

Pak - Affairs Part - II

Q2 Discuss the main changes made in the Constitution of Pakistan through Twenty-Sixth amendment. What effects it shall have on the Political system of Pakistan. Elaborate.

Outline:

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Introduction:

The proposed 26th amendment to the constitution of Pakistan have introduces fundamental changes aimed at restructuring the judiciary, enhancing environmental rights, modifying the roles of legislative and executive powers, and establishing a new constitutional court. This amendment brings transformative legal shifts that are likely to shape Pakistan's political and judicial landscape profoundly. It revises power dynamics within the judiciary and introduces mechanisms that may significantly impact governance.

Main changes Made by the 26th Amendment:

- 1 Right to a Clean and Healthy Environment:

The amendment introduces a right to a clean and healthy environment for everyone, not just citizens, showing a commitment to protecting nature.

and public health.

2 Changes to Article 63A on Party Defection:

Previously, if members of Parliament went against their party in critical votes, their votes were ignored. Now, their votes will count, which may change the balance of power in Parliament.

3 Limiting Judicial Review on Constitutional Amendments:

The amendment says that no court can challenge changes to the Constitution, including the Supreme Court, which limits the court from undoing constitutional changes.

4 Creation of the Federal Constitutional Court (FCC)

The new FCC will handle all constitutional matters, taking over the Supreme Court's role in these cases. This makes the FCC the highest authority on constitutional issues.

5 Changes in appointment Process for Judges:

Changes are introduced in the appointment procedures for judges of the FCC and the Supreme Court, including the establishment of a National Assembly Committee to recommend Chief Justices, and a lowering of the minimum age for High Court Judges to 40 years. These changes are aimed at increasing parliamentary influence over judicial appointments.

6 Role of the Supreme Judicial Council Redefined:

The Supreme Judicial Council now has more power to monitor and discipline judges but could face more political influence.

→ High Court Limitations and Transfer of Jurisdiction:

The amendment restricts High Courts from acting on certain matters, like national security, and transfers some of their powers to the FCC, reducing their independence.

8 New Rules for Service Chiefs and Cantonment Taxation:

The 26th Amendment mandates that the appointment, extension, and removal of service chiefs follow the laws relating to the Armed forces. It also gives Parliament authority over local taxes, fees, and charges in cantonment areas, expanding the legislative reach into military zones.

3 Impact on Pakistan's Political System:

a) Enhanced Environmental Rights for All Persons:

The new environmental right encourages more sustainable and eco-friendly policies, likely shaping future government actions.

b) Effects on Parliamentary Democracy:

By altering Article 63A, the amendment may impact party loyalty and discipline, leading to greater independence for parliament members. However, this change could also destabilize parliamentary governance if party leadership loses influence over voting, especially in critical votes like

confidence motions and money bills.

c Judicial Reforms and Independence:

The creation of the FCC and restrictions on judicial review over constitutional amendments may raise concerns over judicial independence. While this could lead to streamlined decision-making in constitutional matters, it risks reducing the judiciary's check on legislative and executive actions, possibly eroding democratic safeguards.

d Effects on Provincial Representation and Governance:

By giving all provinces equal representation in the FCC, the amendment strengthens federalism and regional autonomy, potentially leading to a more balanced governance model. The FCC's role could improve inter-provincial harmony but may also create jurisdictional conflicts between courts.

Conclusion:

The 26th Amendment to Pakistan's Constitution makes a turning point, restructuring judicial powers, introducing environmental rights, and affecting party discipline in Parliament as it reshapes how judges are appointed and creates a new top court called the Federal Constitutional Court (FCC). These changes aim to improve the country's law and governance, but they also raise concerns about the balance of power between the government and the courts. ¶