

## Q No. 02 INTRODUCTION:

The Twenty-Sixth Amendment in the constitution of Pakistan introduces various changes that aim at revising judicial appointments, creating dedicated constitutional benches, and adjusting judicial tenure limits. Passed by Pakistan's National Assembly, this amendment has sparked widespread debate across political and legal spheres, with some praising it as a step towards greater judicial accountability and others warning it could also undermine judicial independence.

## Historical Context:

Historically, Pakistan has seen multiple amendments aimed at balancing power across governmental institutions. The rationale behind the Twenty-Sixth Amendment was largely motivated by a need to introduce systematic changes to the judiciary, ensuring transparency in judicial appointments and enhancing accountability by clarifying the roles and responsibilities of various benches.

Source: DAWN

Following Amendment took place:  
1. Appointment of Chief Justice of Pakistan; the expansion of Parliamentary Committee.

The article 175 A, of Pakistan's constitution, which deals with the process of appointment of judges of Supreme Court, high courts and the Federal Shariat Court (FSC), has been amended. In which clause 3 of article 175 A proposed that instead of the President appointing the most senior judge of Supreme Court out of 3 senior judges to be the Chief Justice of Pakistan, will now be appointed by the recommendation of Special Parliamentary Committee.

The Parliamentary Committee, shall send the name of nominee to the Prime Minister, who shall forward to the President for final approval. Under the clause amended, the CJP will now send its nomination directly to the Prime Minister, who will forward it to the President for final approval of appointment.

Under clauses, 9, 10, 11, 12 and 13 pertaining to the old members (eight-member committee) shall be omitted.

Under the clause 3A, the Parliamentary Committee shall consist of twelve members, which includes:

- 1) Eight members from National Assembly.

2) Four members from Senate.

It also provided that when the National Assembly is dissolved, the No. of Committee members shall be only four from Senate.

Under the clause 3C, the Committee shall send the nomination by two-third of its total membership, within 14 days before the retirement of the CJP.

Under a new clause 3D, No action or decision taken by the Commission shall be invalid or called in question only on the ground of existence of a vacancy therein or of the absence of any member from any meeting thereof.

Under the clause 3E, the Committee's meeting shall be held in-camera and the record of its proceedings shall be maintained.

Under the clause 3G, Committee may make rules for regulating its procedure.

Clause (4) of Article 175A, which empowered the CJP to make rules to regulate its procedure may now make rules regarding its procedure including the procedure of and criteria of assessments, evolution, and fitness of

## appointment of judges.

The change under article 179, which will now read as: A judge of Supreme Court shall hold the office until he reach to the age of 65 years, unless he resigns or is being removed from the office.

The Chief Justice of Pakistan's term shall be three years until he resigns or attains the age of 65 years.

## Supreme Court and High Court Powers:

Article 184 has been amended, under which the apex court's original jurisdiction taking away the SC's suo motu powers.

"Supreme Court shall not make an order or give direction or make a declaration on its own behalf."

Under article 186A, the apex court can now transfer cases from high courts to itself.

It will now read as, "The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings, pending before

any high court to any other high court to itself."

## Formation of the Constitutional Benches in Supreme Court:

A new Article 191A (Constitutional Benches of Supreme Court), has been inserted into the Constitution for the formation of these Judicial Benches.

Clause 1 reads; "There shall be Constitutional Benches of the Supreme Court, comprising such judges of the Supreme Court and for such term and may be nominated by the judicial Commission of Pakistan, from time to time, provided that the constitutional Benches may comprise an equal number of judges from each Province."

Under clause 2: of Article 191A, the most senior judge among the judges nominated under clause 1 shall be the Presiding judge of the constitutional Benches.

Clause 3 restricts SC benches other than constitutional benches to, "Exercise following jurisdictions of the Supreme Court."

1) Original jurisdiction of the Supreme

Court under Article 184.

b) appellate jurisdiction of the Supreme Court under clause 3 of article 185, where a judgment or order of a high court passed under article 199 involves constitutionality of any law or a substantial question of law as to interpretation of the constitution.

c) Advisory jurisdiction of Supreme Court under Article 186.

Under the clause 4, for the purpose of clause 2, a bench comprising not less than 5 judges to be nominated by a Committee consisting of Presiding judge and next two most senior judges from amongst the judges nominated ~~by~~ under clause 1 shall hear and dispose of such matters.

According to clause 5 of Article 191A, "all Petitions, appeals or review applications against the judgement rendered or passed, Pending files Prior to the commencement of 26th Amendment would now stand transferred to the constitutional benches.

Clause 6 empowers judges nominated in clause 1 to make rules regulating the practice and procedure of constitutional benches.

# Constitutional Benches in High Courts

The Article 202A has been inserted for the formation of Constitutional benches in the high courts. It is composed of 3 clauses:

Clause 1: "These shall be constitutional benches of high court, comprising of such judges of a high court and for such term, as may be nominated by the judicial commission of Pakistan as constituted under clause 5 of Article 175 A from time to time."

