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PART-II

QUESTION : 02

- Q Discuss the main changes made in the Constitution of Pakistan. Elaborate.

26th Amendment :

26th Amendment or 'Constitutional Package' passed by the Senate and National Assembly with a 2/3 majority each mainly discusses Judicial reforms.

The bill received 65 votes in Senate and 225 in National Assembly, and also received Presidential assent.

Along with discussing Judicial reforms, the amendment also proposes the elimination of Riba by January 2028, and includes 'Right to sustainable and clean environment' as a fundamental right of all citizens.

Following are the main changes made in the Constitution of Pakistan through the 26th Amendment:

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- New environmental rights.
- Ban on interest-based practices.
- Limiting Court enquiries into government decisions.
- Election expenses added to budget.
- Judicial appointment reforms.
- New Parliamentary nomination process.
- Fixed term for Chief Justice of Pakistan.
- Performance evaluation of Judges.
- Limits on Supreme Court Jurisdiction: limit on Suo Motu.
- Creation of Constitutional benches
- Restructuring of Supreme Judicial Council.

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New Environmental Rights
Article 9A

Every citizen is entitled to a clean, healthy and sustainable environment.

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Ban on interest-based practices
Article 38-F

Interest free financial system must be pledged and Riba must be eliminated by January 1, 2028.

- Supreme
- Two
- Federal
- Justice
- Attorney
- Bar

Limiting Court inquiries into

- 15 + 4
Members

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practices.
into

Government decisions
Article 48(4)

to

Courts and tribunals cannot question the advice given to the Prime Minister by the P.M or the Cabinet.

reforms.
introduction

Election expenses added to the budget

Justice

Article 81:

of Judges.
Court
Suo Motu.
all benches
come

Funding for the elections of National Assembly, Senate and the local government is now formally included in the National budget.

Judicial appointments reforms
Article 175A

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sustainable

The Chief Justice of Pakistan will chair the Judicial Commission and other members of the Commission will include:

practices

- Three senior Judges from the Supreme Court.
- Two Senior judges from the Constitutional benches.
- Federal Minister of Law and Justice
- Attorney General of Pakistan
- Bar Council nominee with 15+ years of experience
- Members of the Parliament with

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Two from National Assembly
and Two from senate.

Performance evaluation:

Now includes the evaluation
of High Court judges along
with the existing process.

Appointment of Chief Justice of
Pakistan:

Chief Justice of Pakistan will
be nominated by a
special 'Parliamentary Committee'

The Committee will have
12 members,

- 8 from National Assembly
- 4 from senate

One member must be a
woman or from minorities
to display inclusion and
diversity.

The Committee will nominate
Chief Justice from three most
senior judges of the Supreme
Court.

If any nominee declines,
the next in line will be
the Chief Justice.

Proportional representation:

Parliamentary parties will have
proportional representation in

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the National Assembly Committee based on their strength in the Parliament.

Nomination deadline:

The Committee must nominate the Chief Justice 14 days before the retirement of the outgoing Judge.

The decision of the Parliamentary Committee will stand valid even during the absence of a member.

Article 68 restrictions on court discussions will not apply to the discussions of the Parliamentary Committee.

Fixed term for Chief Justice of Pakistan:

Article 179

Chief Justice of Pakistan will now serve a fixed term of 3 years until of 65 years age unless they resign, retire, or are removed according to constitutional rules.

After completing these years term, the Chief Justice will retire automatically.

Performance evaluation of Judges:
The Commission will conduct

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annual performance reviews of High Court Judges and notify the Supreme Judicial Council.

Limits on Supreme Court Jurisdiction
Article 184

The Supreme Court cannot act on its own, and issue directions *Suo Motu*, unless an application has been filed.

Creation of Supreme Court's Constitutional benches
Article 191

Special Constitutional benches will be formed comprising Judges from each province to deal with constitutional cases and cases of interpretation of the constitution.

These Constitutional benches will have the authority over

- Original Jurisdiction (fundamental rights, use of *Suo Motu*).
- Appeals related to Constitutional interpretation.
- Advisory Jurisdiction.

Article 202A

New High Court benches with powers similar to constitutional benches of the Supreme Court.

Restructured Council:
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EFFECTS ON PAKISTAN

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Restructuring of Supreme Judicial
Council:

Article 209

The Supreme Judicial Council
will now include

- Chief Justice of Pakistan
- Two senior most Judges of the Supreme Court.
- Two senior chief justices of the high courts!

• Removal of Judges:

A Judge can be removed
for :

- Incapacity due to physical/mental reasons.
- Inefficiency in performance
- Misconduct

Code of Conduct will be established
by the Council for the Judges-

EFFECTS OF 26th AMENDMENT ON POLITICAL SYSTEM OF PAKISTAN:

While the reforms introduced in
the 26th Amendment aims
at modernizing Pakistan's
Judicial system, reinforces
Governance framework and
addresses environmental and
finance issues, they also
raise concerns about the

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implementation of the reforms, and their impact on Judicial Independence. While these reforms offer accountability and transparency, their potential impact on the political landscape cannot be ignored.

Potential for increased political discourse:

The amendment's introduction to significant reforms to the Judicial system sparked public discourse on governance, judicial appointments and constitutional rights, hence promoting a more informed electorate.

Blurring the Separation of Powers:
These reforms blur separation of Powers notion, as the Legislature and Executive seem dominant over the Judicial processes of appointment and evaluations.

