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Q2. Discuss the main changes made in the constitution of Pakistan through 26th amendment. What effects shall it have on the Political system of Pakistan. Elaborate.

ANS:

INTRODUCTION:

The 26th amendment in the constitution of Pakistan, passed on October 21st, 2024, is yet another landmark amendment after the 18th amendment. It has been subjected to criticism in the various educational as well as judicial circles of Pakistan, and has been condemned by the International Commission of Jurists as well. Thus, it is crucial to understand the main changes in the 1973 constitution of Pakistan brought by the 26th amendment and the impact on Pakistan's already changed Political and Judicial system of Pakistan.

PROMINENT CHANGES IN THE CONSTITUTION OF PAKISTAN

The draft of the constitutional amendment contains 22 clauses and is hailed

as the 'Constitutional package' by its proponents. Following are the main changes brought by the 26th amendment in the constitution of Pakistan.

(i) PROCESS OF THE APPOINTMENT OF JUDGES (Article 175-A):

The greatest number of amendments are done to article 175-A, which deals with the process of the appointment of Judges to the Supreme Court, High Courts, and the Federal Shariat Court. Under the amendment proposed to the ~~article~~ clause-3 of article 175-A, instead of President appointing the senior most judge as the CJP, the top Judge will now be appointed on the recommendation of a special parliamentary committee from amongst the three senior most Judges of Pakistan.

The Parliamentary Committee will consist of eight members of the National Assembly and four members of the Senate, who would be selected in proportion to the number of their party's

seats in the house

(ii) Reconstitution of the Judicial Commission of Pakistan: The

Judicial Commission of Pakistan which is the prime body for the selection of Judges to the Supreme and High Courts of Pakistan, has also been reconstituted under article 175-A. The commission previously consisted of five ^{senior} Supreme Court Judges including the Chief Justice as its chairman, the Attorney General of Pakistan, the Federal Law Minister, a former Chief Justice, and a senior advocate nominated by the Pakistan Bar Council. There has been, now, an inclusion of four members of the Parliament, two each from Treasury and Opposition, and one from the National Assembly, and one from the Senate. The Commission will also:

under clause Eighteen, conduct an annual evaluation of the High Court judges and if found unsatisfactory, it will report to the Supreme Judicial Council.

(iii) Taking Away the Supreme Court's Suo Motu Powers under

Article 184: The amendment also took away the SC's jurisdiction of Suo Motu provided in article 184. Suo Motu powers which previously granted the Supreme Court of Pakistan to intervene in matters where the general welfare or fundamental rights of the people of Pakistan were violated, will now be out of the jurisdiction of the Supreme Court.

(iv) Setting the CJP's Term: The Chief Justice of Pakistan's term, which was previously a year, is now set as 3 years under article 179.

(v) Formation of Constitutional Benches (Article 191A):

The amendment also creates a new article 191-A, titled 'Constitutional Benches of the Supreme Court'. It will consist of five judges nominated and the time frame determined by the Judicial

commission of Pakistan. These benches under the amendment will deal with the 'Constitutional' cases of Pakistan. Supreme Courts advisory Jurisdiction has also been given to the constitutional benches, and the Suo Motu Powers will also be exercised by the constitutional benches of the apex court. The amendment also seeks to envision similar benches for the High Courts under article 202A.

EFFECTS ON THE POLITICAL AND JUDICIAL SYSTEM OF

PAKISTAN: The twenty-sixth amendment carries with itself grave effects critical to the political system of Pakistan for generations to come. The International Commission of Jurists called this amendment 'a blow to Judicial Independence, the rule of law, and human rights protection.' Thus, the following are the implications of the Twenty-Sixth amendment over Political and Judicial System of Pakistan.

(i) Political Influence Over the Judicial Appointments:

The Parliamentary committee which will select the Chief Justice of Pakistan will entirely be Parliamentary, which means that the party having the majority in the Parliament will have the most say in selecting the top Judge of the Supreme Court making the entire process extremely political and prone to bias vulnerabilities.

(ii) Erosion of the Concept of Separation of Powers:

The concept of Separation of Powers elucidates how the three components of the state; Executive, Legislative, and the Judiciary, should work in their own domain without interfering in the others'. The twenty-sixth amendment brings the entire say of the executive in the Parliamentary Committee as well as the Judicial Commission of Pakistan which makes the concept of separation of powers almost insignificant. Thus, undermining the independence of Judiciary in its own domain.

(iii) Lobbying Among the Senior

Judges: The selection of the chief Justice from among the top three senior judges of the Supreme Court by the Parliamentary Committee will bring a sense of competition among the judges to win the trust of the executive, since it will form the majority in the Parliamentary committee. Given this provision, the top three judges may be more concerned about pleasing the government rather than focused on their duty. This will bring conflict of interests where government is a party and would have material impact on the independent administration of the justice.

(iv) Partisan interests over Selection

of Judges: The Judicial Commission of Pakistan which seeks to select the judges, now has one-third of the total membership from the government. This brings in the notion of partisan interests in selecting the judges, which undermines the judicial independence and the due process. The executive may also seek to punish the judges, who give decisions against them, ~~by~~ by altering

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the formation of the constitutional benches through the judicial commission.

(v) Evaluation of the judges: The amendments also contemplate an annual performance evaluation by the judicial Commission of the high court judges. The government having a role in the evaluation of the judges will give rise to the culture of fear and pressure among judges in decision making, ultimately discouraging the spirit of independent decision-making.

CONCLUSION: One of the core mandate of Pakistan's constitution is the judicial independence. Thus, the twenty-sixth amendment has brought certain changes, harmful to the spirit of Pakistan's constitution and in turn imparts the already strained and struggling Political system of Pakistan. Therefore, serious contemplations among the civil society members of Pakistan, have been on the rise.