of the

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JcP increasing the number of Parliamentarians on the commission while reducing the proportion of Judges. This shift grants the legislature and, by extension, the executive, greater influence over the appointments of judges. Critics argue that this change could politicize judicial appointments and undermine the independence of the judiciary, as the balance of power in the JcP is now tilted in favor of political actors.

c) Creation of separate constitutional Bench

The amendment established a dedicated constitutional bench within the Supreme Court to handle constitutional matters. While this move is intended to expedite the adjudication of constitutional issues, it has also raised concerns about the concentration of power within a small group of judges. Critics argue that selective allocation of constitutional matters to a fixed bench may compromise judicial impartiality, as specific judges may become dominant voices on constitutional interpretation.

d) Limitation of *Suo Motu* Powers

The 26th Amendment restricts the judiciary power to initiate *suo motu* cases. These cases initiated by the court on its own accord usually to protect public interest. The amendment transfers this power to a judicial committee created under the Practice and Procedure Act.

This change reduces the ability of the judiciary to act as a check on government excesses, especially in cases where the executive or legislature fails to address public grievances.

Many critics view this as an erosion of the judiciary's proactive role in protecting fundamental rights and ensuring accountability.

e) Introduction of Environmental Rights

A positive aspect of the amendment is the inclusion of Article 9A, which declares the right to a clean, healthy, and sustainable environment as a fundamental right. This provision formalizes environmental rights in Pakistan's constitutional framework, obligating the government to ensure environmental protection. While the judiciary could play a vital role in enforcing this right,

its practical impact depends on the independence of the courts and the state's commitment to environment protection.

3. Impact on the Balance of Power

a) Judiciary

The 26th Amendment significantly alters the power dynamics within Pakistan's judiciary. By introducing political oversight in the appointment of the chief justice and restructuring the JCP, the judiciary's independence is at risk. The ability of the legislature to play a greater role in judicial appointments may subject the judiciary to political influence, affecting its ability to act as a neutral arbitrator. Furthermore, the establishment of the constitutional bench raises concerns that a small group of judges may dominate the interpretation of constitutional issues. The restriction on suo motu powers further curtails the judiciary's capacity to act as a check on government power, limiting its role in upholding human rights and protecting public trust.

b) Legislature

The legislature's role has been significantly enhanced through its greater influence over judicial appointments and its increased presence in the J.C.P. By allowing members of Parliament to participate in the selection of the Chief Justice and Supreme Court judges, the legislature now wields significant control over the composition of the judiciary. This increase in legislative power disrupts the balance of power between the three branches of government, as the legislature now has an indirect influence over judicial decisions. This could lead to a scenario where executive and legislative interests converge to dominate judicial processes.

c) Executive

The 26th Amendment indirectly strengthens the role of the executive. Although the executive is not explicitly granted new powers, its influence increases due to its close alignment with the legislature.

in parliamentary systems like Pakistan's. As members of the legislature gain a stronger role in judicial appointments, the executive may use its influence to ensure that appointments are politically favorable. This shift could erode the separation of powers as the executive may exert undue influence over constitutional interpretation and the protection of citizen's rights.

4. Criticism and Concerns

a) Threat to Judicial Independence

One of the most prominent criticisms of the 26th Amendment is its impact on judicial independence. By shifting the process of appointing the Chief Justice and altering the JCP's composition, the legislature and executive now have a greater role in selecting judges. Critics argue that this threatens the judiciary's independence, as judges may face pressure to align with the political

interests of the executive and legislature. This concern is particularly acute given Pakistan's history of political interference in judicial matters.

b) Impact on Rule of Law and Human Rights

The reduction of suo motu powers is seen as a blow to the rule of law and human rights in Pakistan. Previously, the judiciary could initiate cases on its own to address violations of fundamental rights especially in situations where state institutions failed to act. The transfer of this power to a judicial committee reduces the judiciary's ability to respond promptly to human rights issues. As a result, vulnerable groups who previously relied on the judiciary's proactive approach to human rights protection may face greater challenges in accessing justice.

c) Risk of Executive - Legislative Collusion

By granting the legislature and executive greater control over judicial appointments, the amendment increases the risk of

collusion between these two branches of government. In a parliamentary system like Pakistan's, where the executive is drawn from the legislature, the two branches often have overlapping interests. This overlap raises concerns that politically motivated appointments could reduce judicial impartiality and create a judiciary that is subservient to the ruling government. Such a scenario would undermine the checks and balances essential to democratic governance.

5. Potential Benefits

a) Accountability and Transparency

Proponents of the 26th Amendment argue that giving Parliament a greater role in judicial appointments enhances accountability and transparency. They contended that parliamentary oversight ensures that judicial appointments are not made behind closed doors by a small group of judges. By involving elected representatives in the process, proponents believe the judiciary becomes more democratically accountable to the people.

b) Environmental Protections

The amendment's inclusion of Article 9A which guarantees the right to a clean and

sustainable environment, is seen as a progressive step toward addressing environmental issues. This right provides a constitutional basis for citizens and civil society groups to demand environmental protections and challenge the government on ecological issues. The judiciary will play a key role in interpreting and enforcing this right, though its capacity to do so depends on the level of its independence from political influence.