Impartiality risk:
Granting Parliament a greater oversight over the Judicial process risks being influenced by political dynamics, undermining the impartiality of Judiciary.

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On the other hand, with the Constitutional Court Cases being handled by benches, the Supreme Court's caseload is can be reduced and the potential involvement in high-profile political cases as well. This move is intended to 'depolitize the Judiciary' -

Increased Transparency:
Introducing Parliamentary Committee for Judicial appointments could allow elected representatives to have a greater say in the judiciary, potentially enhancing transparency. However, this also raises concerns about the independence of Judiciary in Judicial decisions from political influence.

Election Funding Provisions:
Ensuring proper funding and Organizational support for elections is expected to improve election integrity, with a focus on transparent and fair processes at all governmental levels.

Elimination of Riba and global markets:

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As Global markets are interest based, sudden shift towards elimination of interest based policies would create economic instability and will have political repercussions.

Conclusion:

In conclusion, Pakistan's 26th Amendment represents a pivotal step towards reforming the country's political and judicial landscape. The amendment aims to reduce pending cases by initiating constitutional benches, and streamlining the appointment process. However, these changes also bring new challenges and concerns especially regarding Judicial independence and Parliamentary oversight.

Overall, the amendment has the potential to align political processes with constitutional values but its long-term success will depend upon careful implementation and public engagement.

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Q QUESTION: 04

Q Critically evaluate Sir Syed's trinity..
from politics

SIR SYED AHMED KHAN

The visionary leader, muslim reformer, and educator; Sir Syed Ahmed Khan was born in 1817 in Delhi during the waning years of the Mughal Empire.

He belonged to a highly respectable family of Mughal court officials. He entered the service of East India Company and rose to be a judge.

Amidst the socio-political turbulence following the War of Independence in 1857, he recognized the need for Indian Muslims to adopt modern education and reform to thrive in British-ruled India.

In 1858, he wrote "Essay on the Causes of the Indian Revolt", and attributed the mutiny to British ignorance

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of the Indian mind.

Sir Syed's Trinity of Ideas:
Loyalty towards Britishers,
devotion to education and
aloofness from Politics:

Sir Syed Ahmed Khan formed
a critical framework for the
Muslims in colonial India.

His approach is referred
to as "Trinity of Ideas:
loyalty towards Britishers, devotion
to education and aloofness
from Politics". This approach was
instrumental in guiding the Muslim
community during a time of
socio-political upheaval, yet
it met both support and
criticism for its lasting impact
on the political consciousness
of the Indian Muslims.

Loyalty to the British:

Following the 1857 war of
Independence, Sir Syed believed
that loyalty to the British was
necessary to secure better
conditions for Muslims and to
repair strained British-Muslim
relations. His loyalty was a
pragmatic choice aimed at
reducing hostilities and winning

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favour from colonial rulers to safeguard Muslim rights.

In *The Making of Pakistan*, K. K. Aziz writes that,

“The only way of wiping off the stigma of Muslim instigation of the mutiny was to make friends with British and thus to make them believe / disabuse their minds of the idea that Muslims were their traditional enemy”

However, this stance drew criticism from some contemporaries who viewed it as overly accommodating to colonial rule. Sir Syed was criticised for his Pro-British attitude.

The legacy of 'loyalty towards Britishers' fostered an era of educational and social reforms that benefitted the Muslim community.

Devotion to Education:

Sir Syed's focus on modern education led to the founding of the Muhammadan Anglo Oriental College, later becoming Aligarh Muslim University, which introduced Western sciences and

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humanities alongside traditional Islamic studies. He believed that modern education would empower Muslims to compete with other communities.

K.K. Aziz in the Making of Pakistan, quotes Sir Syed Ahmed Khan as,

"Devote yourself to education, this is your only salvation"

However, some criticized his emphasis on Western education as a departure from Muslim heritage. Critics felt that the emphasis on Western education was a means of "Westernizing" Muslims at the expense of cultural and religious identity.

His vision inspired future leaders in the community and created a generation that could engage with contemporary issues on equal footing with the British and other Indian communities.

Focus on education was Sir Syed Ahmed Khan's most successful legacy.

Sloofness from Politics:

Sir Syed believed that political involvement under colonial rule would not benefit Muslims, as

he felt engage at advocat through participi

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he felt they were not prepared to engage effectively in politics at that time. Instead he advocated for gradual empowerment through education before political participation.

"With such crippling handicaps how could they dream of political participation? they must keep themselves completely aloof from all political movements and devote to educational uplift"

- Sir Syed quoted by K.K Aziz

Many critics argue that his encouragement of political detachment prevented Muslims from participating in the Indian nationalist movement early on. It delayed the political organization of Muslim population until early 20th Century.

However, his stance that "Hindu Muslim were unequal nations: democracy would mean depression of Muslims under Hindu majority" influenced the subsequent developments of the All India Muslim League and shaped a distinct political trajectory for Muslims, ultimately contributing

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to the demand of separate representation, and eventually creation of Pakistan.

That is the reason why he is commonly referred to as, "The father of two-Nation Theory"

Conclusion:

Sir Syed's Trinity of ideas aimed to protect Muslim community and uplift them in colonial India. His strategies had a lasting impact on Muslim Identity and Politics. While his loyalty to the British and encouragement of Political detachment have been debated, his emphasis on modern education is widely acknowledged as a critical factor in empowering Muslims. His approach laid the groundwork for future political engagement, but it also created a legacy that kept Muslims on a path separate from the broader nationalist movement, influencing the socio-political structure of South Asia even after Independence.