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Qno1: Critically evaluate ..... balance of power between the various pillars of state!

• Introduction:

The 26<sup>th</sup> amendment to the constitution was enacted on 21<sup>st</sup> October, 2024 introduces signi-

ficant changes that will impact the balance of power among major pillars of state i.e.

the legislature, the executive, and the

judiciary. These changes will affect balance

of power in both negative and positive

ways. If we look at its positive impacts,

it will strengthen parliamentary authority

and will curtail judicial overreach into

political matters. On the other hand, it

is feared that it will affect balance of

power negatively by weakening judicial independ-

ence and encouraging political manipulation.

The ultimate success of this amendment will

depend on how these changes are implemented



and whether they foster more accountable judiciary that can effectively server democratic principles in Pakistan.

### • Key Changes Introduced by the

Amendment:

#### 1- Appointment of chief justice of Pakistan:

According to the amendment, an eight members 'Special Parliamentary Committee' will nominate CJP from three most senior judges of supreme court and PM will have the final say.

#### 2- Removal of *Suo Motu* Powers:

The amendment eliminates the Supreme Court's *suo motu* jurisdiction, which allowed it to take action on its own initiative without a formal petition.

#### 3- Judicial Commission Reforms:

This amendment changes the composition of JCP to also include two members of national assembly, two members of senate and one woman or non-muslim (nominated



by speaker of National Assembly. The JCP will also have the power to determine and nominate 'constitutional benches' within supreme court and high courts. These benches will have exclusive jurisdiction over matters involving interpretation of the constitution and enforcement of fundamental rights.

#### 4- Performance Evaluations and Removal on the Grounds of Inefficiency:

This amendment enables the Supreme Judicial Council (SJC) to recommend judges of supreme court and high courts for removal if they find them inefficient in performance of the duties.

#### • Positive effects on balance of Power:

##### 1. Strengthening Parliamentary Authority:

The amendment empowers parliament in appointing CJP and ensures its role in establishing constitutional benches through its judicial commission members. This shift aims to reinforce the principle of Parliamentary



supremacy, ensuring that elected representatives have a greater role in governance and judicial oversight.

## 2 - Curtailing Judicial Overreach:

By removing the Supreme Court's *suo motu* powers, the amendment seeks to prevent judicial overreach into political matters. This change is intended to allow the legislature to operate without undue interference from the judiciary which has historically intervened in political issues, sometimes leading to instability.

## 3 - Improving Efficiency of judicial processes by Establishing Constitutional Benches:

Establishment of constitutional benches is expected to enhance judicial efficiency and ensure that important cases are resolved by judges with specific expertise, thereby improving public confidence in judicial outcomes.



#### 4. Strengthening Executive

Powers:

The amendment appears to favor the executive branch by consolidating control over judicial appointments and limiting judicial autonomy.

#### • Negative effects on Balance of Powers:

##### 1- Weakening Judicial

Independence:

The curtailment of judicial powers particularly through the removal of *suo moto* jurisdiction could weaken the judiciary's role as a check on executive power.

Critics argue that the amendment undermines judicial independence by increasing political influence over judicial appointments.

##### 2- Concentration of Power in

Executive:

Through this amendment executive will exercise control over judicial leadership, thus there is the risk of executive



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to overshadow judicial authority. This shift could lead to an imbalance where the executive exerts undue influence over judicial outcomes, undermining the checks and balances essential for democratic governance.

### 3 - Risk of Political Manipulation:

By allowing Parliament to select the Chief Justice and involvement in judicial commission, there is a significant risk that of political manipulation. This could result in judiciary that is less capable of resisting government excesses and more prone to serving partisan agendas.