6- Conclusion

The 26th Amendment to Pakistan's constitution introduces sweeping changes to the country's balance of power. By altering the process of judicial appointments, restricting suo motu powers and granting Parliament greater oversight of the judiciary, the amendment has shifted power away from the judiciary toward the executive and legislature. While it aims to promote transparency and accountability, it also poses significant risks to judicial independence and the rule of law. The establishment of the right to a healthy environment is a

welcome development but its enforcement depends on the independence of the judiciary. The long-term implications of these changes will depend on how the new processes are implemented and whether mechanisms are put in place to preserve the separation of powers and judicial independence. Without these safeguards, Pakistan risks weakening one of its most vital checks on executive and legislative overreach.

Q No. 3 Answer

1. Introduction

Pakistan has witnessed a troubling resurgence of terrorism, exposing the limitations of its counter-terrorism policies. While the country has previously achieved some success in curbing militant activities, a new way of violence highlights the gaps in its approach. Factors such as inconsistent implementation of policies, lack of political will and regional complexities have hampered Pakistan's ability to effectively address this menace.

2. The New wave of Terrorism

Recent years have seen a

significant increase in terrorist activities across Pakistan with militant groups such as Tehreek-e-Taliban (TTP) and the Islamic State Khorasan Province (ISKAP) intensifying their operations. The situation has been exacerbated by the Taliban's return to power in Afghanistan which has emboldened these groups. Pakistan's porous borders and weak border management have further allowed militants to infiltrate and launch attacks. This resurgence has placed immense pressure on Pakistan's security forces and exposed the weaknesses in its counter-terrorism framework.

3. Pakistan's Policy Responses to Terrorism

a) Counter-Terrorism Framework

Pakistan has implemented several counter-terrorism measures over the years, including military operations like Zarb-e-Azb and Radd-ul-Fasad, as well as the National Action Plan (NAP). While these efforts initially yielded results, their momentum has dwindled over time. Intelligence-sharing and coordination among security agencies remain inconsistent, limiting the effectiveness of counter-terrorism operations.

b) Legislative and Judicial Measures

Anti-terrorism courts and laws have been established to ensure swift prosecution of terrorists. However, inefficiencies in the judicial system such as prolonged trials and low conviction rates, undermine these efforts. Corruption, lack of resources, and inadequate legal frameworks further hinder the fight against terrorism.

c) Engagement with Extremist Groups

Pakistan has historically engaged in peace negotiations with extremist groups, including the TTP. These agreements, while aimed at reducing violence, have often backfired, allowing militants to regroup and strengthen their positions. Such policies have been criticized as appeasement, leading to more harm than good.

4 - Policy Failures

2) Lack of Political Will

The absence of a unified national strategy reflects the lack of political will to address terrorism comprehensively. Counter-terrorism policies are often politicized, with different governments pursuing their agendas rather than a consistent approach. This lack of cohesion weakens the overall response.

b) Inconsistent Implementation

Pakistan's counter-terrorism measures suffer from uneven implementation. The National Action Plan (NAP), for instance, remains partially enforced, with significant gaps in areas like madrasa reform and tackling sectarian violence. This inconsistency creates for militants to operate and thrive.

c) Regional and External Challenges

Pakistan's counter-terrorism efforts are complicated by regional dynamics. The instability in Afghanistan, coupled with strained relations with India and Afghanistan, hampers effective border security and counter-terrorism collaboration. The spillover of militants and weapons from neighboring countries further fuels violence.

d) Socio-Economic Neglect

A significant factor contributing to terrorism in Pakistan is socio-economic deprivation. Poverty, unemployment and illiteracy create a fertile ground for radicalization particularly in marginalized regions. The unchecked proliferation of extremist ideologies through unregulated religious seminaries exacerbates the problem.

5- Consequences of Policy Failures

The failure to address terrorism effectively has dire consequences for Pakistan. The escalating violence has resulted in significant civilian casualties and a growing sense of insecurity.

Economically, terrorism has deterred foreign investment, damaged infrastructure and stifled tourism, further crippling the country's growth. On the international front, these policy failures have tarnished Pakistan's ~~credit~~ credibility making it harder to garner global support for its efforts.

6- Recommendations

a) Strengthening Counter-Terrorism Infrastructure

Pakistan must revitalize its counter-terrorism infrastructure with a renewed focus on fully implementing the National Action Plan. Enhancing intelligence-sharing and coordination among security agencies are essential to preempt and prevent terrorist attacks.

b) Political Unity and Governance

A bipartisan consensus on counter-terrorism strategies is critical. Politicization of national security must be avoided, and reforms in law enforcement and judicial systems are

needed to ensure swift and fair justice.

c) Socio-Economic Reforms

Addressing the root causes of terrorism requires significant investment in education, employment and social welfare. Regulating madrassas and promoting moderate religious narratives can help counter radicalization and extremism.

d) Regional Cooperation

Improved relations with neighboring countries, particularly Afghanistan, are crucial for effective border management and counter-terrorism collaboration. Pakistan must actively participate in international efforts to address transnational terrorism and secure regional stability.

7. Conclusion

The resurgence of terrorism in Pakistan underscores the urgent need for a comprehensive, consistent and multifaceted approach to counter this menace. While Pakistan has made strides in combating terrorism, policy failures coupled with socio-economic and regional challenges have hindered its progress. A combination of ~~its~~ political will, regional cooperation and socio-economic reforms is essential to ensure long-term peace.

and stability. Only through a holistic approach can Pakistan overcome this persistent threat and secure a prosperous future for its citizens.