Under clause 2, most senior judges nominated in clause 1 shall be the head of constitutional ~~committee~~ benches.

According to clause 3, "No high court bench other than a constitutional bench shall exercise jurisdiction vested in the high court under sub-paragraph (a) and (c) of clause 1 of article 199."

According to clause 4, A Bench nominated by a committee consisting of the head of constitutional benches and the next two most senior judges from the judges, nominated by clause 1.

shall hear and dispose of such matters.

Under clause 5 all petitions under the sub-paragraph (1) of paragraphs (a) and (c) of article 199, pending or filed in a high court prior to 26<sup>th</sup>

## Other Amendments:

Under a change made to Article 208 which deals with the appointment of officers and servants of courts, now also allows the JHC beside the SC and FSC to make rules for the same purpose.

An amendment made to article 215 allows the Chief Justice election commission and a member of the election commission to continue to hold office until a successor enters upon the office.

Article 255 now specifies, where under the constitution an oath is required to be made before that person

Article 259, which deals with the awards conferred by the president, "Natsing" has been replaced with, "Science, technology, medicine, arts or public service"

## Effects on Political System:

26<sup>th</sup> constitutional amendments have



## Judicial Appointments

The amendment changes the process of appointing the Chief Justice of Pakistan. Instead of automatically being the most senior judge, CJP will now be nominated by a special Parliamentary committee and appointed by the President. This gives the Parliament and the executive branch more influence over judicial appointments.

## Removal of Suo Motu Powers:

The Supreme Court and High Court is no longer to take Suo Motu, meaning, this limits the Judiciary's Independence.

## Political Influence:

The composition of the judicial commission of Pakistan has been altered to include more Political representatives, reducing the proportion of judicial members. This increases Political influence over judicial appointments and decisions.

## Constitutional Bench:

A new Constitutional bench will handle the constitutional matters exclusively, which may centralize adjudication and potentially reduce the Supreme Court's role in such cases.

# Transparency Concerns

The Amendment was passed quickly and without broad public consultations, raising concerns about transparency and ~~political~~ the democratic process.

Overall, the twenty sixth amendment is seen as a move that could undermine the judicial independence and increase political control over judiciary.

Q No. 03

## Introduction:

A functioning democracy is the foundation for a nation's stability and progress. Establishing a robust democracy faces several challenges. To achieve this, it is imperative to focus on both the fellowship and leadership. A healthy, Educated, and Participatory fellowship, coupled with an educated, morally grounded leadership, forms the bedrock of a thriving democracy.

### 1. Importance of a healthy fellowship

#### 1.1 Access to healthcare

Ensuring access to healthcare is crucial for maintaining a healthy population. A

health citizenship is more likely to participate in the democratic process and engage in civic activities. Public health initiatives and policies can play a vital role in promoting overall well-being.

## 1.2 Impact of health on Political Participation:

Good health enables individuals to be active participants in their communities and political process. Addressing health disparities and providing adequate healthcare services can enhance citizens' ability to contribute to democracy.

## 2. The role of Education in Democracy

### 2.1: Education as a catalyst of awareness

Education empowers individual with knowledge and critical thinking skills, enabling them to make informed decisions and participate meaningfully in democratic processes. Educated citizens are better equipped to understand their rights and responsibilities.

### 2.2 Literacy Rates in Pakistan

Pakistan faces challenges in achieving

high literacy rate, particularly in rural areas and among women. Efforts to improve literacy through educational reforms and policies are essential for strengthening the democracy.

## 2. Educational Reforms and Policy:

Implementing effective educational reforms and policies can address disparities in access to education. Investment in quality education, teacher training, and infrastructure development can create a more educated and engaged citizenry.

## 3. Encouraging Participatory Fellowship

### 3.1 Youth Involvement in Politics:

Engaging young people in politics is crucial for the future of democracy. Initiatives to involve youth in political debates, leadership training, and civic activities can foster a sense of responsibility and commitment to democratic principles.

### 3.2 Women's Participation

Women to participate in politics is a vital role for inclusive democracy. Addressing women's <sup>political</sup> participation barriers and ensuring their representation in

decision-making Processes can lead to a more equitable Policies.

## 4. Addressing Socio-economic Inequalities

Economic disparities and Political Participation Socio-economic inequalities can limit Political Participation and undermine democratic Processes. Addressing economic disparities through inclusive economic Policies and social safety nets can enhance citizens ability to engage in democracy

### 3.1 Social Justice and democracy

Promoting social justice is essential for a thriving democracy. Policies that address discrimination, protect vulnerable groups and ensure equal opportunities can create a more just and inclusive society.

### 3.2 Poverty Alleviation Programs

Implementing poverty alleviation programs can improve the quality of life for marginalized communities democratic Processes. Investment in education, healthcare, and economic development can lift people out of poverty and empowers them to contribute to democracy.